

## MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 13, 2006 in Room 234-N of the Capitol.

All members were present except:

James Barnett- excused  
Jim Barone - excused  
Dennis Wilson - excused  
Pete Brungardt - excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Ken Wilke, Office of Revisor of Statutes  
Bev Beam, Committee Secretary

Conferees appearing before the committee:

Woody Moses, KAPA  
Mark Wilkerson, IMA  
Ramon Gonzales, N. R. Hamm Quarries  
Warren Harshman, Harshman Construction  
Lew Ebert, Kansas Chamber  
Larry Magill, KAIA  
Debs McIlhenny, Kansas Trial Lawyers Assn.

Others attending:

See attached list.

The Chair welcomed everyone to the meeting and thanked those in attendance for meeting on Monday.

Hearing on:

**SB 512** - An act enacting the silicosis claims act

The Chair asked Melissa Calderwood for an overview of (**SB 512**). Ms. Calderwood said the first section of the bill is the definition section and those definitions of most interest are found on page 4 that define what a silicosis claim is. A "Silicosis claim" means any claim for damages, losses, indemnification, contribution or other relief arising out of, based on, or in any way related to inhalation of, exposure to, or contact with silica. Silicosis claim also includes a claim made by or on behalf of any person who has been exposed to silica, or any representative, spouse, parent, child or other relative of that person for injury, including mental or emotional injury, death or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to silica. Silicosis, she said, means an interstitial lung disease caused by the pulmonary response to inhaled silica.

The Chair asked Woody Moses for his testimony. Mr. Moses said Silicosis is a disease of the lung which is caused when small particles of silica usually contained in sand become imbedded in the lungs. It is important to note, he said, that silicosis is not related to asbestos, a similar lung disease. Crystalline silica, despite many years of study, has never been found to be carcinogenic. In Kansas, our rock, sand and gravel actually contain very low amounts of silica. So low, that in some cases they are not measurable, he said.

Mr. Moses said there has been an explosion of silica cases occurring primarily in the eastern half of the United States. This has led insurance carriers providing liability coverage to exclude silicosis coverage regardless of where a particular producer may reside and operate, despite the fact that the overall national mortality rate as a result of silicosis has been dropping steadily for the last 40 years. This is a particular problem in Kansas because the Kansas aggregate industry is comprised of a high percentage of relatively small members who, due to their size, do not have a net worth to withstand a silicosis claim. Without available insurance coverage, it is impossible to withstand such an action without facing bankruptcy, he said. (Attachment 1)

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 13, 2006 in Room 234-N of the Capitol.

The Chair called for testimony of Mark Wilkerson, IMA.

Mr. Wilkerson said while **(SB 512)** is an important issue for the insurance industry, he wanted to make clear that it does not affect Workers Compensation Insurance nor the coverage of Kansas workers. It is a bill that is related to the commercial general liability insurance policy, he said.

He added as a result of numerous lawsuits over the past several years and many of these being filed without merit, the insurance industry has spent a considerable amount of time and money defending their insured's interests in cases where no evidence of bodily injury has occurred. Plaintiffs have even alleged that possible exposure to silica or mixed dust might create future medical conditions or ailments and are seeking judgments where no injury has occurred. The defense of these unsubstantiated claims has caused the insurer's to look for ways to mitigate their defense expenses, Mr. Wilkerson said.

He said insurance carriers, both large and small, apply exclusion for silica and mixed dust to the Commercial General liability policies of many construction firms, quarry operations, manufacturing, glass plants, and tool makers. The exclusion is also being applied to Environmental Pollution policies as well. He said this exclusion releases the carrier from being obligated to respond to claims and be responsible for defense costs, judgments, or settlements related to silica or mixed dust related claims.

If the Kansas Legislature passes this proposed legislation, it will limit litigation to only silica and mixed dust claims meeting the established medical criteria and will eliminate the potential for unfounded claims tying up our courts. It will also ensure that those who have valid claims are provided an opportunity to seek medical care and any damages related to their condition from the responsible party, he said. (Attachment 2)

The Chair called on Ramon Gonzalez for his testimony. Mr. Gonzalez said Hamm Quarries has seen the number of insurance companies willing to write coverage for their company shrink in the last five years. This is mainly because of a shift in insurance companies' willingness to underwrite exposures in either heavy highway companies, paving contractors, quarry operations or companies with large auto fleets, Mr. Gonzalez said. He added, one or more of these exposures usually makes the majority of insurance companies decline even a quotation, regardless of a very good loss record.

