UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS LIABILITY LITIGATION (No. VI)	}	**MDL DOCKET NO.: MDL 875**
THIS DOCUMENT RELATES TO: ALL ACTIONS	}	

CERTAIN DEFENDANTS' COMBINED MOTION AND BRIEF TO EXCLUDE EXPERT TESTIMONY BY DR. JAY T. SEGARRA AND TO DISMISS THE CLAIMS OF PLAINTIFFS RELYING ON SAME

Certain Defendants[1] (hereinafter "Defendants") submit this combined motion and brief for two purposes:

- First, Defendants respectfully request that this Court exclude any and all expert testimony, including that in the form of alleged "diagnoses," by Dr. Jay T. Segarra, one of the plaintiffs' most prolific litigation doctors.
- Second, Defendants respectfully request that this Court dismiss without prejudice the claims of all plaintiffs in MDL No. 875 which are based upon the opinions of Dr. Jay T. Segarra.

[1] A.R. Wilfley & Sons, Inc.; Accurate Felt & Gasket Co., Inc.; Allied Glove Corporation (sometimes sued as Nationwide Glove Corporation); Amsted Industries, Inc.; Baldor Electric Company; Bondex International, Inc.; CertainTeed Corporation; Chemtura Corporation; Cooper Alloy Corp.; Crossfield Products Corp.; Eastern Safety Equipment Company, Inc. (sometimes sued as Aearo Company); Flexo Products, Inc.; Gardner Denver, Inc.; General Electric Co.; Georgia-Pacific Corporation; The Gorman-Rupp Company; Gulf Coast Marine Supply Company; Pulsafeeder, Inc.; Viking Pump Company; Warren Rupp, Inc.; Illinois Tool Works Inc.; Ingersoll-Rand Company; Lawrence Pumps, Inc.; Magnetrol International Incorporated; Marine Specialty Company, Inc.; Mueller Steam Specialty; National Service Industries, Inc.; Owens-Illinois, Inc. d/b/a O-I; Pecora Corporation; Pneumo Abex, LLC; Rogers Corporation; Sager Glove Corp.; Aurora Pump Company; BIF; DeZurik, Inc.; Layne & Bowler Pump Group; Marsh Instruments; Standard Equipment Company, Inc.; Terex Corporation; Terex Cranes, Inc.; The American Crane Corporation; Turner Supply Company; Union Carbide Corporation; Amchem Products, Inc.; Warren Pumps, LLC; "Yeoman's Chicago Corporation" (also erroneously served for "Chicago Pump Company" and/or "Morris Machine Works/Morris Pumps"); Yuba Heat Transfer.

I. INTRODUCTION

Tens of thousands of asbestos plaintiffs have filed claims based solely upon alleged diagnoses authored by Dr. Jay T. Segarra, a pulmonologist from Ocean Springs, Mississippi.[2] Dr. Segarra began his career as an "expert" and litigation screening doctor in the early 1990s, working initially for the now-discredited screening company, Pulmonary Function Laboratories. Nov. 20, 2006 Dep. of Dr. Jay Segarra, *In re W.R. Grace & Co., et al.*, No. 01-1139 (Bankr. D. Del.) (hereinafter "11/20/2006 Segarra Dep."), at 18 (attached as Exhibit 2). In the ensuing decade, Dr. Segarra became what he is today – a professional witness who, in conjunction with many of the most notorious for-profit mass screening companies in the country,[3] has "diagnosed" an astonishing number of would-be plaintiffs with asbestosis and/or silicosis – not for any valid medical reason, but solely for profit. Dr. Segarra has issued at least 38,447 ***positive*** asbestos-related diagnoses, for which he has admittedly charged over $10 million. Mar. 2, 2006, CRMC[4] Response to Am. Notice of Dep. Upon Written Questions, *In Re Asbestos Prods. Liab. Litig.*, MDL No. 875 (E.D. Pa.) (attached as Exhibit 3); 11/20/06 Segarra Dep. at 145-148.

---

[2] Plaintiffs in MDL No. 875 have already produced diagnosing reports authored by Dr. Jay Segarra in response to Administrative Order No. 12 (attached as Exhibit 1).

[3] As discussed *infra*, Dr. Segarra worked for a decade with Respiratory Testing Services, Inc. (hereinafter "RTS"), and worked for N&M, Inc. (hereinafter "N&M") on a number of occasions as well. 11/20/2006 Segarra Dep. at 20, 24.

[4] The Manville Trust is a bankruptcy trust managed by the Claims Resolution Management Corporation (hereinafter "CRMC") which accepts claims made against The Johns Manville Company, a bankrupt asbestos insulation manufacturer. Mar. 2, 2006, CRMC Response to Am. Notice of Dep. Upon Written Questions, *In Re Asbestos Prods. Liab. Litig.*, MDL No. 875 (E.D. Pa.). Although the Manville Trust was formed in 1988, CRMC did not start tracking the frequency of diagnosing doctors until early 2002. Thus, CRMC's testimony that Dr. Segarra participated in 38,337 diagnoses "likely materially under report[s] the number of claims supported by medical reports prepared by" Dr. Segarra. *Id*. at Question 11.

Over the span of his 13-year screening career, it is clear that Dr. Segarra has abandoned medical methodology for expediency, legitimacy for lawlessness, and sincerity for prosperity. Having reviewed many, but certainly not all, of Dr. Segarra's records,[5] Defendants have chronicled in this motion and brief the suspect patterns and practices Dr. Segarra employed while allegedly "diagnosing" individuals for litigation purposes at the behest of screening companies and plaintiffs' firms. Chief among these is that Dr. Segarra has routinely used unreliable diagnostic materials to consistently diagnose his quota of 47% of the tens of thousands of plaintiffs he has screened without regard to proper medical standards, including those set forth by the Association of Occupational and Environmental Clinics and the American Thoracic Society. Furthermore, Dr. Segarra's severe lack of credibility is nowhere more apparent than in the all too numerous instances where he diagnoses a plaintiff with asbestosis, and then later inexplicably changes his diagnosis to silicosis – all to satisfy the litigation plans of the plaintiffs' firms and screening companies who employ him.

At a minimum, Dr. Segarra's methodologies fail to comport with the recognized medical standards for diagnosing asbestos-related diseases; at a maximum, they constitute a fraud upon this, and hundreds of other, courts. Not surprisingly, Dr. Segarra has reacted to the inevitable and ever-increasing challenges to his work product with a dizzying labyrinth of denials, justifications, and rationalizations – none of which can be reconciled with each other, much less demonstrable fact.

---

[5] Dr. Segarra has refused to produce any documents in response to the subpoena issued by this Court. Defendants hereby renew their request that the Court order Dr. Segarra to produce documents relating to his work screening individuals for litigation purposes. Certain Defendants' Combined Motion and Brief to Compel Dr. Jay T. Segarra's Response to Subpoena, filed with this Court on Aug. 10, 2006.

As such, Defendants hereby respectfully request that this Court exclude any and all testimony by Dr. Segarra, including that in the form of alleged "diagnoses," pursuant to Rule 702 of the Federal Rules of Evidence, and that this Court dismiss the claims of all plaintiffs in MDL No. 875 which are based upon the opinions of Dr. Segarra.

II. THE STANDARD FOR ADMISSIBILITY OF EXPERT TESTIMONY

A. The Court is Required to Exclude Unreliable Expert Testimony

Federal Rule of Evidence 702 establishes the gate-keeping responsibilities of this Court in evaluating the admissibility of expert testimony. Fed. R. Evid. 702; *Calhoun v. Yamaha Motor Corp.*, 350 F.3d 316, 321-22 (3rd Cir. 2003) (citing *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993)).

Rule 702 articulates a stringent set of requirements for an expert to meet before his or her testimony is considered admissible. Rule 702 states:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, **if:**
>
> (1) the testimony is based upon sufficient facts or data,
>
> (2) the testimony is the product of reliable principles and methods, and
>
> (3) the witness has applied the principles and methods reliably to the facts of the case.

Fed. R. Evid. 702 (emphasis added).

This standard, discussed in relevant part below, was adopted by the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 (1993). *Calhoun*, 350 F.3d at 321-22. In *Daubert*, the United States Supreme Court ruled that a trial judge is required to conduct a "preliminary assessment of whether the reasoning or

methodology underlying the [expert] testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue." *Daubert*, 509 U.S. at 592-93; *Calhoun*, 350 F.3d at 321. These gate-keeping considerations ensure that the expert testimony offered at trial is relevant and "rests on a reliable foundation," a two-pronged test of admissibility. *Daubert*, 509 U.S. at 597; *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999) (citing *Daubert*, 509 U.S. at 589). Furthermore, "[b]y holding that the admissibility of scientific testimony is governed by [Federal Rule of Evidence] Rule 104(a), *Daubert* clearly holds that **the party seeking admissibility must make out more than a prima facie case of reliability**." *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 744 n.9 (3rd Cir. 1994) (emphasis added).

The "relevancy" of expert testimony, the first prong of the *Daubert* analysis, refers to whether or not the expert's evidence "fits" the facts of the case, meaning that the witness' expertise must be sufficiently tied to the facts of the case to assist the jury. *Daubert*, 509 U.S. at 591. In order to be considered "reliable," the second prong of the *Daubert* analysis, an expert's testimony or opinions must be based on "sound science [requiring] some objective, independent validation of the expert's methodology." *Id.*

Daubert sets forth several factors that bear on the second prong of analysis, the inquiry of whether particular expert testimony is "reliable," including: (1) the testability of the experts' hypothesis, (2) whether the methodology has been subjected to peer review and publication, (3) the technique's rate of error, (4) the existence and maintenance of standards controlling the technique's operation, and (5) whether the technique has been generally accepted in the scientific community. 509 U.S. at 593-594. However, these precise "factors may or may not be pertinent in assessing reliability,

depending on the nature of the issue, the expert's particular expertise, and the subject of his testimony." *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d 563, 621 (S.D. Tex. 2005) (internal quotations and citations omitted) (attached as Exhibit 4). Indeed, the inquiry as to whether an expert's testimony is "reliable" is both fact-specific and flexible. At a minimum, however, to be admissible, an expert's methodology must be based on scientifically valid principles. *Id*. Moreover, in making the reliability inquiry, it is a court's responsibility "to make certain that [the] expert . . . employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho*, 526 U.S. at 152.

Because it ensures integrity in the realm of expert testimony, it is this second "reliability" requirement of *Daubert* that challenges litigation doctors like Dr. Segarra and provides a hurdle impossible for them to overcome.

B. The Standard for Screening and Diagnosing Asbestosis

The American Medical Association, the American Thoracic Society, the International Labour Organization, the National Institute for Occupational Safety and Health, and medical textbooks have developed standard diagnostic protocols for occupational diseases, including asbestosis, which include the following four key criteria:

- **Evidence of structural change**
- **Evidence of plausible causation**
- **Exclusion of alternative diagnoses**
- **Evidence of functional impairment**

Diagnosis and Initial Management of Nonmalignant Diseases Related to Asbestos, Official Statement of the American Thoracic Society, 170 Am. J. Respiratory Critical

Care Med. 691, 692, at Table 1: Criteria for Diagnosis of Nonmalignant Lung Disease Related to Asbestos (2004) (emphasis added) (attached as Exhibit 5); *The Diagnosis of Nonmalignant Diseases Related to Asbestos*, Official Statement of the American Thoracic Society, 134 Am. Rev. Resp. Dis. 363-368 (1986) (attached as Exhibit 6); Nat'l Inst. for Occupational Safety and Health, U.S. Dep't of Health, Educ., & Welfare, *Criteria for a Recommended Standard: Occupational Exposure to Asbestos* (1972) (attached as Exhibit 7); *Int'l Labour Office, Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconiosis* (2000) (attached as Exhibit 8).

Similarly, in a Guidance Document issued in 2000, the Association of Occupational and Environmental Clinics specifically set forth what must be done during the screening process to form a reliable diagnosis of nonmalignant asbestos-related disease pursuant to "the standard of care and ethical practice in occupational medicine:"

> **Screening on the basis of chest X-ray and work history alone identifies possible cases but does not by itself provide sufficient information to make a firm diagnosis**, to assess impairment or to guide patient management.
>
> **An appropriate screening program** for asbestos-related disease **includes properly chosen and interpreted chest films, reviewed within one week of screening; a complete exposure history; symptom review; standardized spirometry; and physical examination.**
>
> Programs should also include smoking cessation interventions, evaluation for other malignancies and evaluation for immunization against pneumococcal pneumonia.
>
> Timely physician **disclosure of results to the patient, appropriate medical follow-up** and patient education are essential.
>
> **Omission of these** important preventive aspects in the clinical assessment of asbestos-related lung disease **falls short of the standard of care and ethical practice in occupational health.**

Association of Occupational and Environmental Clinics Guidance Document at 1 (2000) (emphasis added) (attached as Exhibit 9).

The clinical criteria discussed above are generally accepted in the medical community as the standards for use in the screening for, and diagnosis of, asbestos-related diseases, and have been so recognized by this Court. MDL No. 875 Administrative Order No. 12 (May 13, 2007). In fact, in Administrative Order No. 12, this Court specifically found "screenings . . . utilizing standards and protocols established by the American Thoracic Society (ATS), the Association of Occupational and Environmental Clinics (AOEC), and other accredited health organizations," to have a "larger probability" of being adequate, reliable, and admissible. Administrative Order No. 12, ¶ 7 (May 13, 2007). Conversely, the Court held that those screenings and diagnostic practices that fail to meet these standards "lack reliability and accountability." *Id*. As this Court expressly noted, "**[c]urrent litigation efforts in this Court and in the silica litigation have revealed that many mass screenings . . . fail[] to adhere to certain necessary medical standards and regulations. The result is that mass screenings create an inherent suspicion as to their reliability."** *Id*.

As set forth below, the diagnoses generated by Dr. Jay Segarra and the screening methodology he employed fail to meet "necessary medical standards and regulations," including, but not limited to, the criteria established by the American Thoracic Society (ATS) and the Association of Occupational and Environmental Clinics (AOEC). As such, Dr. Segarra's opinions are wholly unreliable and should be excluded by this Court.

III. DR. SEGARRA'S TESTIMONY AND DIAGNOSES SHOULD BE EXCLUDED UNDER RULE 702 AND *DAUBERT*

A. Dr. Segarra Does Not Follow Established Medical and Diagnostic Protocols in His Litigation Screening Work

It is without question that Dr. Segarra (and the screening companies with whom he associated) failed to follow the scientifically established methodology for screening and diagnosing individuals with asbestos-related diseases. By his own prior testimony, **Dr. Segarra concedes the proper methodology for diagnosing individuals with asbestosis is that set forth above.** As discussed below, **however, Dr. Segarra fails to meet the standards for which he has so adamantly advocated.** Instead, his purported "diagnoses" of asbestos-related diseases are not based on established medical criteria or any form of "good ground" as required by *Daubert*, but are based on a skewed diagnostic methodology driven solely by profit.

