

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

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April 27, 2009

The Honorable Eric Holder  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Holder:

I write as a follow up to letters I sent your predecessors at the Department of Justice concerning the investigation and prosecution of pervasive fraudulent activities in asbestos and closely related silica litigation. In those two letters (enclosed), I highlighted growing evidence of asbestos litigation fraud and the reported investigations pursued by federal and state prosecutors, as well as the U.S. Congress.

It now appears that these investigations, which (among others) include the convening of a federal grand jury in the Southern District of New York to reports of an investigation of litigation abuses and corruption in Madison County, Illinois, have been allowed to languish without criminal prosecutions against those responsible for committing perhaps the largest systematic litigation fraud in this country's history. In an April 7, 2009 editorial, The *Wall Street Journal* asked "where's the enforcement follow up?" The *Journal* went on to point out that "the silicosis and asbestos scams are as corrosive to justice in their way as the cases that resulted in convictions for Bill Lerach, Melvyn Weiss, and Dickie Scruggs for kickbacks or bribery. The difference is that these asbestos cases are still in court" (article enclosed).

This litigation fraud has taken a serious toll on employers, employees, and asbestos victims throughout the country. Indeed, a leading academic has estimated the cost of fraudulent asbestos claims will total at least \$40 billion. These claims, "manufactured" by a network of plaintiffs' law firms, doctors, and X-ray screening operations have resulted in the bankruptcy of 84 companies, cost 60,000 people their

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jobs and, worst of all, have delayed justice and compensation for the thousands of men and women who were truly injured by asbestos containing products.

It is evident to me and the thousands of companies on whose behalf I speak that the government's failure to hold these wrongdoers accountable has encouraged further abuses in the system. Since I sent my last letter to Attorney General Mukasey in March 2008, evidence of fraudulent activities in litigation involving asbestos plaintiffs' lawyers and their so called "experts" continues to grow at an alarming rate.

For example, asbestos litigation in West Virginia state court just last month revealed disturbing allegations that asbestos plaintiffs' lawyers enabled and tacitly encouraged their client to forge asbestos diagnoses by providing him with a cash advance and preprinted diagnosis forms without a signature. The asbestos plaintiff used a fake name, someone else's phone number, and a fake address on the diagnostic report (pleading enclosed).

In February of this year, a civil RICO lawsuit filed in Mississippi alleged massive racketeering activities against doctors and plaintiffs' lawyers for manufacturing asbestos claims. The lawsuit alleges that the group of defendants engaged in an unlawful enterprise for over a decade to generate false medical test results, false medical reports, and false diagnoses to substantiate tens of thousands of personal injury cases involving allegations of asbestos related disease. The lawsuit notes that the asbestos plaintiffs firms made a practice of inundating the judicial system and asbestos litigation defendants with voluminous claims on behalf of a large number of claimants – most of whom had little, if any, injury (complaint enclosed).

This recent evidence of serious fraud committed by the plaintiffs' asbestos bar should hardly come as a surprise given its history of abuses. As a reminder, in 2007 an Ohio state court judge in Cuyahoga County barred one of the top asbestos plaintiffs' law firms in the country from his court saying lawyers from the firm had told "lies upon lies upon lies" in connection with an asbestos case there. The judge went on to say "in my 45 years of practicing law, I never expected to see lawyers lie like this" (article enclosed).

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The growing evidence of fraud is not confined to the asbestos lawyers, but includes the medical experts they hire to pursue their cases. Last November, a Michigan state court judge in Wayne County disqualified an asbestos doctor, who had diagnosed more than 7,000 asbestos plaintiffs in that state, as “unreliable,” but not before companies were forced to pay out millions of dollars to plaintiffs he “diagnosed” who were not sick. The doctor had failed the test that certifies physicians to read x-rays for lung disease and had submitted nearly identical reports for every patient he saw. Indeed, the judge said that “the findings of Dr. Kelly are suspect. The same findings appear in almost every case” (court transcript and related article enclosed).

Just last January, New York State revoked the medical license of the notorious Dr. Ray Harron, who diagnosed more than 51,000 people with asbestos-related disease and thousands more with silica-related disease. The grounds for revocation included “negligent and fraudulent practices” and “perpetrating a fraud on the courts” (Order enclosed). This past February, the federal judge presiding over the federal multidistrict asbestos litigation in Philadelphia disqualified Dr. Harron as an expert in thousands of asbestos claims filed there (Order enclosed).

Despite all of this growing evidence, these wrongdoers continue to escape prosecution and are not being held accountable for conduct that has inflicted unwarranted economic damage to companies and their employees, undermined the integrity of our civil justice system and deprived the truly sick of compensation for their injuries. It is unfathomable to the business community that federal prosecutors could ignore this conduct, especially when it is revealed repeatedly and openly around the country.

To make matters worse, it appears that asbestos litigation is on the rise. Recent filing data from Madison County, Illinois, considered by many as one of the worst asbestos and mass tort jurisdictions in the country, shows a dramatic uptick in asbestos lawsuits over the past three years. While the number of asbestos lawsuits hit a low of 266 cases in 2006, more than 600 cases were filed in 2008 (article enclosed). In addition, legal experts in California have observed that out-of-state asbestos

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plaintiffs' lawyers, who once thrived in asbestos-friendly jurisdictions, are now moving west to California (law review article enclosed).

Asbestos litigation fraud is likely to continue without the intervention of law enforcement. I therefore renew my request that the Department prioritize and complete its investigations of asbestos litigation fraud raised in my previous and current letters.

Thank you for you attention to this matter.

~~Sincerely,~~

A handwritten signature in black ink, appearing to read "TJ Donohue", written over a horizontal line.

Thomas J. Donohue

Enclosures