Mr. Gonzalez said his company believes **(SB 512)** will reduce the apprehension to the insurance companies declining to quote insurance to Kansas employers solely based on silica exposure. We also believe the state of Kansas, business and industry benefit from the elimination of the possibility of frivolous class action claims from silica. (Attachment 3)

The Chair called on Warren Harshman, Harshman Construction for his testimony. Mr. Harshman said, in Kansas, unlike the eastern United States, the actual silica content of our rock is very low and in some cases not even measurable. Yet the liability is great, as many claims can be generated by a perceived exposure as compared to an actual exposure. Mr. Harshman said he wishes to stress that his company is not seeking to avoid a legitimate claim for which they may or may not be liable. He said **(SB 512)** would simply require a bona fide medical diagnosis of silicosis to exist prior to filing a claim. Mr. Harshman said **(SB 512)** is very important and without its passage, the basic sustainability of his business will be threatened because he simply has no coverage for this liability. (Attachment 4)

The Chair called on Lew Ebert, President and CEO of The Kansas Chamber. Mr. Ebert said the Kansas Chamber and it's more than 10,000 members support **(SB 512)**. He added that because silica claims and diagnosis have mirrored asbestos litigation, Kansas, like other states, is seeing an insurance market place that is excluding companies with silica exposure. He said these concerns need to be addressed so companies can continue to compete in Kansas and employ Kansas workers. (Attachment 5)

Larry Magill, Executive Director, Kansas Association of Insurance Agents, brought written testimony. (Attachment 6)

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 13, 2006 in Room 234-N of the Capitol.

Charles L. Chip Wheelen testified on behalf of Kansas Association of Osteopathic Medicine. Mr. Wheelen said requested amendments by the Kansas Association of Osteopathic Medicine would simply acknowledge that there are two parallel systems whereby a physician may become board certified in a particular field of medical expertise. (Attachment 7)

The Chair called on Debs McIlhenny, Kansas Trial Lawyers Association, who testified as an opponent of the bill.

Due to time constraints, the chair asked Ms. McIlhenny if she would discontinue her testimony and return on Wednesday, February 15, to continue her testimony. She agreed.

The meeting adjourned at 10:30 a.m. The next meeting of this Committee is scheduled for February 14, 2006.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: February 13, 2006

NAME	REPRESENTING
Callee Jill Denton	KTLA
Debs McElhenney	KTLA + self
JOHN KLAMAKI	KTLA
Eric Stafford	AGIC of KS
Scott Heidner	ACEC Kansas
Woody Mares	KAPA
Wendy Mares	KAPA
Chip Wheeler	Asn of Osteopathic Med.
Bob Totten	K-C-A
J. Scott Heers	Hamm, Inc
Ramon Gonzalez	Hamm, Inc.
Warren Harshman	Harshman Construction
Clint Potty	KAPA
MARK WICKERSON	IMA OF KANSAS, INC.
Larry Magill	KPIA
Bill Sneed	State Farm
Brad Smart	AIA
Dome Ann Lower	ICA-ITP
Lee Wright	Farmers Ins.
Wan Morin	Kansas Medical Soc.
David Hanson	Ks Insur Assns

# KAPA

Kansas Aggregate  
Producers' Association

Edward R. Moses  
Managing Director

## TESTIMONY

Date: February 13, 2006  
Before: The Senate Committee on Financial Institutions and Insurance  
By: Edward R. Moses, Managing Director  
Kansas Aggregate Producer's Association  
Regarding: Senate Bill 512 Silicosis Claims

Good Morning Madame Chair and Members of the Committee:

My name is Edward Moses, Managing Director of the Kansas Aggregate Producer's Association the Kansas Aggregate Producer's Association is a group of rock, sand & gravel and their suppliers located throughout the state. We appreciate the opportunity to appear before you today in support of Senate Bill 512 a very important matter to our industries as well as many others. As with any matter that comes before this committee, and the legislature in general, the debate surrounding silicosis claims is an issue of developing an appropriate state policy in a fair and balanced manner.