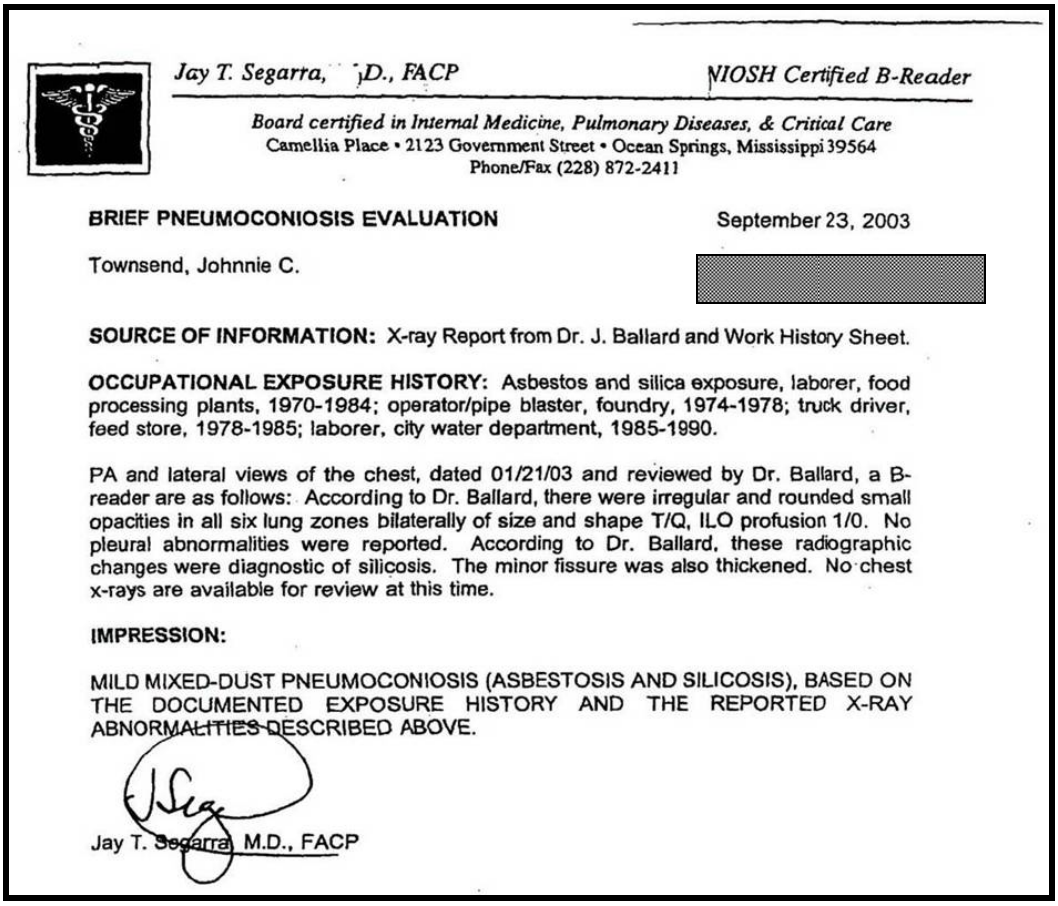
1. Dr. Segarra Does Not Practice What He Preaches

Dr. Segarra has previously testified that his methodology when diagnosing pneumoconioses such as asbestosis ***always*** includes: (1) personally taking medical and exposure histories; (2) personally obtaining enough information to assess frequency, regularity, and proximity of exposure; (3) personally performing physical examinations; (4) personally reading X-rays; (5) personally interpreting PFTs done by technicians Dr. Segarra supervises; (6) personally discussing with the plaintiffs the diagnosis, prognosis, future care, and increased risks of future disease; and, (7) personally dictating, reviewing, and signing his reports. Feb. 16, 2005, Courtroom Dep. of Dr. Jay Segarra, *In re Silica Prods. Liab. Litig.*, MDL No. 1553 (S.D. Tex.) (hereinafter "2/16/2006 Segarra Courtroom Dep."), at 359-367 (attached as Exhibit 10); 11/20/06 Segarra Dep. at 85, 88,

92, 93, 102, 103. In fact, according to Dr. Segarra, the entire process of determining whether an individual has asbestosis or silicosis takes between 60–90 minutes. *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d at 594 (footnote omitted).

Dr. Segarra claims that he follows this "standard medical practice" whenever he diagnoses anyone with pneumoconiosis in order to "maintain the integrity and methodology" of his diagnosing process. His work product, however, reveals that **he simply has not practiced what he has preached**.

Take, for example, Dr. Segarra's diagnostic report for Mr. Johnnie Townsend:[6]



Jay T. Segarra, M.D., FACP *NIOSH Certified B-Reader*

Board certified in Internal Medicine, Pulmonary Diseases, & Critical Care
Camellia Place • 2123 Government Street • Ocean Springs, Mississippi 39564
Phone/Fax (228) 872-2411

BRIEF PNEUMOCONIOSIS EVALUATION September 23, 2003

Townsend, Johnnie C. [redacted]

SOURCE OF INFORMATION: X-ray Report from Dr. J. Ballard and Work History Sheet.

OCCUPATIONAL EXPOSURE HISTORY: Asbestos and silica exposure, laborer, food processing plants, 1970-1984; operator/pipe blaster, foundry, 1974-1978; truck driver, feed store, 1978-1985; laborer, city water department, 1985-1990.

PA and lateral views of the chest, dated 01/21/03 and reviewed by Dr. Ballard, a B-reader are as follows: According to Dr. Ballard, there were irregular and rounded small opacities in all six lung zones bilaterally of size and shape T/Q, ILO profusion 1/0. No pleural abnormalities were reported. According to Dr. Ballard, these radiographic changes were diagnostic of silicosis. The minor fissure was also thickened. No chest x-rays are available for review at this time.

IMPRESSION:

MILD MIXED-DUST PNEUMOCONIOSIS (ASBESTOSIS AND SILICOSIS), BASED ON THE DOCUMENTED EXPOSURE HISTORY AND THE REPORTED X-RAY ABNORMALITIES DESCRIBED ABOVE.

Jay T. Segarra, M.D., FACP

[6] Defendants have redacted Mr. Townsend's Social Security Number and date of birth from this report.

Contrary to his claimed methodology, Dr. Segarra issued a diagnostic report for Mr. Townsend even though:

- Dr. Segarra never met Mr. Townsend.
- Dr. Segarra did not personally take, nor did he review, Mr. Townsend's medical history.
- Dr. Segarra did not personally take an exposure history from Mr. Townsend.
- Dr. Segarra had no information on the frequency, regularity, or proximity of Mr. Townsend's exposure, if any at all, to asbestos or silica.
- Dr. Segarra did not conduct a physical examination of Mr. Townsend.
- Dr. Segarra did not conduct, or even review, a pulmonary function test performed on Mr. Townsend.[7]
- Dr. Segarra never directly discussed his diagnosis, or anything else for that matter, with Mr. Townsend.
- Dr. Segarra did not read or interpret Mr. Townsend's X-ray himself.[8]

---

[7] As previously discussed, one of the recognized criteria for a diagnosis of asbestosis is evidence of functional impairment of the lungs. Dr. Segarra has testified that he always personally interprets PFTs done by technicians under his supervision. 11/20/06 Segarra Dep. at 103. Most of the PFTs and X-rays interpreted by Dr. Segarra during his career as a screening doctor were performed by RTS, N&M, PFT Services, and Holland Bieber. April 23, 1999 Dep. of Jay Segarra, *Charles Adkins, et al. v. Pittsburgh Corning Corp., et al.*, No. B-150,896-C (50th Jud. Dist. Ct., Jefferson Co., Tex.), at 30-31. Defendants submit that these companies are full service asbestos and silica screening entities whose sole purpose is to obtain plaintiffs for mass tort litigation. As discussed in prior pleadings filed with this Court, several of the representatives for these entities now regularly assert their Fifth Amendment right against self incrimination when questioned regarding the methods and practices they employed generating these diagnostic materials. Certain Defendants' Combined Motion and Brief to Exclude Expert Testimony and for Dismissals (Regarding Dr. Ray Harron, Dr. Andrew Harron, Dr. James Ballard, Dr. George Martindale, Dr. Richard Levine, and Dr. Jeffrey Bass), filed with this Court on June 8, 2006; Certain Defendants' Combined Motion and Brief to Exclude Diagnostic Materials Created by Respiratory Testing Services, Inc. and to Dismiss Claims of Plaintiffs Relying on Same, filed with this Court on Apr. 3, 2007. Though courts have afforded experts wide latitude in picking and choosing the sources on which to base opinions, Federal Rule of Evidence 703 nonetheless requires courts to examine the reliability of those sources. The Third Circuit has held that where "underlying data are so lacking in probative force and reliability that no reasonable expert could base an opinion on them," an opinion which rests entirely upon them must be excluded. *In re Paoli*, 35 F.3d at 748.

- Dr. Segarra could not have spent 60 to 90 minutes on Mr. Townsend's diagnosis as he produced at least 44 similar reports for other plaintiffs on the same date.

Dr. Segarra's report for Mr. Townsend is not an aberration. Defendants' incomplete records of Dr. Segarra's screening and diagnostic work alone contain over 700 reports similar to that of Mr. Townsend in that all have diagnoses,[9] but none have: (1) exposure or work histories prepared by Dr. Segarra; (2) frequency, proximity, and regularity information; (3) medical histories; or, (4) personal examinations by Dr. Segarra. Further, in at least 600 of the over 700 reports, Dr. Segarra did not review the X-rays personally, but instead relied upon X-ray reports by other B-readers.

Dr. Segarra's consistent and continual departure from the proper diagnostic methodologies established by the medical community is not limited to his failure to collect the information required to establish a diagnosis of asbestosis. As detailed below,

---

[8] **Instead, Dr. Segarra relied on little other than an X-ray reading by Dr. James W. Ballard, a screening doctor who now regularly asserts his Fifth Amendment Privilege against self-incrimination rather than testify under oath regarding his X-ray interpretation practices.** Dr. Segarra's report on Mr. Townsend also serves to evidence the unreliability of these types of reports and diagnoses in general – despite their formal window-dressing. In the case of Mr. Townsend, with no further information and with no basis for doing so, Dr. Segarra transformed a mere X-ray interpretation by Dr. Ballard into a formal "Pneumoconiosis Evaluation," which unequivocally states a "diagnosis" of "Mild Mixed-Dust Pneumoconiosis (Asbestosis and Silicosis)." Mr. Townsend then relied upon Dr. Segarra's report to file his lawsuit. Of course, Dr. Segarra's diagnosis of Mr. Townsend becomes even more outrageous when one learns that he either chose not to know, or not to state, that **Dr. Ballard had actually prepared three separate X-ray interpretations for Mr. Townsend – one finding asbestosis**, **another finding silicosis**, and a **third finding mixed-dust**, ostensibly so that the screening company and plaintiffs' firm could pick and choose which one best fit their litigation needs.

[9] Dr. Segarra has testified that the words "diagnosis" and "impression" in his reports, sometimes appearing as the comparative phrase "diagnosis/impression," are synonymous. 11/20/2006 Segarra Dep. at 104. However, later that day during the same deposition, when confronted with hundreds of reports like that of Mr. Townsend, Dr. Segarra attempted to abandon this premise and testified that a diagnosis captioned as an "impression" is not really a "diagnosis in any way." *Id*. at 213.

he also failed to eliminate other potential causes of the symptoms and clinical findings he allegedly saw in each potential plaintiff he screened.

2. Dr. Segarra's Failure to Perform a Differential Diagnosis Is a Critical Flaw and Renders His Methodology Unreliable

To properly diagnose an individual with an asbestos-related illness, the diagnostic process must include a "differential diagnosis." Creating a differential diagnosis is the process by which a physician eliminates alternative diseases and causes that could account for the symptoms presented. *In re Paoli*, 35 F.3d at 755. This bedrock component of diagnostic criteria is "a critical aspect of any claim of medical causation in a toxic tort setting" and is undoubtedly the diagnostic requirement which Dr. Segarra most consistently fails to complete. *Carroll v. Litton Sys., Inc.*, 1990 WL 312969 *1, *48 (W.D.N.C. 1990) (citing *In re "Agent Orange" Prods. Liab. Litig.*, 611 F. Supp. 1223, 1250 (D.C.N.Y. 1985) ("[c]entral to the inadequacy of plaintiffs' case is their inability to exclude other possible causes of plaintiffs' illnesses").

A differential asbestosis diagnosis is particularly critical because the hallmark symptoms and clinical findings consistent with asbestosis are also consistent with a host of other, completely unrelated, illnesses.

> To reach a medical diagnosis certainly requires more than just shadows on a chest X-ray. Because those shadows can be caused by quite a number of disease processes. . . . [In making t]he differential diagnosis, you're interested in their [occupational and exposure] history, their review of systems, their past medical history. There are drugs that can cause shadows on X-rays, or pharmaceutical preparations that can injure lungs and cause shadows on the X-ray. There are organic dust exposures and inorganic dust exposures that can cause shadows on the X-ray. There are collagen vascular diseases such as rheumatoid arthritis, lupus that can cause shadows on the X-ray. There's this unusual disorder, sarcoidosis, that can cause shadows on the X-ray, and congestive heart failure can cause shadows on the X-ray. Obese patients, as well as patients who take a shallow breath or other technical quality abnormalities with the film may

> lead to shadows on the X-ray that may be misleading and thought to be abnormal.

In re Silica Prods. Liab. Litig., 398 F. Supp. 2d at 630 (citation and quotation omitted).

Dr. Segarra previously tried to "explain away" the complete void of any evidence that he performs differential diagnoses. As he has stated in his prior testimony, "Sometimes yes and sometimes no. I don't in every case I see except in my mind. I don't write it down." Feb. 19, 2002, Dep. of Dr. Jay Segarra, *Figuero, et al. v. Owens Corning, et al.*, Cause No. 99-6090-A (28th Jud. Dist. Ct., Nuences County, Tex.), at 105. Of course, as Dr. Segarra himself has testified, in a medical documentation setting, "not writing it down" means "it didn't happen." March 3, 2004 Deposition, *Paul Richards, et al. v. Pulmosan Safety Equip., et al. (H.C. Hutto)*, No. 2002-49-CV9 (Cir. Ct. Jones County, Miss.), 43, 45 (stating "that's one of those axioms you are sort of taught in medical school"). Dr. Segarra again attempted to justify his failure to conduct a differential diagnosis in later testimony by contending that a differential diagnosis of asbestosis is often so "obvious" that you "don't normally go through that process." July 12, 2004 Dep. of Dr. Jay Segarra, *Cunningham, et al. v. Aearo Co., et al.*, Cause No. 203-Ci_02575 (55th Jud. Dist. Ct., Bexar County, Tex.), at 286-287.

A differential diagnosis, however, is anything but "obvious" in cases of asbestos-related disease, and practicing physicians do, in fact, "normally go through that process." *E.g.*, *In re Paoli*, 35 F.3d at 755; *Carroll*, 1990 WL at *48; *In re "Agent Orange" Prods. Liab. Litig.*, 611 F. Supp. at 1250. Dr. Segarra's incorrect understanding of the requirements of a differential diagnosis, and his failure to adequately conduct one, are clearly evidenced by the thousands of diagnostic reports authored by Dr. Segarra and

reviewed by Defendants that lack reference to any likely alternative sources for the plaintiffs' alleged symptoms.

B. Dr. Segarra's Diagnoses Are Unreliable

Dr. Segarra's failure to follow the scientifically established criteria for screening and diagnosing individuals with asbestos-related diseases renders his diagnoses unreliable. Even a cursory review of his reports reveals to the examiner a severe breakdown in diagnostic protocol. However, the Court's considerations are not limited to this one aspect of Dr. Segarra's shortcomings. Additional evidence of the unreliability of Dr. Segarra's diagnoses lies in the examination of his body of work as a whole.

1. The Number of Diagnoses Dr. Segarra Has Issued Is Staggering

The number of plaintiffs Dr. Segarra has purportedly diagnosed with pneumoconiosis is staggering and alone evidences the overall unreliability of his screening and diagnostic work. According to CRMC, Dr. Segarra has participated in 38,447 ***positive*** asbestos-related diagnoses; other records show an additional 1,780 positive silica or mixed dust findings by the doctor. Mar. 2, 2006, CRMC Response to Am. Notice of Dep. Upon Written Questions, *In Re Asbestos Prods Liab. Litig.*, MDL 875 (E.D. Pa.). In essence, Dr. Segarra would like the Court to believe that over his 13-year career he has diagnosed over 40,000 plaintiffs with pneumoconiosis. That number is equal to over 8 positive diagnoses per day, every single day of the year, including Saturdays, Sundays and legal holidays!

Dr. Segarra's prior efforts to defend the validity of the suspect volume of claims he has generated only undermine his credibility. At times, Dr. Segarra has simply underreported the number of diagnoses he has manufactured. For example, in an August

2005 deposition, Dr. Segarra somehow misstated the number of diagnoses he created by at least ***39,000*** plaintiffs – testifying that he had only 1,000 asbestosis, 200 silicosis, and 50 mixed dust diagnoses in the medical-legal context "throughout the nation." Aug. 15, 2005 Dep. of Dr. Jay Segarra, *Antonio & Enriqueta Alamo, et al. v. Pittsburgh Corning Corp., et al.*, No. 99-3969-D (Nueces County, Tex. Dist. Ct.), at 21-22. On other occasions, Dr. Segarra has attempted to justify the legitimacy of his some-40,000 diagnoses by reference to the purported thousands of persons in whom he has allegedly found no disease. Wade Goodwyn, *All Things Considered: Silicosis Ruling Could Revamp Legal Landscape* (National Public Radio radio broadcast Mar. 6, 2006) (Dr. Segarra stated: **"I may have diagnosed that many cases and, and I don't know if I have or not, but um . . . they don't know how many that I've looked at and haven't found any disease"**). This attempted justification, however, collapses under its own weight.

