



COLUMNS

SILICA

FROM THE FRONT LINES OF THE SILICA LITIGATION

DECEMBER 2005

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A HarrisMartin Interview with Texas Silica Attorney Jason A. Gibson, Esq.



Jason A. Gibson, Esq.

Jason A. Gibson of Smith Gibson Law Firm in Houston has been handling silica claims for seven years. The 32-year-old plaintiffs' attorney graduated *magna cum laude* from Stephen F. Austin State University in 1995, then went on to University of Houston Law Center, where he obtained his J.D. in 1998. A native of Lake Jackson and Sugar Land, Texas, Gibson is a member of numerous organizations, including the Texas Trial Lawyers Association and the Association of Trial Lawyers of America.

He is also a frequent lecturer at silica litigation seminars held around the country, and was this month recognized by *H Texas Magazine* as one of Houston's "Top Professionals on the Fast Track." HarrisMartin sat down with Gibson to discuss the high and low points of his career as a silica litigator, and the recent changes in Texas law affecting the silica docket.

HarrisMartin: How did you first get involved in silica litigation, and how much longer do you plan to stay involved?

Gibson: My first exposure to silicosis litigation was as a law clerk working for Shelton Smith while I was in law school. Shelton was the first lawyer to try a silicosis case in Harris County and has been handling silicosis cases since the early 80's. As a lawyer, I continued to work on the silicosis docket. I plan to represent workers with silicosis for a long time to come — unless the Texas Legislature makes it impossible or illegal for me to do so.

HM: Why are you a plaintiff's attorney?

JG: Two words: My grandfather. I grew up in a union hall. My grandfather was the business manager and president of a local union for 30 years. Pipefitters Local 390 in Angleton, Texas. He spent his entire life helping others and making sure the working men and women of Texas had a better quality of life — better working conditions, better pay, etc. Before I even stepped foot on a college campus, I knew I wanted to be a lawyer and represent injured workers. That's just what I wanted to do, and I made it happen. I've never worked for a defense firm or insurance company. I went straight from law school to doing Plaintiffs work.

HM: SB 15 certainly changed the way silica cases are litigated in Texas. What's the biggest impact that the law has had on these silica cases, in your opinion?

JG: It wiped out a large portion of our existing docket. Workers who previously had legitimate, compensable injuries now have absolutely nothing. On top of SB 15, the state MDL stopped silica litigation in its tracks. Cases are just now starting to move again.

HM: As a plaintiffs' advocate, what's your feeling about SB15?

JG: It wasn't necessary, and it's just another example of big business and insurance companies taking advantage of blue collar workers. It also shows that big business and insurance companies can buy laws and create a "litigation crisis" when no such crisis exists.

HM: Prior to the transfer of your claims to the silica MDL, you and only a handful of others chose to file medical reports pursuant to the requirements of SB15. I suppose the filing and deferred filing of medical reports is part of some sort of strategy. Can you elaborate, and even speculate, on what that strategy might be?

JG: No particular strategy other than we want to get our cases moving again as soon as possible. If there's going to be a fight over what a proper medical report looks like, someone has to get one on file and argue about it at the courthouse. I think others are not wanting to file reports because they would like to see the court make some rulings before spending the time and money getting it wrong the first time and then having to re-do everything.

HM: Can you point to one particular instance as a silica attorney that you might consider your most satisfying?

JG: I represented a sandblaster by the name of Roger Dixon. He was diagnosed with complicated silicosis. It was a great case from a legal standpoint, but Mr. Dixon was, and continues to be, very ill. Two things stand out in my mind on this particular case. One, I settled with all but two defendants and was set to try the case when the trial court dismissed it on summary judgment related to a limitations argument. We won on appeal and had the trial court reversed. Two, after winning on appeal and settling with the last two defen-

dants, I got a handwritten letter from my client, stating in part:

"Enclosed are selected photographs of the vehicles, house, etc., that were purchased with funds from the lawsuit settlements. A Thanksgiving celebration was held here recently and many people marveled at how all of this came together so quickly. I told my guests that your law firm in Houston is responsible for helping me get back some semblance of dignity. The land purchase put 12 grand into my sister's land business, the septic system construction company employed 4 people. Pouring the concrete runners employed a woman and 4 men; hauling in sand and gravel, 3 men; bulldozer work, 2 men; drilling the water well, 5 men; building the covered front deck, 6 men; and the utility work, 4 men. All of this brought at least temporary work to the locals. *When they tried to thank me, I said they should 'thank Jason Gibson, because without him, a lot of folks wouldn't have paychecks.'*" Signed, R.D. Roger Dixon

I guess reading this letter was one of the most satisfying moments I've had handling silicosis claims. This is the kind of stuff insurance companies don't want to hear or choose to ignore.

HM: Several years ago, you made headlines for settling a silica case for \$650,000, just prior to the jury's award of nearly \$12 million. Did that ever keep you up at night, wondering "what if"? Or, in retrospect, was that probably one of the best moves you've ever made?

JG: Did you have to remind me of that? Actually, the jury was set to award between \$13 million and \$30 something million. It would have been the biggest silicosis verdict ever. Put it this way, it was a long trip back from Corpus Christi to Houston. After all was said and done, my client was able to put away enough money to take care of him and his family for the rest of their lives. Knowing that, I can sleep at night. I will have plenty of opportunities in the near future to take some verdicts and plan on doing so.

HM: You've run a string of, I believe, four straight wins in appeals involving silica-related matters. I don't think anyone else, plaintiff or defendant, has had near as much success — from a pure numbers standpoint — at the appellate level in Texas. Can you tell me very briefly what those cases involved and what your secret is?

"Now, anytime someone hears the word 'silicosis,' they start thinking about the Federal MDL mess. It's unfortunate."

JG: I believe all of them had to do with statute of limitations issues and the "discovery rule" in Texas. We've been successful for a number of reasons. First, we were right from the beginning. Each respective trial court should have never granted the motions to begin with. Second, we handle our own appeals and do not turn the work over to an "appellate lawyer." I think we're the best in the business when it comes to briefing and arguing our cases, both at the trial court level and the appellate level. Giving short, concise arguments is very important, or at least has worked for us.

HM: There was a recent article in the legal press regarding a slow down, if even a halting, of silica litigation in Texas, which has always had the most active docket in the country. What's the future of the silica docket in Texas?

JG: The insurance companies have succeeded in making sure that only the best cases — those filed by the most severely impaired silicotics — go to trial against their insureds. In doing so, they have also ensured more trials and bigger verdicts against their clients. I think insurance companies will see their potential losses going up as a result. Pretty smart thinking on their part, don't you think? What's the future? More trials, bigger verdicts.

HM: With a big focus now on experts and Daubert/Havner issues, is there any specific strategy you employ in an effort to get your experts to pass muster?

JG: We start by using someone who actually qualifies as an "expert." Most of the science in silicosis cases is not disputed. There may be some issues regarding lung cancer and other disease processes linked to silicosis, but the underlying medical case has been established. The fields of expertise involved in these cases has also been established — pulmonary, X-rays, industrial hygiene, etc. I don't see this area being a big focus.

HM: I don't believe you had any cases in the Federal MDL, so from the outside

looking in, what is your opinion about what was accomplished there, and how do you see it affecting your cases?

JG: I think the whole situation gave the entire silicosis docket in Texas a bad name. A couple of bad apples spoiled to whole bunch. Now, anytime someone hears the word "silicosis," they start thinking about the Federal MDL mess. It's unfortunate, particularly for those workers out there with legitimate claims.

HM: What other types of cases are you currently taking?

JG: We're looking at everything except medical malpractice claims. Have any referrals??

HM: If you could get one gift this holiday season, what would it be?

JG: Well, Gov. Rick Perry of Texas filed today, stating he would seek re-election as governor of Texas. He indicated his main priority would be lawsuit abuse and tort reform. Forget school finance and the rest of problems this state is facing, let's get rid of the plaintiffs lawyers! Gov. Perry getting defeated in the upcoming election would be nice. Otherwise, to stay healthy and continue to help the working men and women of Texas. Keep fighting the good fight.