### What is Silicosis?

Silicosis is a disease of the lung which is cause when small particles of silica usually contained in usually from industrial sand operations becomes imbedded in the lung. It is important to note that silicosis is not related to asbestos a similar lung disease particularly in the fact that crystalline silica, despite many years of study, has never been found to be carcinogenic. In Kansas our rock and sand& gravel actually contain very low amounts of silica content as a matter of fact so low that in some cases they are not measurable and according to the National Institute of Occupational Health and Safety exposure to silica are very low. However, this has not prevented the Kansas industry from getting embroiled in what has become a national silica debate.

*Senate FI&I Com.  
Attachment 1-1  
February 13, 2006*

### **The Problem**

Often when matters such as these come before the legislature the question is often asked what has changed, why are we having this problem today which we did not have before? In this particular case the problem has developed over the last 12 to 24 months where many small producers have seen their insurance coverage for silicosis claims excluded on their general product liability policies. The reason for this has been the explosion of silica cases occurring primarily in the eastern half of the United States which has led insurance carriers providing liability coverage to exclude silicosis coverage no matter where a particular producer may reside and operate. Despite the fact that the overall national mortality rate as a result of silicosis has been dropping steadily for the last 40 years. In Kansas this has become a particularly acute problem in our industry as the Kansas aggregate industry is comprised of a high percentage of relatively small members, members who due to their size do not have a net worth to withstand a silicosis claim to defend or pay out awards on potential silica claims that may be filed against them. Without insurance coverage being available it is virtually impossible to withstand such an action without facing bankruptcy. It should also be noted at this point that this is also a larger threat for both state and local governments who their used silica routinely in their operations.

### **The Solution**

SB 512 is a bill similar to measure that have been passed in Georgia, Florida, Texas and Ohio dealing with providing a statewide policy that would put reasonable limits on circumstances under which a silica claim could arise. The peanut of this bill being that any potential third party wishing to lodge a silica claim against foreign exposure against a producer would have the duty of providing a bona fide medically diagnosed illness prior to filing their claim. It is hoped by providing such a requirement that in Kansas we may avoid similar situation in Texas where over 11,000 silicosis claims were filed by parties alleging to have mere exposure to the disease rather than a verifiably diagnosed illness. By passing this law we feel the legislature would take a positive action towards providing an environment in which insurance coverage for silicosis claims could be restored. Given this we think passage of SB 512 would lead to the restoration of liability coverage which would shield small producers from the threat of bankruptcy and yet maintain responsible coverage in order that those claimants with legitimate diagnosis of silicosis can be assured that responsible parties with have the actual means to pay their claims. With this in mind we would ask this committee to take due consideration and pass SB 512 with a favorable recommendation for passage. I thank you for taking the time to hear our comments and we will stand ready to answer questions at the appropriate time.

December 2, 2005

## REVIEW &amp; OUTLOOK

**Screening for Corruption***December 2, 2005; Page A10*

The neutron bomb that federal Judge Janis Graham Jack dropped in June on runaway silicosis claims is still reverberating through the legal system, and to cleansing effect. On Capitol Hill, in a federal grand jury, and even in the courts themselves, subpoena power is beginning to expose the corruption that has underpinned both silicosis and asbestos litigation.

Most promising is the news that a federal grand jury in the Southern District of New York is looking into all this, sending subpoenas to doctors and screening companies that Judge Jack had cited for "manufacturing" silica claims for money. Many of these same doctors and companies, and the lawyers they worked with, were previously responsible for huge numbers of asbestos claims. Much of what a grand jury does is secret, but a few details are leaking out.

Among them is a recent court filing, in which one doctor involved in the Jack opinion, James Ballard (responsible for at least 11,000 asbestos diagnoses), has admitted he is a "subject" of a "criminal" grand jury proceeding. He and another asbestos diagnoser -- Dr. Ray Harron -- are already lawyered up and asserting their Fifth Amendment rights. Yet another physician, George Martindale, has sent documents to the grand jury suggesting that trial lawyers misused his work in court, as well as encouraged him to shut up about certain details in his deposition.


And then there are the courts, which up to now have refused to probe individual asbestos claims. Yet recently, federal bankruptcy Judge Judith Fitzgerald allowed W.R. Grace to send detailed questionnaires to all of its 118,000 asbestos claimants, seeking information about their doctors and prior legal claims. W.R. Grace specifically cited the fraud uncovered by Judge Jack as grounds for this discovery.