As demonstrated by the following table, assuming a 13-year career, and a positive rate ranging from 10% to 50%, Dr. Segarra would have had to participate in the screening and diagnosis of an utterly impossible 80,000 to 400,000 persons, at a rate ranging from 17 to 84 per day, everyday, including Saturdays, Sundays, and legal holidays, to achieve the number of positive diagnoses for which he is responsible.

Positive Rate	Total Evaluated	Total Evaluated Per Day
50%	80,000	17
40%	100,000	21
30%	133,333	28
20%	200,000	42
10%	400,000	84

Clearly, Dr. Segarra's attempts to justify his high volume of positive findings fail miserably when one considers the calculations above.

Of course, the way in which Dr. Segarra really did reach this incredible number of positively diagnosed plaintiffs becomes more clear – but even less justifiable – when one considers that he did much of his litigation diagnosis work at screenings conducted by the most notorious for-profit screening companies in the country.[10] Indeed, Dr. Segarra worked for many years with RTS and N&M, two screening companies who were excoriated for their fraudulent screening practices by Judge Jack in the Silica MDL No. 1553. 11/20/2006 Segarra Dep. at 20, 24; *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d 563, 596-603 (S.D. Tex. 2005). In fact, both Charles Foster, president of RTS, and Heath Mason, owner of N&M, have exercised their Fifth Amendment privilege against self-incrimination in lieu of testifying about the screening practices of their companies including, but not limited to: their work with Dr. Segarra; the authenticity of the X-rays and pulmonary function tests generated by their companies and reviewed by Dr. Segarra; the exposure, medical, and work history information provided to Dr. Segarra; and any positive rate guaranteed by their companies and Dr. Segarra. *The Silicosis Story: Mass Tort Screening and the Public Health Before the Subcomm. on Oversight and Investigations of House Comm. on Energy and Commerce*, 109th Cong. 264 (2006) (testimony of Charles Foster), *available at* http://www.access.gpo.gov/congress/house; Oct. 27, 2006, Dep. of Charles Foster, *In re W.R. Grace & Co., et al.*, No. 01-1139

[10] A more complete discussion of the suspect screening and diagnostic practices of these entities and their associated screening doctors can by found in Certain Defendants' Combined Motion and Brief to Exclude Expert Testimony and for Dismissals (Regarding Dr. Ray Harron, Dr. Andrew Harron, Dr. James Ballard, Dr. George Martindale, Dr. Richard Levine, and Dr. Jeffrey Bass), filed with this Court on June 8, 2006, and Certain Defendants' Combined Motion and Brief to Exclude Diagnostic Materials Created by Respiratory Testing Services, Inc. and to Dismiss Claims of Plaintiffs Relying on Same, filed with this Court on Apr. 3, 2007.

(Bankr. D. Del.); Feb. 27, 2007, Dep. of Heath Mason, *In re W.R. Grace & Co., et al.*, No. 01-1139 (Bankr. D. Del.).

As this Court is aware, it is black letter law that "Taking the Fifth" justifies an adverse inference in a civil case that the answer would be unfavorable. *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976). "As for the insight to be accorded to adverse inferences, the District Court should be mindful of Justice Brandeis' classic admonition: 'Silence is often evidence of the most persuasive character.'" *Id.* at 319 (quoting *United States ex. rel. Bilokunsky v. Tod,* 263 U.S. 149, 153-4 (1923)). Therefore, the refusal, and perhaps inability, of RTS and N&M representatives to explain how litigation doctors such as Dr. Segarra rendered tens of thousands of positive diagnoses for their companies speaks forcefully in this civil proceeding about the suspect nature of Dr. Segarra's methodology, and the dubious circumstances under which his "diagnoses" were generated.

2. Dr. Segarra's Daily Diagnosing Rates Defy Reason

The problems inherent in Dr. Segarra's generating tens of thousands of positive asbestos-related diagnoses give rise to additional concerns over his resulting "daily diagnosing rates." When considered in a medical, scientific, and statistical context, the number of diagnoses rendered by Dr. Segarra on a given day can be confounding. Such high daily diagnosing rates serve to further demonstrate how Dr. Segarra's diagnoses are inherently unreliable and how his methodology is flawed.

As previously noted, Dr. Segarra testified that he requires 60-90 minutes per diagnosis of pneumoconiosis:

> According to Dr. Segarra, the entire process of determining whether an individual has silicosis takes between 60–90 minutes. Thirty minutes of this time is devoted to taking the person's occupational, medical and smoking histories, and performing the physical examination.

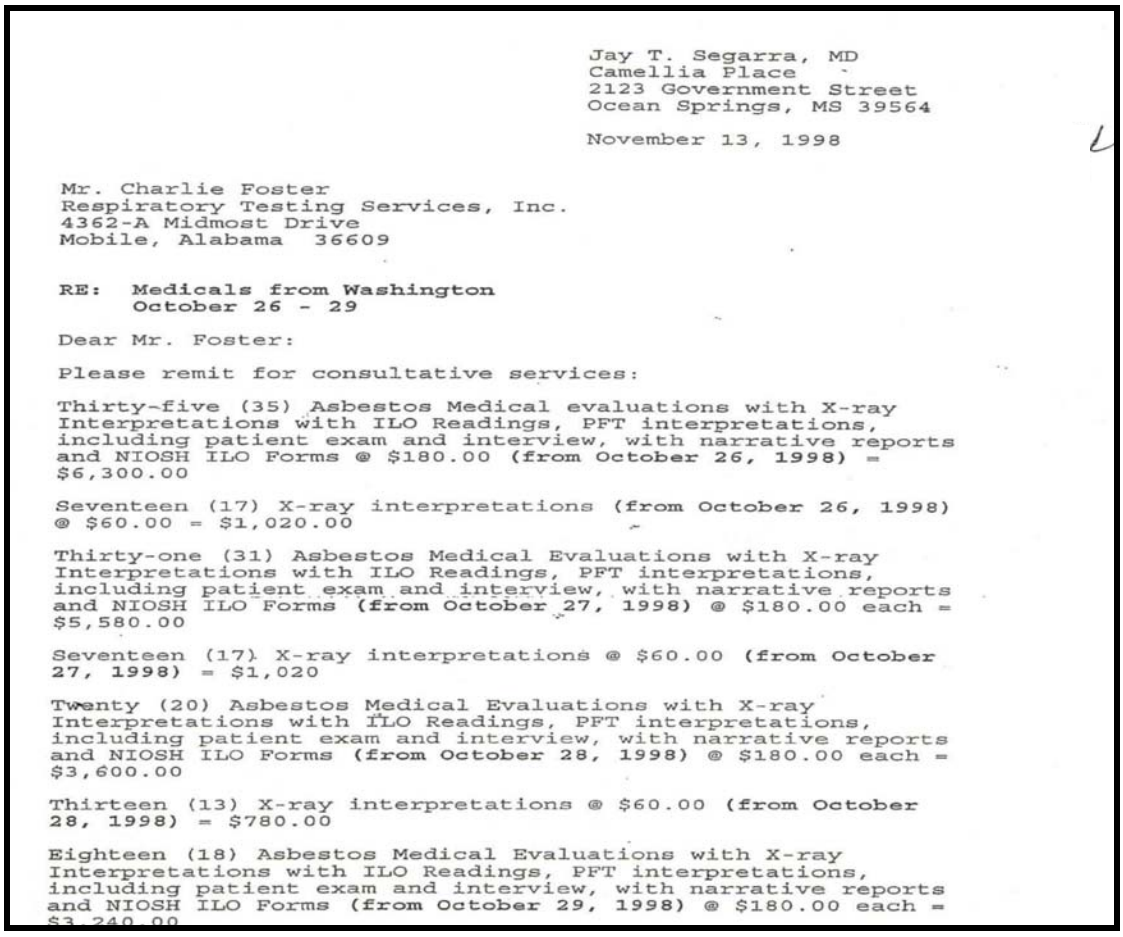
In re Silica Prods. Liab. Litig., 398 F. Supp. at 623 (citation omitted). For this reason, Dr. Segarra has previously testified that the highest number of plaintiffs he has diagnosed in any one day is 20, May 3, 2004, Dep. of Dr. Jay Segarra, *David Dexter Abbott, et al. v. Pulmosan Safety Equip., et al.*, No. 2002-308 (Cir. Ct. Claiborne Co., Miss.); 11/20/06 Segarra Dep. at 208. Likewise, Dr. Segarra's long time transcriptionist has testified that Dr. Segarra instructed her to prepare his reports with no more than 20 bearing the same date. Feb. 21, 2007 Dep. of Anne Burke, *In re W.R. Grace & Co. et al.*, No. 01-1139 (Bankr. D. Del.) (hereinafter "2/21/2007 Burke Dep."), at 209-212 (attached as Exhibit 11). By promulgating the myth that he would never generate more than 20 diagnoses in one day, Dr. Segarra could maintain that (in theory) it would have been possible for him to spend an adequate amount of time on each diagnostic report he issued.

Unfortunately for Dr. Segarra, financial materials and other records produced to this Court by various screening companies tell a different story. Based on information contained in these documents, Dr. Segarra **has rendered positive diagnoses for more than 20 people per day on no less than 199 occasions** throughout his screening career; and, he has **diagnosed more than 50 per day on at least 14 occasions**.

The following chart reflects Dr. Segarra's "Top 20" days in terms of positive diagnoses per day, as well as the minutes spent per diagnosis (assuming an eight hour day):

Date	Number of Positive Diagnoses	Minutes Spent Per Diagnosis
July 29, 2003	200	3
December 5, 1994	135	5
October 15, 1994	122	5
August 9, 2003	96	7
March 27, 1994	82	8
August 15, 2003	81	8
August 13, 2003	63	10
May 1, 1994	62	10
October 9, 1994	61	10
March 19, 1994	59	11
October 1, 1994	58	11
November 30, 1999	57	11
March 13, 2002	57	11
August 14, 2003	56	11
August 21, 2003	55	12
December 30, 1996	54	12
October 26, 1998	45	14
September 23, 2003	45	14
March 27, 2001	44	15
October 27, 1998	43	15

Even Dr. Segarra's own invoices, collected from RTS (the screening company for whom he worked for much of his career), provide additional evidence that Dr. Segarra previously lied about his diagnostic methodology (60-90 minutes per diagnoses) and his output (no more than 20 per day). For example, the first page of Dr. Segarra's invoice for RTS' October 26, 1998 screening (depicted below and attached as Exhibit 12), reflects that Dr. Segarra performed "Thirty-five (35) Asbestos Medical Evaluations with X-ray interpretations with ILO Readings, PFT interpretations, including patient exam and interview, with narrative reports and NIOSH ILO forms" all on October 26, 1998.



Jay T. Segarra, MD
Camellia Place
2123 Government Street
Ocean Springs, MS 39564

November 13, 1998

Mr. Charlie Foster
Respiratory Testing Services, Inc.
4362-A Midmost Drive
Mobile, Alabama 36609

RE: Medicals from Washington
October 26 - 29

Dear Mr. Foster:

Please remit for consultative services:

Thirty-five (35) Asbestos Medical evaluations with X-ray Interpretations with ILO Readings, PFT interpretations, including patient exam and interview, with narrative reports and NIOSH ILO Forms @ $180.00 (from October 26, 1998) = $6,300.00

Seventeen (17) X-ray interpretations (from October 26, 1998) @ $60.00 = $1,020.00

Thirty-one (31) Asbestos Medical Evaluations with X-ray Interpretations with ILO Readings, PFT interpretations, including patient exam and interview, with narrative reports and NIOSH ILO Forms (from October 27, 1998) @ $180.00 each = $5,580.00

Seventeen (17) X-ray interpretations @ $60.00 (from October 27, 1998) = $1,020

Twenty (20) Asbestos Medical Evaluations with X-ray Interpretations with ILO Readings, PFT interpretations, including patient exam and interview, with narrative reports and NIOSH ILO Forms (from October 28, 1998) @ $180.00 each = $3,600.00

Thirteen (13) X-ray interpretations @ $60.00 (from October 28, 1998) = $780.00

Eighteen (18) Asbestos Medical Evaluations with X-ray Interpretations with ILO Readings, PFT interpretations, including patient exam and interview, with narrative reports and NIOSH ILO Forms (from October 29, 1998) @ $180.00 each = $3,240.00

Finally, some of the most shocking testimony about the feverish pace at which Dr. Segarra diagnosed plaintiffs is provided by one of his primary transcriptionists, Anne Burke. See 11/20/06 Segarra Dep. at 21. Ms. Burke testified that Dr. Segarra was perennially behind in preparing reports, and that, **on occasion, Dr. Segarra's wife, Lisa Segarra, would dictate Dr. Segarra's reports for him**. 2/21/2007 Burke Dep. at 176. Indeed, Ms. Burke further testified that, to satisfy an impatient plaintiffs' law firm, Lisa Segarra once asked Ms. Burke to help **her** personally read an X-ray and dictate a diagnostic report:

> A. [The law firm] became so impatient one time – and this was only one occasion, but I remember it clearly. I don't have the date. **Mrs. Segarra asked me if I'd come down there and look at an X-ray with her and try to read it.**

Q. Okay. Let's backtrack a little bit about that. You say you recall one occasion where Mrs. Segarra asked you to join her and look at an X-ray?

A. Yes.

Q. And attempt to read the X-ray?

A. Yes.

Q. And dictate a report?

A. Yes. . . .

Q. Did you participate with Mrs. Segarra on this occasion?

A. Absolutely not. I told her I had no medical background.

Id. at 108. Unfortunately for Dr. Segarra, Mrs. Segarra lacks any medical training as well. Indeed, Ms. Burke eventually became so uncomfortable with the authenticity of Dr. Segarra's work that she quit working for him.[11] *Id*. at 188.

3. Dr. Segarra's Positive Rate of 47% Belies Both the Sincerity of His Diagnosis and His Integrity as a Witness

Records obtained from various screening companies via subpoenas issued by this Court demonstrate that Dr. Segarra consistently made positive findings of pneumoconiosis in 47% of the potential plaintiffs he evaluated. **Although Dr. Segarra's 47% positive rate is more than four times what one would expect based on an objective review of the accepted medical literature, his findings are alarmingly <u>in step</u> with the pre-determined *business expectations* of the screening company** for whom he worked most of his career – RTS.[12] Moreover, in what has become a tired and

[11] In addition to Lisa Segarra's antics, Ms. Burke began to suspect that the names on the reports she was transcribing for Dr. Segarra were fictional. *Id*. at 184.

[12] During his screening career, Dr. Segarra has primarily worked for three screening companies: RTS, Worker's Disease Detection Service, and Holland Bieber, Inc.

familiar pattern of deception and self incrimination, Dr. Segarra's 47% positive rate is also two to four times higher than the positive rates he claimed in his prior testimony. Thus, Dr. Segarra's 47% positive rate belies both the sincerity of his diagnoses and his integrity as a witness.

Segarra and RTS

Defendants have obtained the records of RTS pursuant to discovery conducted in these consolidated proceedings. The RTS records indisputably show that Dr. Segarra made positive X-ray findings in 42% of 11,378 X-rays read for RTS:[13]

Diagnosis Type	Count of Diagnoses	Percentage of Total
Asbestos	3797	42%
Pleural	901	
Silica	28	
Mixed	36	
Negative	6616	58%
Total	11,378	100%

Segarra and WDDS

Dr. Segarra also worked extensively for another screening company, Worker's Disease Detection Service (hereinafter "WDDS"). Dr. Segarra's published abstracts and presentations regarding his WDDS experience demonstrate that he made positive X-ray findings in 50% of 18,463 X-rays read for that company:

[13] The documents and materials used to form these calculations are presently on file in this Court's document repository. The Court may take judicial notice of those records. If further elaboration or identification of the subject documents is deemed necessary by the Court, Defendants will, upon request, provide the Court with the relevant Bates numbers for each and every document, together with the mathematical calculations substantiating the calculations and statistics contained herein.

Title	WDDS Study Group	Number	Positive X-rays
Longitudinal Pulmonary Function Changes in Asbestos-Exposed Workers (Apr. 1997)	"Asbestos-exposed building trade workers"	440	33% (145) 1/0 or higher
Comparison of Two Groups of Building Trades Workers Screened for Asbestos-Related Pneumoconiosis in 1988 and 1996 (Mar. 1998)	"[T]wo populations of Building Trades Workers"	4,049	29% (1,165) ILO Not Provided
Relation of Single Breath Diffusing Capacity to Radiographic Interstitial Fibrosis in Workers Exposed Occupationally to Asbestos (Apr. 2002)	"[A]sbestos-exposed Workers"	1,904	65% (1,244) 1/0 or higher
Forced Vital Capacity (FVC) and Diffusing Capacity (DL) in 5015 Exposed Workers: Relationships to Radiographic Interstitial Fibrosis and Pleural Thickening (Apr. 2004)	"Workers exposed to asbestos"	5,015	56% (2,823) 1/0 or higher
Comparison of Radiographic and Pulmonary Function Findings in Female and Male Asbestos-Exposed Workers (Feb. 2005)	"[A]sbestos-exposed Workers"	7,055	54% (3,781) 1/0 or higher
Total		18,463	50% (9,158)

Segarra and Holland Bieber

Finally, Dr. Segarra's written response to inquiries by the Oversight and Investigations Subcommittee of the Energy and Commerce Committee of the United States House of Representatives reveals that Dr. Segarra made positive X-ray findings in 47% of 13,063 X-rays read for yet another screening company, Holland Bieber, Inc. (hereinafter "Holland Bieber"), in 2003, 2004, and 2005:[14]

Year	Pleural	Asbestosis	Silicosis	Mixed Dust	Negative	Unreadable	Total
2005	148	352	51	50	960	72	1,633
2004	296	1,768	193	197	3,575	117	6,146
2003	320	2,204	278	235	2,436	77	5,550
TOTAL	764	4,324	522	482	6,971	266	13,329

[14] 11/20/2006 Segarra Dep. at Exhibits. The positive rate is calculated by dividing the sum of all positive reports for these three years by the total reports issued for these three years (minus those that are unreadable).

Overall Positive Rate

Combining Dr. Segarra's experience with RTS, WDDS, and Holland Bieber, Dr. Segarra's overall average rate of positive X-ray findings is 47%.

Screening Company	Total Findings	Number of Positive Findings (1/0 or higher)	Number of Negative Findings	Percentage of Positives
RTS	**11,378**	**4,762**	**6,616**	**42%**
WDDS	**18,463**	**9,158**	**9,305**	**50%**
Holland Bieber	**13,063**	**6,092**	**6,971**	**47%**
TOTAL	**42,904**	**20,012**	**22,892**	**47%**

Professor Lester Brickman recently reviewed 56 reports of clinical studies of more than 77,662 exposed workers' X-rays, and concluded that 9,131, or 11.76%, were found to have fibroses graded as 1/0 or higher on the ILO scale. Lester Brickman, *Disparities Between Asbestosis and Silicosis Claims Generated by Litigation Screenings and Clinical Studies*, Cardozo L. Rev. (2007). Therefore, Dr. Segarra's 47% positive rate is more than four times the positive rates generated by objective and expert clinical studies. Professor Brickman concluded that this high a positive rate "alone provides compelling evidence of systematically erroneous if not fraudulent medical reports by the comparative handful of B-readers and doctors employed by screening companies and plaintiff's lawyers." *Id.*

As previously noted, although Dr. Segarra's 47% positive rate does not compare to those of physicians in a non-litigation setting, it meshes perfectly with the business

expectations of Charlie Foster, president of RTS, expressed in testimony given prior to his recent taking of the Fifth Amendment:

> Q. Is that a goal of Respiratory Testing Services, though, to get somewhere around 40 percent positives?
>
> A. Not a goal, no, sir.
>
> Q. Is it a business practice?
>
> A. It's a common practice with the numbers around 40 percent, 40 percent.
>
> Q. And one of your business practices is to basically screen 50 people a day. Correct?
>
> A. Yes, sir.
>
> Q. As a minimum, and give the lawyers about 20 folks out of 50. Is that correct?
>
> A. Thereabouts, yes, sir.

Feb. 18, 2005 Hr'g Tr., *In re Silica Prods. Liab. Litig.*, MDL No. 1533 (S.D. Tex.), at 169, 170. In a rare moment, Dr. Segarra had little or no explanation for the remarkable, convenient, and profitable "coincidence" between his overall positive rate and that of his largest employer:

> ***It's mostly a coincidence***. But to the degree that it's not a coincidence, Mr. Foster from long experience, just basically has an empirical understanding of what percentage of people will generally have some kind of positive finding when they go through the testing. That's all.

11/20/2006 Segarra Dep. at 285 (emphasis added).

Finally, as Dr. Segarra's 47% positive rate is four times more than that of doctors in legitimate clinical settings, it is similarly two to four times more than what he himself has been willing to admit to in prior deposition testimony. Indeed, Dr. Segarra has routinely, and inaccurately, testified that his positive rate was only 10% to 20%:

Claimed Rate	Case
15% to 20%	**Aug. 7, 2002, Dr. Jay Segarra Dep., *Loftis v. Air Prods. & Chems.*, No. 99-CV-1213 (Dist. Ct., Galveston County, 212th Jud. Dist., Tex.), at 270**
10% to 20%	**Oct. 7, 2003, Dr. Jay Segarra Dep., *Perry v. AC&S*, No. A-168369 (Dist. Ct., Jefferson County, 58th Jud. Dist., Tex.), at 258**
20%	**Dec. 7, 2004, Dr. Jay Segarra Dep., *Alfred v. Aearo Co.*, No. 2003-28152 (Dist. Ct., Harris County, 269th Jud. Dist., Tex.), at 288-289**
10%	**Mar. 22, 2005, Dr. Jay Segarra Dep., *Salazar v. Lone Star Indus.*, No. 02-CV-1434 (Dist. Ct., Galveston County, 56th Jud. Dist., Tex.), at 6.**

4. Lack of Variability Among Dr. Segarra's X-ray Readings Evidences Their Unreliability

Dr. Segarra's high, yet consistent, positive rate of 47% is not the only aspect of his litigation screening practice that defies statistical and medical logic. The lack of variability among his actual X-ray readings also casts a serious doubt on Dr. Segarra's methodologies and further evidences the unreliable nature of his work.

As this Court is aware, in asbestos and silica litigation, findings from a chest radiograph are often reported as a "B-reading." *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d 563, 581 n. 28 (S.D. Tex. 2005). This report is entered on a standardized form (by a physician who has been certified as a "B-reader" by NIOSH) using a classification system devised by the International Labour Office (hereinafter "ILO"). *Id.* Under the ILO classification system, the extent of radiographic abnormalities, known as the "profusion," is characterized by a number between 0 and 3, and a second number, separated from the first by "/". *Id.* at 591. The first number, preceding the "/", is the final score assigned to that film by the reader. *Id.* at 591. The second number, following

the "/", is a qualifier. The numbers 0, 1, 2, and 3 are the main categories, ranging from normal (or 0) to increasingly abnormal (1, 2, and 3). *Id.* at 591.[15]

A population whose members have pneumoconiosis should have profusions spread among the range of 0 to 3. However, plaintiffs' litigation doctors, like Dr. Segarra, consistently find profusions at the lowest level of abnormality (Category 1). Dr. John Parker, former administrator of NIOSH's B-reader program, current reviser of the ILO guidelines, and Chief of Pulmonary and Critical Care Medicine at West Virginia University, previously testified regarding the implausible consistency among litigation doctor profusion findings as follows:

> What I find most stunning about the information I've seen . . . is the lack of reader variability, because the consistency with which these films are read as 1/0 defies all statistical logic and all medical and scientific evidence of what happens to the lung when it's exposed to workplace dust. What again is stunning to me is the lack of variability. This lack of variability suggests to me that readers are not being intellectually and scientifically honest in their classifications. . . .
>
> If I have a population in which there's general agreement that they have silicosis, **I would be stunned to find almost all of the readings to be 1/0. I would expect there to be a range of distributions of profusion. The system would not expect a reader to be that consistent. In fact, that very consistency suggests that people are not being intellectually and scientifically honest**.

Feb. 18, 2005 Trans. at 81–84.

Dr. Segarra's profusion findings have the same characteristics which Dr. Parker found to be "stunning," "def[ying] statistical logic and all medical and scientific evidence," and "not . . . intellectually and scientifically honest." The following chart

[15] An X-ray read as a category 1 film might be described as 1/0, 1/1, or 1/2. *Id.* at 591. When the reader uses the descriptor "1/1", she is rating the film as a "1", and only considered it as a "1" film. *Id.* at 591. If she uses "1/0", she is saying she rated the film as a "1", but considered calling it a "0" (or normal) film before deciding it was category 1. *Id.* at 591. Finally, when the reader uses "1/2", she is saying she is rating the film as a "1," but considered calling it a "2" film. *Id.* at 591.

reflects Dr. Segarra's B-read profusion findings for all profusions greater than 0 (or normal) among 14,600 of Dr. Segarra's B-reads currently in Defendants' possession.

PROFUSIONS IN B-READS OF DR. JAY SEGARRA		
PROFUSION	NUMBER OF B-READS	PERCENTAGE OF TOTAL
1/0	7,007	90%
1/1	6,121	
1/2	903	10%
2/1	360	
2/2	140	
2/3	36	
3/2	23	
3/3	10	
TOTAL	14,600	100%

As with the consistency in his positive rate, Dr. Segarra's X-ray findings are implausibly invariable. Ninety percent (90%) are in the lowest 1/0 and 1/1 categories, the same statistical anomaly that was so roundly criticized by Dr. Parker, which only serves to further demonstrate the unsound and unreliable nature of his diagnoses.

5. Dr. Segarra's Participation in the 2002 Phantom Silica Epidemic Highlights the Unreliability of His Diagnostic Work

Perhaps the most damning feature of Dr. Segarra's notorious career was his participation in the phantom silica epidemic of 2002. Indeed, Dr. Segarra's conduct carried this illegitimate and "qausi-criminal" charade to new depths, becoming the champion of its most dubious invention, the "mixed dust" diagnosis. Feb. 16, 2005, Courtroom Dep. of Dr. Ray A. Harron, *In re Silica Prods. Liab. Litig.*, MDL No. 1553 (S.D. Tex.), at 345. As discussed below, Dr. Segarra's miraculous burst of silica and mixed dust findings during the period of 2001 to 2005 demonstrate once again that his diagnoses are driven not by medicine, but by profit alone.

Shortly after the turn of the millennium, asbestos filings had peaked. As Dr. Segarra noted, the "available pool of workers . . . who had never been screened [for asbestosis] before . . . was dwindling." 11/20/06 Segarra Dep. at 21. Hundreds of thousands of plaintiffs had asserted asbestos claims; many had already been paid. As noted by Chief Justice William Rehnquist, the number of asbestos claims in the tort system "crie[d] out for a legislative solution." *Ortiz v Fibreboard Corp.*, 527 U.S. 815 (1999). As corporate bankruptcies abounded, Congress proposed legislation known as the Fairness in Asbestos Injury Resolution Act (the FAIR Act), which would create a national asbestos compensation fund, and thus dry up private asbestos litigation as it had existed for years. Roger Parloff, *Diagnosing for Dollars*, FORTUNE MAGAZINE (June 13, 2005), at 101; *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d 563, 620 (S.D. Tex. 2005). Additionally, many states, including Mississippi, were enacting tort reform which would cut at the heart of mass tort litigation. With their profitable asbestos carcass virtually picked to the bone, plaintiffs' lawyers, screening companies, and the litigation doctors they employed were scrounging for lucrative new business which would not be affected by existing and proposed asbestos reforms. *Id*.

Thus began the "phantom [silica] epidemic" of 2002, which came "unnoticed by everyone other than those enmeshed in the legal system . . . ." *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d at 635. The first group picked by asbestos plaintiffs' lawyers to be screened for this new rash of lawsuits was their existing asbestos client base. Sadly, but not surprisingly, plaintiffs who had previously been X-rayed and found positive for asbestosis, but not silicosis, were re-examined, and now found positive for silicosis, but not asbestosis. Thus, the value of this "inventory" of pre-existing plaintiffs was

refreshed, as they were given an entirely new disease (silicosis), along with an entirely new claim against an entirely new group of defendants.[16]

Thousands of additional plaintiffs were diagnosed by the screening companies and their doctors to have the incredibly rare, but potentially lucrative, condition of ***both*** asbestosis ***and*** silicosis, thus maximizing their value from the outset with the potential for two lawsuits against two different sets of defendants. These dual asbestosis and silicosis diagnoses were issued in sheer defiance of existing medical science, as practiced by genuine physicians, which holds that the coincidence of asbestosis and silicosis, while possible, is exceedingly rare. After cataloging and considering the extensive medical evidence regarding the rarity of asbestosis and silicosis occurring in the same individual,[17] one federal court concluded that "many pulmonologists, pathologists and B-

---

[16] Indeed, 65% of the approximately 10,000 silicosis plaintiffs in the Silica MDL No. 1553 had previously filed asbestosis claims.

[17] The Silica MDL No. 1553 Court observed as follows regarding the rarity of the coincidence of asbestosis and silicosis:

> While it is theoretically possible for one person to have both silicosis and asbestosis, it would be a clinical rarity. As Dr. Weill testified:
>
> > Although asbestosis and silicosis are different diseases that look different on X-ray films, it is theoretically possible for one person to have both diseases. A person could be exposed to both silica and asbestos in sufficient quantities to cause either disease, but it would be extremely unusual for one person in a working lifetime to have sufficient exposure to both types of dust to cause both diseases. In my clinical experience in the United States, I have never seen a case like this and colleagues who saw patients in periods where exposure levels were much higher have difficulty recalling an individual worker who had both asbestosis and silicosis. Even in China, where I saw workers with jobs involving high exposure to asbestos and silica (such as sandblasting off asbestos insulation), I did not see anyone or review chest radiographs of anyone who had both silicosis and asbestosis.

readers go their entire careers without encountering a single patient with both silicosis and asbestosis," and that "a golfer is more likely to hit a hole-in-one than an occupational medicine specialist is to find a single case of both silicosis and asbestosis." *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d at 603. Indeed, even Ken Suggs, the President of the American Trial Lawyers Association, agreed that "Silicosis and asbestosis are different diseases, have different sources of exposure, and are rarely found in the same individual." March 8, 2006 Letter from Ken Suggs, to Rep. Ed Whitfield, Chairman, Oversight and Investigations Subcommittee of the Energy and Commerce Committee, United States House of Representatives.

> Dr. David Weill, Senate Judiciary Committee Testimony, Fed. Doc't Clearinghouse at 4 (Feb. 3, 2005); *see also* Dr. Paul Epstein, Senate Judiciary Committee Testimony, Fed. Doc't Clearinghouse at 3 (Feb. 2, 2005) ("[I]t is my professional opinion that the dual occurrence of asbestosis and silicosis is a clinical rarity."); Dr. Theodore Rodman, Senate Judiciary Committee Testimony, Fed. Doc't Clearinghouse at 2 (Feb. 2, 2005) ("Among the thousands of chest X-rays which I reviewed in asbestos and silica exposed individuals, cannot remember a single chest X-ray which showed clear-cut findings of both asbestos exposure and silica exposure."). Likewise, Dr. John Parker, former administrator of NIOSH's B-reader program and current reviser of the ILO guidelines, testified before this Court that he has never seen a clinical case of asbestosis and silicosis in the same individual. (Feb. 18, 2005, Trans. at 89–90.) Similarly, Dr. Samuel Hammar, a pathologist who has written the leading pathology textbook on lung disease (and who is frequently a plaintiff's expert in asbestosis cases), has written the following:
>
> > I have seen the diagnosis [of asbestosis and silicosis in the same patient] several times, and in the cases that I've had pathology to evaluate [i.e., where he has actually looked at the lung tissue], I have never seen cases in which there was both silicosis and asbestosis in the same patient. This does not necessarily mean that this couldn't happen, but in my experience, I have never seen it. Silicosis has a fairly distinct morphology, and at this point in time is a rare disease. I think I have seen about five cases over the last ten years that I thought pathologically represented silicosis.
>
> (Feb. 18, 2005, Trans. at 263–64; Friedman Ex. 2.)

In re Silica Prods. Liab. Litig., 398 F. Supp. 2d at 595-596.