Other bankrupt firms, such as USG, have made similar requests, again citing the Jack opinion. In Philadelphia, in federal litigation with as many as 200,000 claims, defendant companies have sent subpoenas to as many as 45 doctors and 12 screening companies. And in the Congoleum bankruptcy in New Jersey, insurance companies are outright contesting thousands of asbestos claims as frauds. These insurers have noted that the claims were diagnosed by the same doctors and screening companies, and filed by the same law firms, as in Judge Jack's discovery.

Even Congress is finally getting in on the act, with House Republicans Joe Barton and Ed Whitfield probing the key players in the Jack litigation. Mr.

**DOW JONES REPRINTS**

 This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers, use the Order Reprints tool at the bottom of any article or visit: [www.djreprints.com](http://www.djreprints.com).

- See a sample reprint in PDF format.
- Order a reprint of this article now.

Whitfield's subcommittee recently voted 11-0 to authorize subpoenas to at least four doctors. To date, none of the doctors has supplied the requested documents; some are citing constitutional privileges. The committee is considering its next steps.

Subpoenas aside, the Jack findings are already having a practical effect on whether claims will be paid. The largest asbestos trust fund, the Manville Trust, in September barred nine doctors and three X-ray screening companies (most involved in the Jack opinion) from submitting further diagnoses. Some of those barred had been among the most prolific asbestos-diagnosing physicians in the country.

Dr. Harron, for instance, has provided medical reports in support of 76,224 individual Manville Trust claimants. Another physician involved in the Jack silicosis cases, Jay Segarra, contributed more than 23,000 Manville claims. Manville has been also asked to turn over documents from its wealth of information to the New York grand jury.

All of this is making plaintiffs attorneys sweat, and no wonder. While much of the subpoena focus has been on doctors and screening companies, the trail is increasingly leading to the law firm door. When Judge Jack asked one plaintiffs lawyer how it was that nearly 70% of his silicosis clients had previously filed asbestos claims (given it is extremely rare to have both silicosis and asbestosis), he replied that he believed their prior asbestos claims had been bogus. According to defense attorneys, some of those claims happened to have been filed by lions of the asbestos bar, including Dickie Scruggs. You can bet New York prosecutors were taking notes.

This blame-shifting may explain why the tort bar has already changed its public-relations strategy from denial to crisis management. In a recent article in Business Week, asbestos kingpin Fred Baron was quoted as saying that in any 100,000 asbestos claims there will be "some small number" that are "fraudulent." In other words, he's willing to believe that some fraud did take place, but it was committed by someone else. Mr. Baron also reverted to the old standby of demonizing corporations, saying that defendant companies were encouraging the criminal and Congressional probes in order to "game the system." But gaming the courts is precisely what the asbestos bar has done for years.

All of which suggests Congress should put on hold any vote to create a new \$140 billion asbestos trust fund. Before any companies are forced to pay out billions of dollars, we all deserve to know how many claims are real. And anyone found to have knowingly submitted false ones should take responsibility for the more than 70 bankruptcies that have so far accompanied the litigation flood.

As for Judge Jack, aside from judicial plaudits, we have another suggestion. Federal Judge Charles Weiner of Philadelphia, who had been presiding over tens of thousands of asbestos cases in multidistrict litigation, regrettably died last month. Since just about any judge can preside over such litigation, how about Judge Jack as a replacement? The judiciary couldn't do better than to keep this asbestos and silicosis sheriff on the beat.

**URL for this article:**

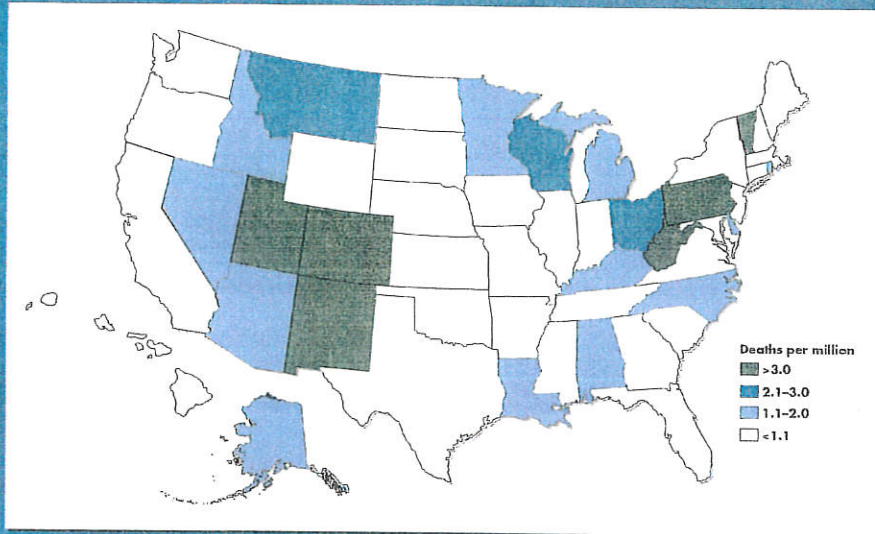
<http://online.wsj.com/article/SB113348496442011933.html>

**Copyright 2005 Dow Jones & Company, Inc. All Rights Reserved**

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our **Subscriber Agreement** and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit [www.djreprints.com](http://www.djreprints.com).



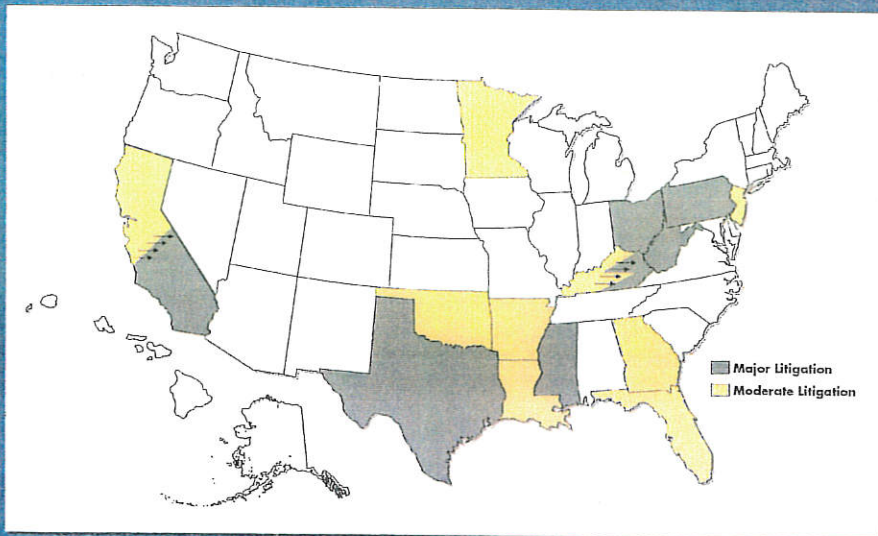
## Silicosis Mortality Rates



Spink, Hinds & Bloom, LLP

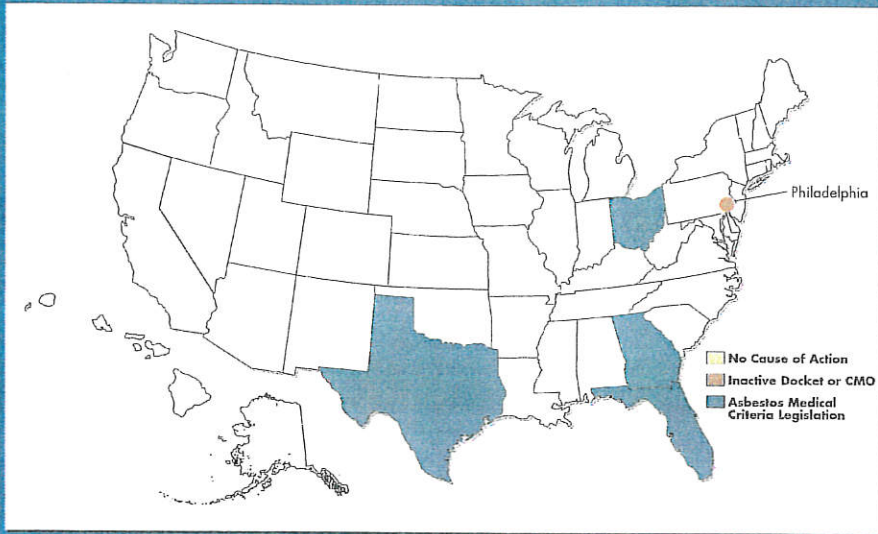
Source: Dept of Health & Human Services, Centers for Disease Control & Prevention, Nat'l Inst. for Occupational Safety & Health, Worker Health Chartbook 2004 17C (Pub. No. 2004-148, Sect. 2004 (1990-1997 data), available at <http://www.cdc.gov/niosh/docs/04/17c/>)