In further propagating the myth that thousands of cases of both asbestosis and silicosis exist, screening doctors like Dr. Segarra even misappropriated the name "mixed dust disease" as a beguilingly convenient – though inaccurate – moniker for the virtually impossible coincidence of these two conditions.[18] In fact, real, practicing physicians had theretofore used "mixed dust" to refer to an entirely different disease not involving asbestosis. Honma, *Proposed Criteria for Mixed-Dust Pneumoconiosis: Definition, Descriptions, and Guidelines for Pathological Diagnosis and Clinical Correlation*, 35 HUMAN PATHOLOGY 1515 (2004). Dr. Laura Welch, the Medical Director of the Center to Protect Workers Rights, in testimony before the Senate Judiciary Committee on February 2, 2005, explained that the term "mixed dust," in fact, does not actually refer to a disease caused in part by exposure to asbestos:

> The term 'mixed dust' has been used broadly, and in my view inappropriately.
>
> The textbook definition of mixed dust pneumoconiosis is lung disease caused by simultaneous exposure to crystalline silica and other dusts such as iron oxides, coal, and graphite. Asbestos exposure is not a contributor to this mixed dust pneumoconiosis.

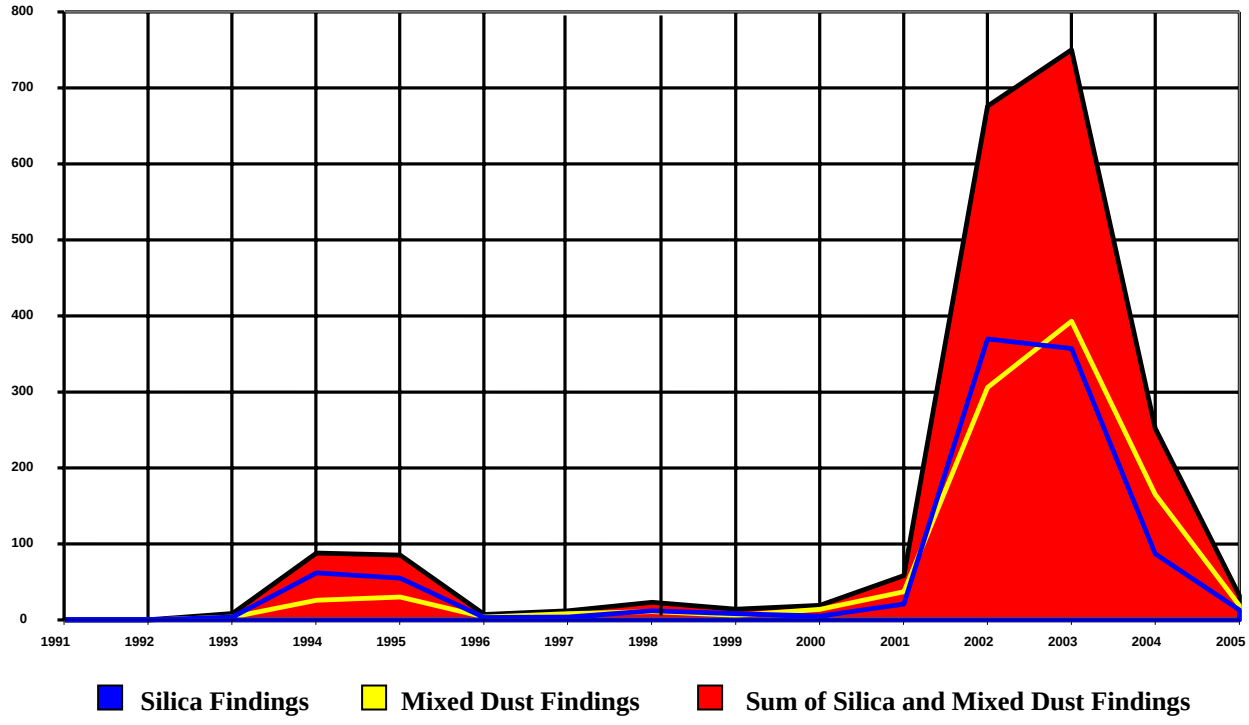
Nevertheless, Dr. Segarra has made a lucrative career out of examining the X-rays of plaintiffs who were involved in "dusty" occupations and (at least in recent years) diagnosing them with this mislabeled "mixed dust pneumoconiosis." Certainly, however, if his litigation-based "mixed dust" diagnoses were genuine and reliable, Dr. Segarra would have found significant numbers of "mixed dust," and even silicosis, plaintiffs

[18] Outside of his litigation doctor business, even Dr. Segarra admits that he has found mixed-dust pneumoconiosis consisting of asbestosis and silicosis only two or three times in his 20-year career. July 5, 2005, Dep. of Dr. Jay Segarra, *Johnny Ray Bell, et al. vs. Aearo Company F/K/A Cabot Safety Corp., et al*., No. E169785 (Jefferson County., Tex. Dist. Ct.), at 184-185.

throughout his 13-year screening career (rather than only toward the end). Instead, virtually all of Dr. Segarra's "mixed dust" and silicosis findings occurred, not so coincidently, during the economically motivated surge of silicosis litigation (and decline of asbestos litigation) beginning in 2002.

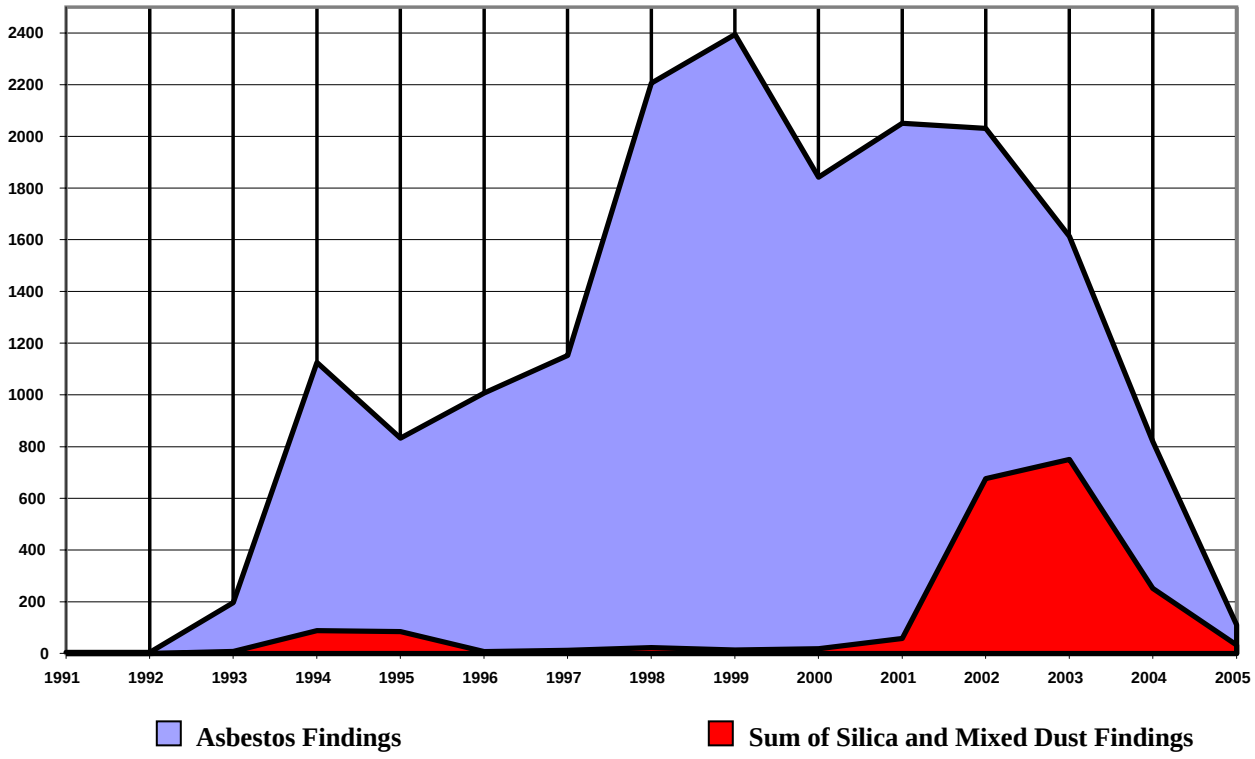
The following two charts reflect the incidence of Dr. Segarra's asbestosis, silicosis, and "mixed dust" (asbestosis and silicosis) findings throughout his career. The first reflects Dr. Segarra's silicosis and "mixed dust" findings by year, and has a pronounced spike in such findings during the period of 2001 to 2005, the period in which asbestos litigation began its downward spiral and silica-related disease became much more lucrative.

JAY T. SEGARRA
SILICA/MIXED DUST FINDINGS PER YEAR



The second chart adds Dr. Segarra's asbestos findings by year as a backdrop to his silicosis and "mixed dust" findings. Incredibly, Dr. Segarra found ***no significant*** silicosis or "mixed dust" disease during his asbestos years (1991 to 2000).

JAY T. SEGARRA
ASBESTOS/SILICA/MIXED DUST FINDINGS PER YEAR



These charts provide undeniable evidence that – even though he examined tens of thousands of X-rays for pneumoconiosis over a 13-year period – Dr. Segarra did not find silicosis or "mixed dust" in significant numbers until 2001, when it became fashionable and, more importantly, profitable to do so. The ineluctable conclusion is that Dr. Segarra's diagnoses are not medically-based or sincere; but rather, Dr. Segarra manufactured these diagnoses to the order of screening companies and lawyers, motivated only by greed. When it became economically profitable to find both asbestosis and silicosis, Dr. Segarra mysteriously found these purported "mixed dust" cases in

droves, such that Dr. Segarra became the virtual, undisputed king of "mixed dust," eclipsing all other screening doctors in the number of cases he labeled with this disease.

Altogether, Defendants have records of over 1,000 of these "mixed dust" holes-in-one by Dr. Segarra. Indeed, Dr. Segarra was so consumed by the "mixed dust" fervor that he **found 19 "mixed dust" holes-in-one in *a single day*** (September 5, 2003) **and 14 more *six days later*** (September 11, 2003). To put Dr. Segarra's 19 "mixed dust" holes-in-one into perspective, the odds of a professional golfer making a hole-in-one is 1 in 3,000; an amateur, 1 in 12,000. David Owen, *Oh my gosh, Alice, I made a hole-in-one*, Golf Digest, Sept. 2005. The odds of this occurring twice for the same golfer in a single day increases to 1 in 67 million. *Id*. Indeed Dr. Segarra's 19 "mixed dust" ***same-day* hole-in-one record** is greater than the *career* hole-in-one records for Arnold Palmer (17) and Tiger Woods (7); and, unlike Dr. Segarra, none of these golfing greats has yet to duplicate the feat twice in one day. Jim Halley, *With holes in one, no matter how you slice them luck is vital*, USA TODAY Sept. 2005; *Miyazaton aces 2 holes in same round*, USA TODAY, Aug. 25, 2006. In fact, only Kim Jong-il, "Dear Comrade Leader, Sun of his Nation and Mankind" and dictator of the Democratic Peoples Republic of North Korea, can lay claim to nearing Dr. Segarra's 19 hole-in-one day. The mysterious and eccentric communist dictator scored 11 holes-in-one in his first round of golf according to North Korean official state media. *Birthday praise for N. Korea's Kim*, (CNN International television broadcast Feb. 16, 2004).

6. Dr. Segarra Has Scores of Irreconcilable "Flip-Flops" In His Portfolio of Litigation Diagnoses Further Evidencing the Unreliable Nature of His Diagnostic Work

Both asbestosis and silicosis are *chronic* lung diseases caused by the inhalation of dusts found in a variety of workplaces. *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d at 594. On a chest X-ray, silicosis presents with small, rounded opacities, in the upper or mid zones of the lungs. *Id.* By contrast, on a chest X-ray, asbestosis presents with irregular, linear, or "reticular" opacities, primarily at the bases and periphery of the lungs.[19] *Id.* The small opacities on a chest X-ray represent scarring, which is permanent; and, in the words of one of the notorious plaintiffs' experts, Dr. Ray Harron, people "with those fibers and scars in their lungs [are] going to their grave with them" – a statement with which Dr. Segarra himself has agreed. *Id.* at 607; 11/20/06 Segarra Dep. at 77-79 (noting scarring from asbestosis and silicosis is permanent).[20] Because asbestosis and silicosis have such different appearances on an X-ray, in a clinical setting, "confusion between silicosis and asbestosis does not occur." *Id.* at 595 (quoting Dr. David Weill, Senate Judiciary Committee Testimony, Fed. Doc't Clearinghouse at 4 (Feb. 3, 2005)). Moreover, as discussed in detail *supra*, "[w]hile it is theoretically possible for one person to have both silicosis and asbestosis, it would be a clinical rarity." *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d at 595.

Indeed, medical literature and relevant testimony are clear and consistent in the premise that asbestosis and silicosis cannot be easily confused and are rarely found in the

---

[19] Under the ILO classification system for B-readings discussed above, the letters "P," "Q," and "R" designate various sizes of rounded opacities, consistent with silicosis. *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d at 591. The letters "S," "T," and "U" designate various sizes of linear opacities, consistent with asbestosis. *Id.*

[20] In addition, in cases of asbestosis, "pleural thickening" or pleural plaques are common – not so with silicosis. *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d at 594.

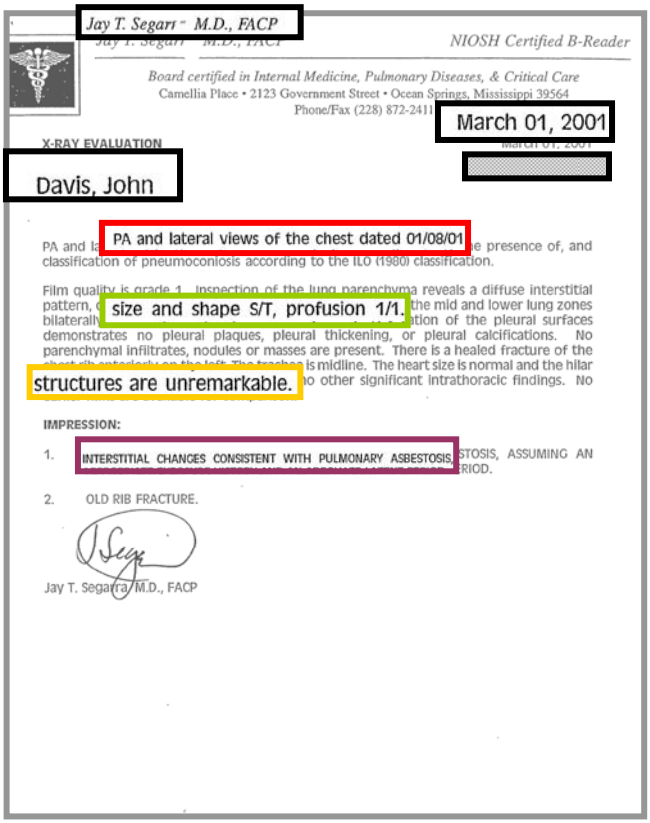
same individual. However, in the realm of asbestos and silica screening, this statistical improbability has occurred in thousands upon thousands of potential plaintiffs, thus doubling their chances for recovery under the litigation lottery system. Given the medical literature, it is risky business for a doctor or screening company to purposefully "retread" an asbestosis plaintiff with an asbestosis diagnosis into a silicosis plaintiff with a silicosis diagnosis – a "flip-flop," yet these entities continued to create inconsistent and impossible-to-harmonize diagnostic reports doing just that. In order to maintain as much plausible deniability as possible, screening companies would often use one doctor to prepare the asbestosis report and another doctor to prepare the silicosis report. If challenged, each doctor could then simply declare the other to be in error. This system fails, however, when a single doctor prepares both reports – one for asbestosis and one for silicosis. The set amounts to a "smoking gun" from which the screening doctor and screening company can not escape ("were you lying when you prepared this report, or that one").