## State Court Silica Filings



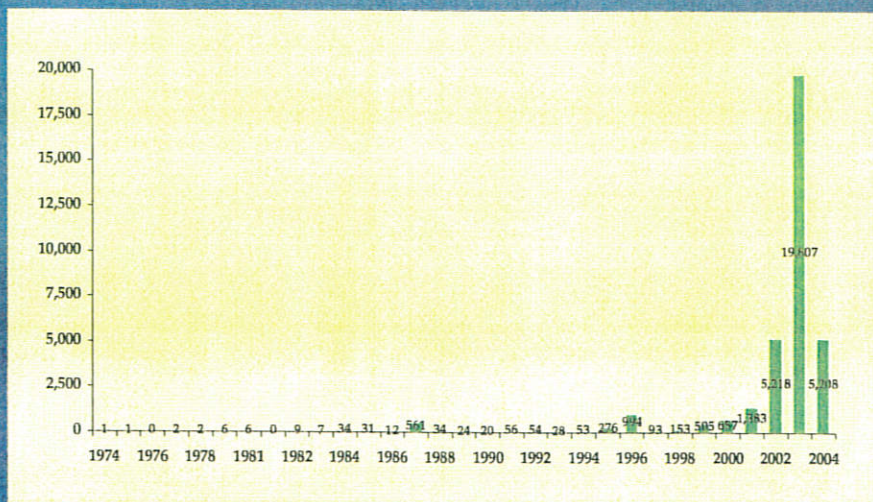
Spink, Hinds & Bloom, LLP

## State Legislation/Court Orders To Address Unimpaired Silica Claimant Filings



Stark  
Fleury  
&  
Kurtz

## Number of plaintiffs, by year, against a major silica defendant

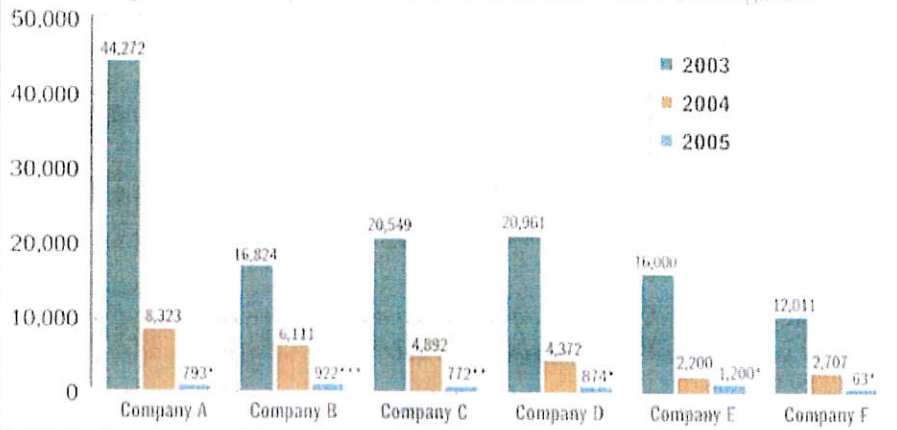


Stark  
Fleury  
&  
Kurtz

**CASES TUMBLE**

**NUMBER OF PLAINTIFFS FILING SILICA CLAIMS**

Against some representative defendants involved in the litigation



Notes: \*2005 through April \*\*2005 through March \*\*\*2005 through Feb.

Source: Coalition for Litigation Justice

Stevens  
Plymouth  
PROCTER

Source: Steve Tuohy, Silica Claims Show Marked Decline, Nat'l Underwrit. Prop. & Cas. / Ris. & Ben. Mgmt., May 30, 2005, at 13 (data provided by Coalition for Litigation Justice, Inc.).



CONSIDER IT DONE

## TESTIMONY

By the  
**Mark Wilkerson**  
**Vice President**  
**IMA of Kansas, Inc.**  
**Wichita / Topeka / Overland Park**

Before the  
**Senate Financial Institutions and Insurance Committee**

Regarding SB 512  
An Act Enacting the Silicosis Claims Act

February 13, 2006

Madame Chair and members of the committee my name is Mark Wilkerson with IMA of Kansas, Inc. headquartered in Wichita, with offices in Topeka and Overland Park, KS. We are a member of the Kansas Aggregate Producers' Association. I would like to take the time to thank you for allowing me to appear before you today in support of SB 512.