Dr. Segarra's litigation portfolio is replete with these types of "flip-flop" diagnoses, where he has prepared two sets of reports for a given plaintiff—one for asbestosis, the other for silicosis—neither of which mentions the other. These flip-flop diagnoses are obviously highly suspect and can only be tied together by the existence of inconsistent lawsuits tailored to the economic needs of the screening companies and the plaintiff lawyers by whom, and for whom, these diagnoses were generated. By way of example, consider the following:

- **John Davis**

Defying all statistical and medical logic, Dr. Segarra prepared two sets of diagnostic reports regarding Mr. John Davis. The first consists of an X-ray Evaluation and ILO dated March 1, 2001 (hereinafter "the 2001 Report"), commissioned for an asbestos plaintiffs' firm (attached as Exhibit 13). The second consists of an Occupational Lung Disease Evaluation, ILO and PFT, dated September 9, 2003 (hereinafter "the 2003 Report"), prepared in association with N&M for a silica plaintiffs' lawyer (attached as Exhibit 14). The conflicting portions of these two reports are highlighted below:

John Davis
2001 X-ray Report



Jay T. Segarra M.D., FACP

NIOSH Certified B-Reader

Board certified in Internal Medicine, Pulmonary Diseases, & Critical Care
Camellia Place • 2123 Government Street • Ocean Springs, Mississippi 39564
Phone/Fax (228) 872-2411

March 01, 2001

X-RAY EVALUATION

Davis, John

PA and lateral views of the chest dated 01/08/01

PA and l[illegible] presence of, and classification of pneumoconiosis according to the ILO (1980) classification.

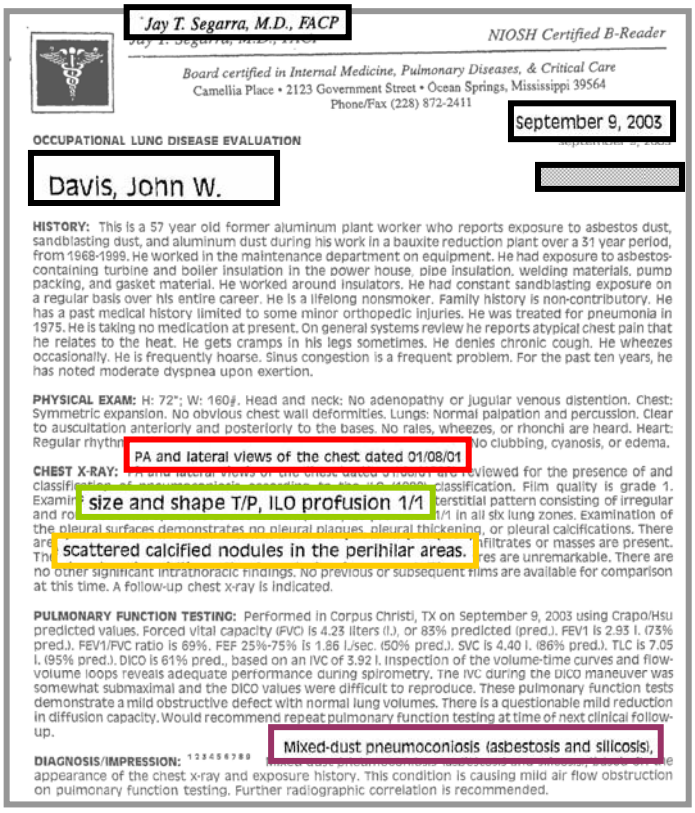
Film quality is grade 1. Inspection of the lung parenchyma reveals a diffuse interstitial pattern, [illegible] size and shape S/T, profusion 1/1, [illegible] the mid and lower lung zones bilateral[illegible]tion of the pleural surfaces demonstrates no pleural plaques, pleural thickening, or pleural calcifications. No parenchymal infiltrates, nodules or masses are present. There is a healed fracture of the [illegible] is midline. The heart size is normal and the hilar structures are unremarkable. [illegible] other significant intrathoracic findings. No

IMPRESSION:

1. INTERSTITIAL CHANGES CONSISTENT WITH PULMONARY ASBESTOSIS, [illegible]STOSIS, ASSUMING AN [illegible]RIOD.
2. OLD RIB FRACTURE.

Jay T. Segarra, M.D., FACP

John Davis
2003 X-ray Report



Jay T. Segarra, M.D., FACP

NIOSH Certified B-Reader

Board certified in Internal Medicine, Pulmonary Diseases, & Critical Care
Camellia Place • 2123 Government Street • Ocean Springs, Mississippi 39564
Phone/Fax (228) 872-2411

September 9, 2003

OCCUPATIONAL LUNG DISEASE EVALUATION

Davis, John W.

HISTORY: This is a 57 year old former aluminum plant worker who reports exposure to asbestos dust, sandblasting dust, and aluminum dust during his work in a bauxite reduction plant over a 31 year period, from 1968-1999. He worked in the maintenance department on equipment. He had exposure to asbestos-containing turbine and boiler insulation in the power house, pipe insulation, welding materials, pump packing, and gasket material. He worked around insulators. He had constant sandblasting exposure on a regular basis over his entire career. He is a lifelong nonsmoker. Family history is non-contributory. He has a past medical history limited to some minor orthopedic injuries. He was treated for pneumonia in 1975. He is taking no medication at present. On general systems review he reports atypical chest pain that he relates to the heat. He gets cramps in his legs sometimes. He denies chronic cough. He wheezes occasionally. He is frequently hoarse. Sinus congestion is a frequent problem. For the past ten years, he has noted moderate dyspnea upon exertion.

PHYSICAL EXAM: H: 72"; W: 160#. Head and neck: No adenopathy or jugular venous distention. Chest: Symmetric expansion. No obvious chest wall deformities. Lungs: Normal palpation and percussion. Clear to auscultation anteriorly and posteriorly to the bases. No rales, wheezes, or rhonchi are heard. Heart: Regular rhythm[illegible] No clubbing, cyanosis, or edema.

CHEST X-RAY: PA and lateral views of the chest dated 01/08/01 [illegible] reviewed for the presence of and classifi[illegible]classification. Film quality is grade 1. Examin[illegible] size and shape T/P, ILO profusion 1/1 [illegible]terstitial pattern consisting of irregular and ro[illegible]/1 in all six lung zones. Examination of the pleural surfaces demonstrates no pleural plaques, pleural thickening, or pleural calcifications. There are[illegible]nfiltrates or masses are present. Th[illegible] scattered calcified nodules in the perihilar areas. [illegible]es are unremarkable. There are no other significant intrathoracic findings. No previous or subsequent films are available for comparison at this time. A follow-up chest x-ray is indicated.

PULMONARY FUNCTION TESTING: Performed in Corpus Christi, TX on September 9, 2003 using Crapo/Hsu predicted values. Forced vital capacity (FVC) is 4.23 liters (l.), or 83% predicted (pred.). FEV1 is 2.93 l. (73% pred.). FEV1/FVC ratio is 69%. FEF 25%-75% is 1.86 l./sec. (50% pred.). SVC is 4.40 l. (86% pred.). TLC is 7.05 l. (95% pred.). DICO is 61% pred., based on an IVC of 3.92 l. Inspection of the volume-time curves and flow-volume loops reveals adequate performance during spirometry. The IVC during the DICO maneuver was somewhat submaximal and the DICO values were difficult to reproduce. These pulmonary function tests demonstrate a mild obstructive defect with normal lung volumes. There is a questionable mild reduction in diffusion capacity. Would recommend repeat pulmonary function testing at time of next clinical follow-up.

DIAGNOSIS/IMPRESSION: [illegible] Mixed-dust pneumoconiosis (asbestosis and silicosis), [illegible] appearance of the chest x-ray and exposure history. This condition is causing mild air flow obstruction on pulmonary function testing. Further radiographic correlation is recommended.

The inconsistencies in these reports are summarized in the table below. Most notably, in the case of Mr. Davis, Dr. Segarra issued two different diagnostic reports by taking one X-ray and "reading" it two different ways.

Dr. Segarra's Inconsistent Reports on the Same January 8, 2001 X-ray

Report	Findings	Notes	Diagnosis
March 1, 2001	S/T Opacities	Unremarkable Hilar Structures	Asbestosis
September 9, 2003	T/P Opacities	Calcified Nodules	Mixed Dust

In the 2001 Report, Dr. Segarra reviewed the January 8, 2001 X-ray of Mr. Davis, and found linear S/T opacities, and "unremarkable" hilar structures. Dr. Segarra opined that these findings were consistent with asbestosis. This 2001 Report was one of 29 reports prepared by Dr. Segarra on March 1, 2001 for a particular asbestos plaintiffs' law firm; and, on May 14, 2002, that firm filed an asbestos lawsuit on behalf of Mr. Davis based on Dr. Segarra's findings: *Francis O. Riley, et al. v. A C & S, et al.*, No. 02-C-275, Gass County, Texas, District Court.

In 2003, however, Dr. Segarra again reviewed the ***very same*** January 8, 2001 X-ray which had formed the basis of his earlier asbestosis report. This time, however, Dr. Segarra read the X-ray at the behest of N&M and a **silica** plaintiffs' lawyer finding opacities sized and shaped as T/P (in other words, the linear S opacities from the original reading inexplicably disappeared from the X-ray film; T opacities have now become predominant; and rounded P opacities have now appeared on the film seemingly out of nowhere). The hilar structures which were "unremarkable" in Dr. Segarra's 2001 Report turned into "calcified nodules," conveniently characteristic of silicosis, in Dr. Segarra's 2003 Report. Dr. Segarra's diagnosis changed from asbestosis in his 2001 Report to "mixed dust" in his 2003 Report. The 2003 Report was one of 23 reports prepared by Dr.

Segarra for a particular silica plaintiffs' law firm on September 9, 2003; all had "mixed dust" or silicosis findings. As a result, the silica plaintiffs' lawyer filed a "mixed dust" case on behalf of Mr. Davis against a new and different set of defendants: *Henry Goodson, et al. vs. American Optical Corp., et al.*, No. 0304637, Dallas County District Court. Dr. Segarra's two sets of reports for Mr. Davis were created for two different lawyers but are both based on the same X-ray. His irreconcilable findings have no basis in medicine or fact. They can only be explained by the nature of the litigation the lawyers who paid Dr. Segarra desired to file on behalf of Mr. Davis. Unfortunately, this type of "flip-flopping" is not an aberration for Dr. Segarra.

- **Edmond G. Elmore**

Dr. Segarra prepared three sets of reports for Mr. Edmond Elmore – all for the screening company Holland Bieber and a law firm known for filing both asbestos and silica cases. His three sets of reports included: (1) an X-ray Evaluation and ILO, dated July 27, 2002 (hereinafter "the 2002 Report") (attached as Exhibit 15); (2) an Occupational Lung Disease Evaluation, ILO, and PFT, dated April 10, 2003 (hereinafter "the 2003 Report") (attached as Exhibit 16); and, (3) an Occupational Lung Disease Evaluation and ILO dated July 27, 2004 (hereinafter "the 2004 Report") (attached as Exhibit 17).

In his 2002 and 2003 Reports, Dr. Segarra examined X-rays, dated May 29, 2002 and April 10, 2003, and found rounded P/Q opacities in the mid and upper lung zones. He also stated, in the 2003 Report, that Mr. Elmore "worked around sandblasting on a regular basis, sometimes so close that sand clogged up his equipment." **Dr. Segarra's final diagnosis for Mr. Elmore was silicosis, with "no clinical or radiographic**

evidence for pulmonary asbestosis at this time." Relying on Dr. Segarra's diagnosis, on May 29, 2003, Mr. Elmore filed a silicosis lawsuit. *Raymond B. Fisher, et al. v. American Optical Corp., et al.*, No. B0169965 (Jefferson County, Tex., Dist. Ct.)

Dr. Segarra's 2004 Report – also commissioned by the same firm that filed Mr. Elmore's silicosis case – marks a stunning reversal from his 2002 and 2003 Reports. For his 2004 Report, Dr. Segarra reviewed a July 7, 2004 X-ray of Mr. Elmore, **this time finding linear S/T opacities, and stating that "[t]here are no rounded opacities in the upper lung zones and nothing to suggest the presence of silicosis."** With jaw-dropping audacity, Dr. Segarra stated that "[c]ompared to an earlier film dated May 29, 2002, there has been no interval change."[21]

In his new 2004 Report, Dr. Segarra made no mention of "equipment-clogging" exposure to sandblasting and stated instead that Mr. Elmore "worked around sandblasters occasionally." In addition, he diagnosed Mr. Elmore with asbestosis, with "[n]o radiographic evidence for silicosis." As a result, Mr. Elmore's lawyers (the same ones that filed his silica case) filed an asbestos lawsuit for Mr. Elmore on August 12, 2004: *Vincent Critchlow, et al. v. A.O. Smith Corporation, et al.*, No. D172938, Jefferson County, Texas, District Court.

Again, Dr. Segarra's two sets of irreconcilable reports can only be explained by the nature of the lawsuits which Mr. Elmore's lawyers desired to file on his behalf.

- **Willie Jones**

Willie Jones was screened a mind-boggling four times by Dr. Segarra. Were the implications not so serious, Dr. Segarra's findings regarding Mr. Jones – which ping-

[21] Dr. Segarra has testified that his phrase "no interval change" means that two films have the same pattern of abnormalities and the same profusion. Aug. 9, 2005, Dep. of Dr. Jay Segarra, *Clent Brown, et al. v. ACS USE, et al.*, No. 02-CV-0938 (Galveston County,. Tex. Dist. Ct.).

pong from silicosis, to "mixed dust," then back to silicosis, and finally back to "mixed dust" – would be comical. In the following table, columns two and four are related, and pertain to two screenings of Mr. Jones by Dr. Segarra for one law firm (hereinafter "Firm 1"). Columns three and five are likewise related, and pertain to two additional screenings of Mr. Jones by Dr. Segarra for a second plaintiffs' law firm (hereinafter "Firm 2"). (Attached as Exhibits 18-21, respectively). The inconsistencies in Dr. Segarra's many reports for Mr. Jones are so numerous and profound that they can only be clearly characterized in table form.

	Report 1	**Report 2**	**Report 3**	**Report 4**
Report Type	X-ray Evaluation	X-ray Evaluation and ILO	Occupational Lung Disease Evaluation, ILO, and PFT	Occupational Lung Disease Evaluation, ILO, and PFT
Report Date	**April 9, 2002**	**October 25, 2002**	**February 27, 2003**	**June 27, 2003**
X-Ray Date	March 14, 2002	September 9, 2002	February 27, 2003	June 27, 2003
Quality	1	1	1	1
Opacities	**P/Q**	**P/S**	**P/Q**	**P/S**
Profusion	1/0	1/0	1/0	1/1
Lung Zones	**Upper, Mid**	**All**	**Upper, Mid**	**All**
Impression/ Diagnosis	**Silicosis**	**Mixed-Dust Pneumoconiosis (Silicosis and Asbestosis)**	**Silicosis ("No radiographic evidence for pulmonary asbestosis.")**	**Mixed-Dust Pneumoconiosis (Silicosis and Asbestosis)**
Comparison	Not Provided	**"No earlier films are available for comparison."**	**"Compared to an earlier film dated 3/14/02, there has been no interval change, especially after allowing for the fact that the older film was overexposed."**	**"Compared to an earlier film dated 9/9/02, there has been no interval change."**
Screener	Not Provided	Not Provided	**Holland Bieber**	**Holland Bieber**
Law Firm	**Firm 1**	**Firm 2**	**Firm 1**	**Firm 2**

On the basis of Dr. Segarra's diagnoses, Mr. Jones eventually filed a total of ***three*** lawsuits: two silica suits (*Bobby Gene Conaway, et al. v. Aearo Co., et al.,* No. 022928C, 241st Jud. Dist. Ct. (Scott County, Tex.) and *Scott Cleveland, et al. v. Air Liquide America Corp.,* No. CC-03-18132-E, County Law Ct. (Dallas County, Tex.)) and an

asbestos suit, actually filed by the same silica attorneys (*Antonio R. Moya, et al. v. A.M.F. Inc., et al.,* No. 03-2543-B, Dallas County, Texas County Law Court).

The story, of course, is the same: the variance in Dr. Segarra's irreconcilable reports on Mr. Jones is, once again, directly related to the variance in the litigation plans of Mr. Jones' lawyers.

- **James Larue**

Perhaps even more egregious is the case of Mr. James Larue. Dr. Segarra prepared three reports for James Larue: a July 7, 2002 X-ray Evaluation (hereinafter "the July 2002 Report") (attached as Exhibit 22); a February 27, 2003 Occupational Lung Disease Evaluation (hereinafter "the February 2003 Report") (attached as Exhibit 23); and an October 31, 2003 X-ray Evaluation and ILO (hereinafter "the October 2003 Report") (attached as Exhibit 24).