IMA of Kansas is an employee owned insurance and surety bond broker with three locations in Kansas; we also have offices in Denver, Dallas, and Boston. A majority of our 400 plus Associates live and work in Kansas. One of our risk management areas of specialization is in the construction industry which includes working with firms that produce aggregates for building roads, manufacturing cement and redi-mix, and for the construction of buildings and other structures like dams and bridges. We thank you for the opportunity to come before you today to express our support for SB 512, regarding silicosis claims.

While this is an important issue for the insurance industry I want to make it clear that this proposed Senate Bill 512 does not affect Workers Compensation insurance nor the coverage of Kansas workers, it is a bill that is related to the commercial general liability insurance policy.

As result of numerous lawsuits over the past several years and many of these being filed without merit the insurance industry has spent a considerable amount of time and money defending their insured's interests in cases where no evidence of bodily injury has occurred. Plaintiffs have even alleged that possible exposure to silica or mixed dust might create future medical conditions or ailments and are seeking judgments where no injury has occurred. The defense of these unsubstantiated claims has caused the insurer's to look for ways to mitigate their defense expenses.

We are now seeing insurance carriers, large national carriers and smaller regional carriers, apply exclusion for Silica and Mixed Dust to the Commercial General Liability (CGL) policies of many construction firms, quarry operations, manufacturing, glass plants, and tool makers. In addition to the exclusion being applied to the (CGL) the exclusion is also being applied to Environmental

Pollution policies as well. This exclusion releases the carrier from being obligated to respond to claims and be responsible for defense costs, judgments, or settlements related to silica or mixed dust related claim. An extremely narrow exception to the exclusion is becoming available for certain types of industries with large deductibles (\$100,000 or more) on a very limited basis.

According to research provided by the National Institute of Occupational Safety and Health, silica or mixed dust related claims in Kansas appear to be extremely low if there are any at all. With this in mind Kansas businesses are being penalized with regards to this exclusion with little to no risk based upon litigation taking place in other parts of the country.

With this exclusion in place, Kansas companies are now on their own to defend themselves against claims or actions whether they have merit or not. Since Kansas aggregates are primarily limestones based and have been found to be extremely low in silica content, compared to states with granite based aggregate with higher amounts of silica present, our businesses face defending themselves against these types of claims with very little likelihood of a silicosis condition being documented.

Several states including Texas, Ohio, Florida and Georgia have enacted legislation to enact preemptive legislation that creates criteria to protect the rights of those who have valid medical symptoms and limit the ability of those who have no medical conditions or evidence to substantiate silica or mixed dust claim.

We are hopeful at IMA of Kansas, Inc., as an insurance broker, that if Kansas adopts a position similar to Ohio, insurance carriers will recognize that silica and mixed dust litigation frequency would be limited to only valid medically documented cases. With this in mind a broker would be able to substantiate a request for the deletion of this exclusion. Carriers would be able to apply their rating schedules against these types of risks and provide the option of coverage for an appropriate premium.

Without this option Kansas Businesses will have to respond to allegations without the benefit of a risk transfer product such as a commercial general liability insurance policy.

If the Kansas Legislature passes this proposed legislation it will limit litigation to only silica and mixed dust claims meeting the established medical criteria and will eliminate the potential for unfounded claims tying up our courts. It will also ensure that those who have valid claims are provided an opportunity to seek medical care and any damages related to their condition from the responsible party.

In closing, we appreciate the opportunity to appear before you. We urge this committee to recommend this bill favorably for passage. I would be willing to answer any questions you may have at the appropriate time. Thank you.