Noting first that Mr. Larue **only had exposure to silica**, in the July 2002 and February 2003 Reports, **Dr. Segarra found Mr. Larue to have Q/P rounded opacities in the mid and upper lung zones (characteristic of silicosis) with "no small opacities in the lower lung zones to suggest asbestosis.**"

In the October 2003 Report, Dr. Segarra changed his tune entirely. **Noting this time that Mr. Larue's only exposure was to asbestos, Dr. Segarra found him to have T/T irregular opacities in the lower lung zones (characteristic of asbestosis)**.

All three reports were prepared for the same group of plaintiffs' lawyers who, of course, filed two lawsuits for Mr. Larue, one alleging asbestosis (*William Cotton, et al. v. A. P. Green Refractories Co., et al.,* B-150, 374-AK (Jefferson County, Tex. Dist. Ct.)

and the other silicosis (*Austin Chapman, et al. v. Aearo Co., et al.*, No. 36, 388-03-05 (Angelina County, Tex., Dist. Ct.).

- **Ranulfo S. Lujan**

Dr. Segarra also prepared two sets of reports for Ranulfo Lujan: a March 24, 2003 X-ray Evaluation and ILO (hereinafter "the March 2003 Report") (attached as Exhibit 25) and a July 11, 2003 Occupational Lung Disease Evaluation, ILO and PFT (hereinafter "the July 2003 Report") (attached as Exhibit 26). In the case of Mr. Lujan, these "flip-flop" reports were prepared less than four months apart for the same plaintiffs' firm.

In the March 2003 Report, Dr. Segarra found S/T irregular opacities in the lower lung zones, and stated that these findings were consistent with asbestosis. Further, Dr. Segarra stated unequivocally in the March 2003 Report that there was "[n]o radiographic evidence for silicosis at this time."

In the July 2003 Report, however, Dr. Segarra found that Mr. Lujan had P/Q rounded opacities in the upper lung zones, and diagnosed silicosis, but not asbestosis. Moreover, Dr. Segarra inexplicably stated "there ha[d] been no interval change" between the February 11, 2003 X-ray, on which the March 2003 Report was based, and the July 11, 2003 X-ray, on which the July 2003 Report was based. Indeed, the only thing that had changed from X-ray to X-ray was the litigation desires of the screening company and plaintiffs' law firm employing Dr. Segarra to read Mr. Lujan's X-ray.

- **John Netter**

Similarly, Dr. Segarra also prepared two sets of reports for John Netter: an Occupational Lung Disease Evaluation and ILO, dated November 9, 2004 (hereinafter "the 2004 Report") (attached as Exhibit 27); and an Occupational Lung Disease

Evaluation, ILO, and PFT, dated May 12, 2005 (hereinafter "the 2005 Report") (attached as Exhibit 28).

In the 2004 Report, Dr. Segarra found P/Q rounded small opacities in all lung zones and diagnosed silicosis. In the 2005 Report, Dr. Segarra found T/S irregular opacities in the lower lung zones and diagnosed asbestosis. **Dr. Segarra's 2005 Report unequivocally stated that "[t]here are no rounded opacities in the upper lung zones and nothing to suggest the presence of silicosis," even though Dr. Segarra had found opacities in the upper lung zones and actually diagnosed Mr. Netter with silicosis just six months earlier.**

Both the 2004 Report and the 2005 Report were prepared for the same plaintiffs' law firm who, of course, filed two lawsuits for Mr. Netter, one alleging asbestosis (*Emma Herron, et al. vs. Minnesota Mining & Manufacturing, et al.,* No. 2002-548 (Cir. Ct. Holmes County, Miss.) and another silicosis (*Leonard McManus, et al. v. Dependable Abrasives, et al.*, No. 04-KV-0017-J (Cir. Ct. Adams County, Miss.).

- **Grover Buie**

Finally, consider Grover Buie, for whom Dr. Segarra likewise prepared two reports: a June 23, 2000 X-ray Evaluation (hereinafter "the 2000 Report") (attached as Exhibit 29) and an April 12, 2003 Occupational Lung Disease Evaluation (hereinafter "the 2003 Report") (attached as Exhibit 30). In his 2000 Report, prepared for an asbestos plaintiffs' firm, Dr. Segarra found pleural thickening and S/T opacities in the lower lung zones. He diagnosed Mr. Buie with "PULMONARY ASBESTOSIS; BASED ON THE PLEURAL AND PARENCHYMAL X-RAY CHANGES AND THE ENVIRONMENTAL EXPOSURE HISTORY," even though Dr. Segarra had no

environmental exposure history regarding Mr. Buie at the time of his assessment. Of course, the asbestos plaintiffs' firm filed a lawsuit on Mr. Buie's behalf.[22]

In his 2003 Report for Mr. Buie, prepared at the behest of N&M and a silica plaintiffs' firm, Dr. Segarra did what he has testified that he never does:[23] *i.e.*, Dr. Segarra completely ignored his own prior reading of Mr. Buie's X-ray, and instead diagnosed Mr. Buie based on an X-ray reading by another B-reader, Dr. Richard Levine. In his 2003 Report, Dr. Segarra "piggybacked" on Dr. Levine's B-read, found P/S opacities of profusion 1/0 (compared to Dr. Segarra's 2000 Report, the P opacities appeared out of nowhere; the T opacities disappeared; the S opacities which Dr. Segarra said were predominant became secondary; and, with the decrease in profusion from 1/1 to 1/0, some of the scars that do not go away, went away). Dr. Segarra's 2003 Report also managed to diagnose Mr. Buie with "mixed dust" disease, not asbestosis. Of course, the silica plaintiffs' firm, relying on Dr. Segarra's opinion, filed a silica lawsuit on Mr. Buie's behalf (*Grover Buie vs. Pulmosan Safety Equip., et al.*, No. 2002-183 (Cir. Ct. Jefferson County, Miss.).

There is, yet again, but one explanation for the blatant inconsistencies in Dr. Segarra's reports – Dr. Segarra found what he was paid to find, and did whatever was necessary (including ignoring his own prior report) to reach outcome desired by his "employers."

---

[22] Indeed, Mr. Buie filed numerous asbestos lawsuits, including: *Catherine Lockett, et al. vs. Minnesota Mining And Manufacturing Company, et al.*, No. 2002-130 (Cir. Ct. Jeffesron County, Miss.); *Grover Buie vs. Minnesota Mining And Manufacturing Company, et al.*, No. 2002-103(A) (Cir. Ct. Jefferson County., Miss.); *James Conway, et al. vs. Hopeman Brothers, Inc., et al.*, No. 2001-22 (Cir. Ct. Jefferson County., Miss.); and, *Grover Buie vs. Hopeman Brothers, Inc., et al.*, No. 2002-170(N) (Cir. Ct. Jefferson County., Miss.).

[23] As discussed in detail *infra*, Dr. Segarra has testified that he never relies on the B-readings of other physicians to generate his diagnoses.

- **Additional Flip-Flops**

Defendants can, and, if necessary will, produce scores of additional, and equally outrageous, examples of Dr. Segarra's "flip-flop" reports like those for Davis, Elmore, Jones, Larue, Lujan, Netter, and Buie. However, Defendants submit that these seven examples of opportunistic transformations of asbestosis reads into silicosis reads more than amply evidence that Dr. Segarra's diagnoses were based solely on economic, rather than medical and scientific consideration, thus rendering then unreliable and in effect useless to this Court.[24]

7. Dr. Segarra Repeatedly "Piggybacked" on Unreliable, Unauthenticated, and Suspect Reports Issued by Other Litigation Screening Doctors

As demonstrated by the cases of Grover Buie and Johnnie Townsend, discussed *supra*, Dr. Segarra's "piggybacks" – *i.e.*, instances where Dr. Segarra has prepared a diagnostic report based on another radiologist's X-ray reading – are not rare, despite his strict denial of their existence. In fact, Defendants have identified "piggyback" reports authored by Dr. Segarra on more than 1,200 plaintiffs. The existence of these reports, and their volume, are significant for several reasons.

"Piggyback" reports prove that Dr. Segarra **will set aside his "integrity" and misrepresent his diagnostic methodology, under oath**, when he believes that circumstances require it. In a March 2004 deposition, Dr. Segarra falsely testified that, with only one exception, in cases where he did not have pathology, he ***always*** read chest X-ray films himself before rendering a diagnosis, and that he never (with two exceptions) relied on an X-ray reading of another doctor in rendering his litigation diagnoses. March

[24] Dr. Segarra has purportedly conducted his own audit of his diagnoses and X-ray readings to identify "flip-flops," which he refuses to produce to Defendants.

3, 2004 Dr. Jay Segarra Dep., *Paul Richards, et al. v. Pulmosan Safety Equip., et al. (H.C. Hutto),* No. 2002-49-CV9 (Cir. Ct. Jones County, Miss.), at 94-95; 11/20/06 Segarra Dep. at 100; Feb. 16, 2005 Transcript, *In re Silica Prods. Liab. Litig.*, No. 1553 (S.D. Tex.), at 359-60; *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d at 591 & 591 n. 41; 11/20/06 Segarra Dep. at 102. **Yet, the more than 1,200 "piggyback" reports in Defendants' possession prove that Dr. Segarra's prior testimony was simply untrue.**

When questioned about this glaring inconsistency in the methodology about which he testifies versus the methodology he actually practices, Dr. Segarra could not come up with a rational explanation. In fact, notwithstanding the clear diagnostic language of Dr. Segarra's reports, his only attempt at redemption with respect to this issue came in the form of a fantastical denial that these reports were simply not diagnoses at all. 11/20/06 Segarra Dep. at 79-81. Of course, the "piggyback" reports, on their face, purport to be diagnoses (as in the case of Johnnie Townsend and Grover Buie, above), and have been used by plaintiffs and their attorneys as the bases for hundreds of asbestos and silicosis lawsuits throughout the country. Thus, Dr. Segarra's attempt to sidestep responsibility for these reports by denying their significance fails utterly.

IV. DR. SEGARRA DISAVOWS HAVING A PHYSICIAN PATIENT RELATIONSHIP WITH THE INDIVIDUALS HE SCREENS

Not surprisingly, with all of the discrepancies in his work product, methodology, and diagnoses, Dr. Segarra chooses to deny having a "true" physician patient relationship with the individuals he screens and diagnoses. "Instead, I consider there to be a limited doctor-patient relationship based . . . [on the] identification of life threatening conditions that might come to light during the course of the [screening]. But they are not longitudinal patients, . . . they're patients that I consult on, on a one-time basis." June

18, 2003 Dep. of Dr. Segarra, *Glenn E. Twist, et al. v. Amoco Chem. Co., et al.*, Cause No. 8111*JG99 at 13 (Brazoria County, Tex. Dist. Ct.).

Whether Dr. Segarra considers the individuals he screens to be "longitudinal" or not, the intent behind his statement is clear. Dr. Segarra wants to avoid at all costs even the appearance of having a real physician-patient relationship with these potential plaintiffs. Whether for reasons of medical malpractice or medical ethics, Dr. Segarra will eagerly accept the bounty from screening these individuals for various pneumoconioses, but will virtually recoil from the insinuation that he owes them any greater duty than taking their money. This denial of a legitimate relationship with the individuals he screens is yet further support for excluding Dr. Segarra from testifying in this Court.

V. DR. SEGARRA ROUTINELY LIED ABOUT HIS SCREENING FORTUNE

As set forth in detail above, Dr. Segarra has diagnosed an unbelievable number of plaintiffs at impossible daily rates – often with inconsistent diseases. Perhaps the only explanation (or the sole motivation) for this extreme departure from standard medical protocol and practice is the considerable fortune "earned" by Dr. Segarra for doing just this type of diagnostic "work." Indeed, in his November 2006 deposition, Dr. Segarra, at long last, grudgingly admitted that he has billed over $10 million for his work as a litigation doctor.[25] For that amount of money, it is understandable – though not justifiable – that Dr. Segarra has (for more than a decade) danced to the tune of the screening companies and lawyers that hired him.

[25] Dr. Segarra admitted $900,000 per year for the period from 1996 to 2004 ($8.1 million) and additional amounts for the years 1991 to 1995, and 2005. 11/20/2006 Segarra Dep. at 147-8.

Not surprisingly, however, Dr. Segarra has routinely lied about the fortune he made as a litigation screening doctor.[26] Indeed, Dr. Segarra has given scores of depositions as an expert witness in civil asbestos and silica personal injury cases wherein he has been repeatedly questioned about his earnings as a plaintiffs' litigation doctor. Dr. Segarra testified over and over again that he earned substantially less per year than he was eventually forced to admit.[27]

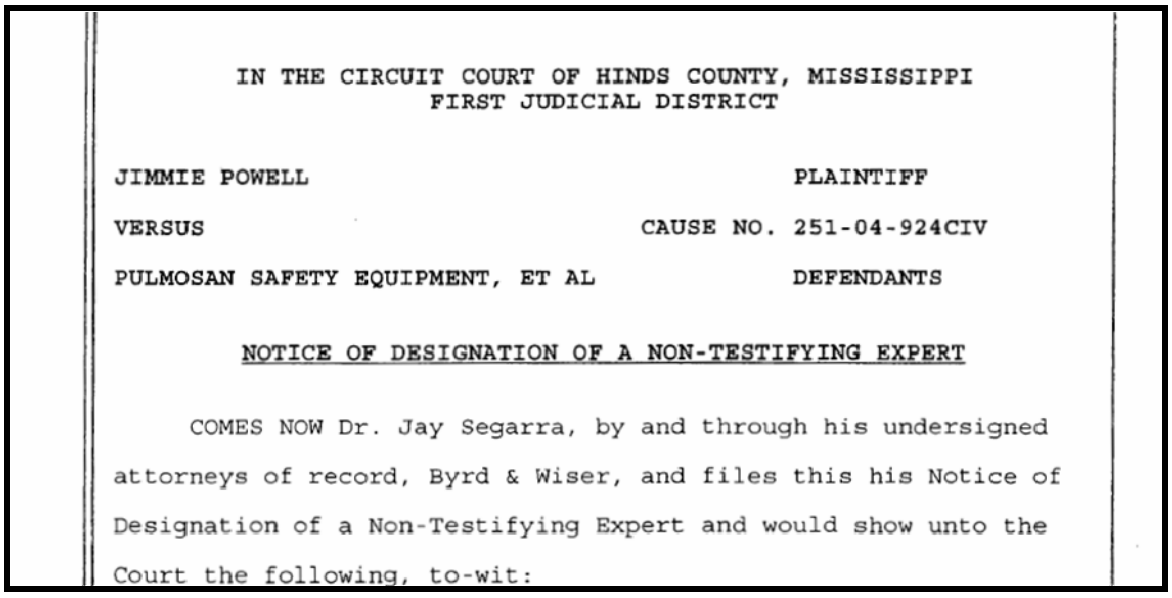
AMOUNT OF INCOME COMPRISED FROM MEDICAL/LEGAL PRACTICE	DEPOSITION
Over a course of a given year, "**[a]t the most, maybe a couple hundred thousand**. I just know it was over--it's been over one hundred thousand. That much, I know. I don't think--I don't think it has been several hundred."	Jan. 4, 2000 Dep. of Jay Segarra, Aaron Clifton Edwards, et al. vs. Pittsburgh Corning Corp., et al., Cause No. (60th Jud. Dist. Ct. Jefferson County, Tex.)
Somewhere **between $100,000 and $200,000 per year over the past few years**- "That's a rough guess. And I really don't know because I don't do my own finances, but that's my best guess."	Feb. 16, 2000 Dep. of Jay Segarra, Aaron Clifton Edwards vs. Pittsburgh Corning Corp., et al., Cause No. (60th Jud. Dist. Ct. Jefferson County, Tex.)
"[I]ts been roughly the same for the past several years. I would say **two or three hundred thousand dollars**, approximately, perhaps a little bit less."	*June 26, 2003 Dep. of Jay Segarra,* Howard Anderson and John Lewis vs. Aearo Co., f/k/a Cabot Safety Corp., et al.*, Cause No. (133rd Jud. Dist. Ct. Harris County, Tex.)*
"[S]omewhere in the neighborhood of **a couple hundred thousand dollars a year**" would be a fairly consistent figure for each of the last five years.	*Aug. 14, 2003 Dep. of Jay Segarra,* Shirley Tinner, et al. vs. Pulmosan Safety Equip., et al.*; (Circuit Ct. Claiborne County, Miss.)*

In an effort to uncover the truth, Dr. Segarra's accountant was even subpoenaed in a state court case in Mississippi in which Dr. Segarra was designated as the plaintiffs'

[26] Defendants have identified at least twenty-nine instances where Dr. Segarra's falsely testified regarding his earnings as a plaintiffs' litigation doctor.

[27] National Public Radio journalist Wade Goodwyn first reported that Dr. Segarra had earned over $10 million as a litigation doctor. Wade Goodwyn, *All Things Considered: Silica Ruling Could Revamp Legal Landscape,* National Public Radio (Mar. 6, 2006). Dr. Segarra has contended that Mr. Goodwyn's report was untrue. June 29, 2006 Dr. Segarra Dep., *Rodney Ragsdale v. Able supply Co., et al.*, No. 2005-76615 at 14 (Harris County, Tex. Dist. Ct.); 11/20/2006 Dr. Segarra Dep. at 146-7. However, Dr. Segarra's November 20, 2006 testimony in fact confirms approximately $10 million in litigation earnings to date.

expert witness. *Jimmie Powell v. Pulmosan Safety Equip. Co., et al.*, No. 251-04-924-CIV (Hinds County, Cir. Ct., Miss). In an unprecedented move, Dr. Segarra **withdrew himself** as the testifying expert from the case – thereby mooting the subpoena to his accountant. Jan. 12, 2007, Notice of Designation of Non-Testifying Expert; Mar. 20, 2007 Order, *Jimmie Powell v. Pulmosan Safety Equip. Co., et al.*, No. 251004-924-CIV (Hinds County, Cir. Ct.).



IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

JIMMIE POWELL — PLAINTIFF

VERSUS — CAUSE NO. 251-04-924CIV

PULMOSAN SAFETY EQUIPMENT, ET AL — DEFENDANTS

NOTICE OF DESIGNATION OF A NON-TESTIFYING EXPERT

COMES NOW Dr. Jay Segarra, by and through his undersigned attorneys of record, Byrd & Wiser, and files this his Notice of Designation of a Non-Testifying Expert and would show unto the Court the following, to-wit:

In fact, only recently, when faced with the reality of Congressional, Justice Department, and state investigations, did Dr. Segarra come clean about the fortune he has earned as a litigation doctor. However, since that time, Dr. Segarra has returned to the familiar practice of hiding the ball with respect to the income he has generated in his screening practice. In a May 2007 deposition, when asked for a ballpark figure of what his screening income has been, Dr. Segarra testified: "I'm not sure. . . . I would say a couple million in profit perhaps, in income after expenses over that time, something along those lines." Dep. of Dr. Jay Segarra, *Robert Dudoit, et al. v. Geogia-Pacific Corp., et al.*, 14th Jud. Dist., Parish of Calcasieu, La.), at 20.

VI. DR. SEGARRA HAS WILFULLY IGNORED STATE LAWS WITH RESPECT TO HIS SCREENING PRACTICES

A. Dr. Segarra Has Flouted State Licensing Laws

Having knowingly contravened proper diagnostic practices, it is not necessarily surprising that Dr. Segarra also knowingly flouted state medical licensure laws such that many of his diagnoses were generated illegally and, therefore, are invalid.

It is undeniable that Dr. Segarra continually disregarded medical and scientific principles when screening and diagnosing individuals with pneumoconioses. In addition to his blatant disregard for the doctrines of proper diagnostic practice, Dr. Segarra also routinely flouted state medical licensure laws by participating in screenings nationwide without the benefit of obtaining the requisite medical and legal credentials. It is common knowledge that each state requires that doctors be licensed to practice medicine within its borders. In direct violation of criminal and civil statutes, Dr. Segarra crossed the lines of at least 22 states to diagnose thousands of potential plaintiffs without obtaining the proper medical license.

The importance of obtaining such a license in the states in which he screened was not lost on Dr. Segarra, however. In 1995, Dr. Segarra obtained an Alabama license for the purpose of pursuing his litigation screening business there. 11/20/2006 Segarra Dep. at 38-39.[28] In 1997, Dr. Segarra obtained a Louisiana medical license, again so that he could screen potential plaintiffs in Louisiana without violating the laws of that state.[29] *Id*. at 39. Finally, Dr. Segarra applied for a license in Texas on April 30, 2001, was granted

[28] Dr. Segarra had already screened more than 1000 potential plaintiffs in Alabama before he obtained his Alabama license.

[29] Dr. Segarra had already screened more than 350 potential plaintiffs in Louisiana before he obtained his Louisiana license.

a temporary license in Texas on September 24, 2001, and proceeded to participate in the diagnosis of 300 Texas plaintiffs during the five-month interim during which his Texas license application was pending but not yet granted. Although Dr. Segarra eventually became licensed in 10 states (virtually all of which he had no business other than screening), Dr. Segarra has regularly traveled to another 13 states to diagnose potential plaintiffs without even ***attempting*** to acquire a medical license.

Altogether, as demonstrated in the table[30] below, Dr. Segarra has willingly and unlawfully participated in the unlicensed diagnosis of at least 8,500 plaintiffs over at least 400 days in at least 22 states.

[This portion of the page intentionally left blank.]

[30] The table reflects the states in which Dr. Segarra has screened and diagnosed plaintiffs without a medical license, whether and when Dr. Segarra obtained a license to practice medicine in that state, the minimum number of days Dr. Segarra conducted unlawful screenings, and the minimum number of persons in whose diagnoses Dr. Segarra unlawfully participated. 11/20/06 Segarra Dep. at 40-43.

DR. SEGARRA'S UNLICENSED SCREENINGS				
	State	Date Licensed	Days Screened Without a License	Individuals Screened Without a License
1	Alabama	11/29/1995	59	1,028
2	Arkansas	04/02/2004	2	6
3	Colorado	02/25/2003	3	54
4	Florida	10/09/2003	74	1,588
5	Georgia	11/07/2003 (Inactive 12/31/2005)	5	144
6	Iowa	Never	12	428
7	Illinois	Never	9	391
8	Indiana	Never	31	1,018
9	Louisiana	05/21/1997	30	366
10	Massachusetts	Inactive	6	64
11	Minnesota	Never	13	400
12	Missouri	Never	5	292
13	Montana	Never	4	94
14	North Carolina	Never	Data Unavailable	Data Unavailable
15	Ohio	01/23/2004 (Inactive 1/1/2006)	12	624
16	Oklahoma	Never	4	148
17	Oregon	Never	4	118
18	Tennessee	Never	8	126
19	Texas	12/07/2001[30]	115	880
20	Virginia	Never	2	86
21	Washington	Never	10	395
22	Wisconsin	Never	6	313
	Total		414	8,563

The illegality of Dr. Segarra's unlicensed screening practice is no mere technicality. In 2002, Dr. Segarra was finally confronted and rebuked for his illegal activities in Washington State, where he had evaluated 385 potential plaintiffs for asbestos claims. Judge Sharon Armstrong, Superior Court Judge for King County, Washington, found that Dr. Segarra had committed a "criminal offense" when he "participated in union screenings of certain plaintiffs," "performed examinations, rendered diagnoses, and recommended treatment without being licensed in Washington,"

and "relied for his diagnoses on radiology reports from unregistered and uncertified technicians or radiologists using unregistered and uncertified equipment." **Judge Armstrong excluded Dr. Segarra's unlawful diagnoses, concluding that it would "contravene public policy to accept such evidence."** Order by the Honorable Sharon S. Armstrong, *In Re Certain: Asbestos Cases (ACR XXIII Cases)*, (Super. Ct. of King County, Wash., Oct. 15, 2002).

B. Dr. Segarra Has Flouted State Reporting Laws

In addition to his practice of unlicensed medicine, Dr. Segarra has also been adept at ignoring state laws regarding reporting of asbestosis and silicosis findings. The laws of several states in which Dr. Segarra screened and diagnosed plaintiffs require doctors to report findings of asbestosis and silicosis to certain civil and medical authorities. By way of example, the Asbestosis Surveillance Program of the Texas Department of State Health Services (hereinafter "TDSHS") maintains a database of information on cases of asbestosis in the state of Texas. Texas law requires that designated professionals, primarily physicians and laboratorians, report cases of asbestosis to TDSHS. Available at http://www.dshs.state.tx.us/epitox (click "Asbestos Surveillance"). Similarly, the state of Ohio also requires the reporting of asbestosis and silicosis findings. Ohio Admin. Code § 3701-3-021(A) and (B). The reporting requirements of Minnesota, Kentucky, Virginia, and Missouri follow suit. Minn. Stat. § 144.34 (2006); 902 Ky. Admin. Regs. 2:020 (2007); Va. Code Ann. § 32.1-36 (2007); Mo. Code Regs. Ann. tit. 19, § 20-20.020 (2007).

As of November 20, 2006, Dr. Segarra had diagnosed over 4,200 plaintiffs in Texas, and over 350 plaintiffs in Ohio, without ever reporting one single case of

pneumoconiosis to the Texas or Ohio authorities. 11/20/2006 Segarra Dep. at 49-52. The best face that Dr. Segarra can put on this blatant disregard for the law is that he purportedly has an "evolving" office policy which would require reporting. *Id*. However, even Dr. Segarra admits – his policy notwithstanding – that he has not reported a case of asbestosis or silicosis in Ohio or Texas to date. *Id*.

VII. DR. SEGARRA HAS REPEATEDLY REFUSED TO PRODUCE HIS SCREENING RECORDS TO THIS, AND MANY OTHER, COURTS

Not only does Dr. Segarra disregard sound diagnostic methodology, defy medical and scientific principles, and flout criminal and civil laws, he also continues to challenge the authority of this Court, and many others, by his repeated and willful refusal to produce the documents for which he has been subpoenaed. Indeed, Dr. Segarra's steadfast denial of access to his screening records, in their entirety, is yet further evidence of the unreliability and untrustworthiness of his diagnoses and opinions.

Over the past few years, Dr. Segarra has played a shell game with his screening records and has often misrepresented the nature of those documents in an effort to stymie a complete review of his career as a litigation doctor.

Dr. Segarra does have relevant documents in his possession. According to his prior deposition testimony, he even maintains an electronic database of his medical/legal practice containing records from 1998 to present that could easily be copied and produced to Defendants:

> A. . . . I have medical records dating back to 1998 in an ISIS database. I don't have any medical records prior to 1998.
>
> Q. Do you maintain that database? . . .
>
> A. I maintain it myself, yes.

Jan. 10, 2006 Dep. of Dr. Segarra, *Emma H. Gardea v. Able Supply Co., et al.*, No. 2004-526 (El Paso County, Tex. Cty Ct.) (hereinafter "1/10/2006 Segarra Dep."), at 37.

Yet, Dr. Segarra repeatedly refuses to produce these documents even in the face of multiple subpoenas. Most recently, he has refused to produce records in response to this Court's subpoena, choosing instead to file a motion to quash even while those doctors and companies participating in screenings with him acquiesced to this Court's request. Prior to his antics here, Dr. Segarra refused to produce records in response to several defendants' subpoena issued in state court litigation in Mississippi. June 24, 2005 Subpoena Issued in *Dan Fairley, Jr. v. Pulmosan Safety Equipment*, No. CI-2004-001-SI (Jackson County, Miss.). Although Dr. Segarra did make a cursory production under the state court subpoena, on November 25, 2005, by producing redacted summaries of his screening work from 2004 to 2005; to date, this material has never been supplemented to adequately respond to the whole subpoena.

Dr. Segarra enjoys the benefit of referring to his own records and analysis, however, when he can do so in a manner that benefits only him. On October 10, 2005, Dr. Segarra testified in a deposition that he had produced to the Energy and Commerce Committee of the U.S. House of Representatives a "statistical analysis of all the readings and diagnoses that [he has] done over the past two years." Oct. 10, 2005 Dep. of Dr. Jay Segarra, *Billy Ashley, et al. v. Able Supply Co., et al.*, No. 24940 (Brazoria County, Tex. Dist. Ct.), at 60-62. Mysteriously, Dr. Segarra continues to refuse to produce a full set of the underlying records supporting his self-serving analysis.

Further compounding the issue, on January 10, 2006, Dr. Segarra gave false testimony that he had provided defense attorneys – specifically Forman Perry Watkins Krutz & Tardy LLP – with copies of the documents he had produced to Congress:

> Q. Did you receive a letter from Representative Joe Barton and Representative Ed Whitfield regarding an investigation by the Oversight Investigation Subcommittee in Congress? It would have been in early or mid August of 2005?
>
> A. Yes.
>
> Q. Did you comply with that request for information?
>
> A. I did. In fact, I just sent a large packet of materials to the house subcommittee which, summarized, answered several questions about basically methodology and diagnosis of asbestosis and silicosis, and also I gave them statistical data on my radiographic – the readings I've done on X-rays in the past. . . . . I've already provided that material to defendants in the past . . . .
>
> Q: Who was it? Do you remember the attorneys?
>
> A: Forman Perry. Forman Perry.

1/10/06 Segarra Dep. at 30-31.

Dr. Segarra's January 10, 2006 testimony is false. Dr. Segarra never supplemented his November 25, 2005 production to Forman Perry, and had, to that date, only produced redacted summaries of a limited set of his expert witness work.

Given the suspect patterns and practices that can be gleaned from the limited set of materials relating to Dr. Segarra produced by other screening doctors and screening companies, Defendants would respectfully submit that this Court should grant their prior motion to compel the production of Dr. Segarra's complete collection of litigation screening and diagnostic records so that a complete analysis of his work can be accomplished.

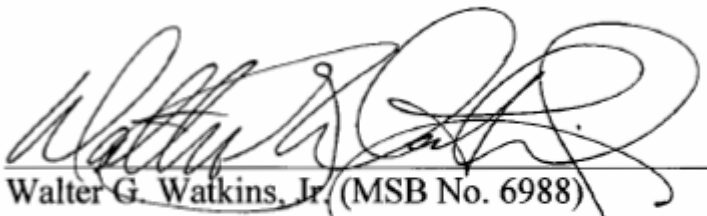
VI. CONCLUSION

Based on the information provided in this combined motion and brief, Dr. Jay T. Segarra has nothing reliable or credible to offer this Court. Any testimony given by Dr. Segarra, including that in the form of alleged "diagnoses," is not worthy of serving as the basis for any plaintiff's cause of action. As such, the United States Supreme Court's decision in *Daubert* and Federal Rule of Evidence 702 require that all expert testimony, including alleged diagnoses by Dr. Jay T. Segarra, be excluded by this Court.

WHEREFORE, PREMISES CONSIDERED, Certain Defendants respectfully request that this Court exclude the testimony of Dr. Jay T. Segarra, including that in the form of alleged "diagnoses," and dismiss without prejudice the claims of all plaintiffs relying on same.

Respectfully submitted, this the 7th day of September, 2007.

FORMAN PERRY WATKINS KRUTZ & TARDY LLP



Walter G. Watkins, Jr. (MSB No. 6988)
Fred Krutz (MSB No. 4270)
Daniel J. Mulholland (MSB No. 3643)
Marcy B. Croft (MSB No. 10864)
Mary Margaret Ratliff (MSB No. 100672)

FORMAN PERRY WATKINS KRUTZ & TARDY LLP
200 South Lamar Street
City Centre, Suite 100
Post Office Box 22608
Jackson, Mississippi 39225-2608
Telephone: 601.960.8630

CERTIFICATE OF SERVICE

I, the undersigned attorney, on behalf of the above named Defendants, do hereby certify that I have mailed via United States Postal Service the foregoing document to the Clerk of the Court for the Eastern District of Pennsylvania to be filed as to All Pending Actions and that notification of such filing, including a copy of the motion, has been sent to all counsel of record.

All counsel of record have also received notification that any exhibits to the foregoing filing are available on the online repository established by this Court's order of December 15, 2005 or be request at the address provided below.

This the 7th day of September, 2007.

FORMAN PERRY WATKINS KRUTZ & TARDY LLP

Walter G. Watkins, Jr. (MSB No. 6988)
Fred Krutz (MSB No. 4270)
Daniel J. Mulholland (MSB No. 3643)
Marcy B. Croft (MSB No. 10864)
Mary Margaret Ratliff (MSB No. 100672)

FORMAN PERRY WATKINS KRUTZ & TARDY LLP
200 South Lamar Street
City Centre, Suite 100
Post Office Box 22608
Jackson, Mississippi 39225-2608
Telephone: 601.960.8630