# ✓ Silica or Silica Mixed Dust Exclusion

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l. Prem.	Return Prem.
					\$	\$

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

**Commercial General Liability Coverage Part  
Products-Completed Operations Liability Coverage Part**

The following additional exclusion is added to **2. Exclusions of Section I. Coverages:**

**2. Exclusions**

This insurance does not apply to:

**Silica or Silica Mixed Dust**

- A. "Bodily injury", "property damage" or "personal and advertising injury" caused directly or indirectly, in whole or in part, by the actual, alleged or threatened inhalation, ingestion, absorption, exposure to, existence of or presence of "silica"; or
- B. Loss, costs or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any manner responding to or assessing the effects of "silica" by any insured or by any other person or entity.
- C. For the purposes of this exclusion, the following definition applies:  
"Silica" means:
  - (1) Any form of crystalline or non-crystalline (amorphous) silica, silica particles, silica compounds, silica dust or silica mixed or combined with dust or other particles; or
  - (2) Synthetic silica, including precipitated silica, silica gel, pyrogenic or fumed silica or silica-flour.



[CDC Home](#)

[CDC Search](#)

[CDC Health Topics A-Z](#)



[Search NIOSH](#) | [NIOSH Home](#) | [NIOSH Topics](#) | [Site Index](#) | [Databases and Information Resources](#) | [NIOSH Products](#)

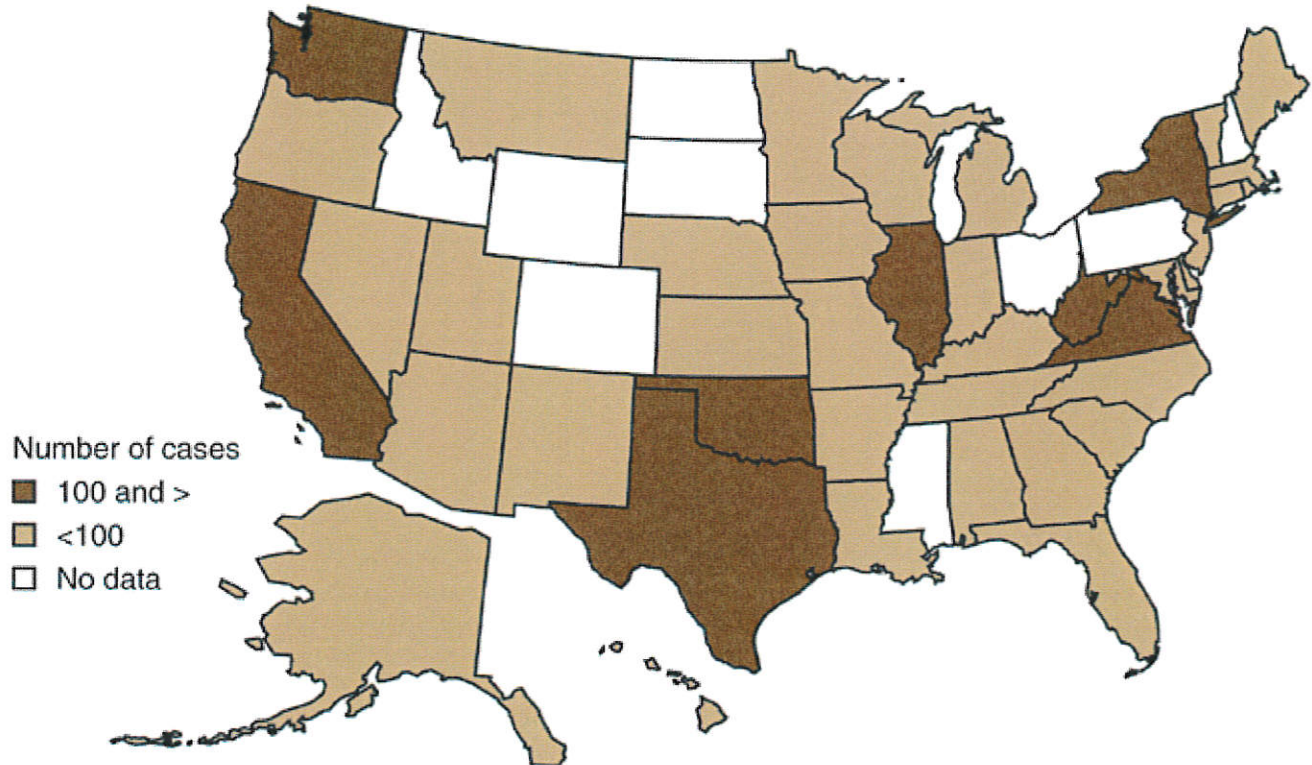
NIOSH Publication Number 2004-146

# Worker Health Chartbook 2004

[<< Back to Previous Page](#)

[Chartbook Home Page](#)

**Figure 2-197**



**Figure 2-197. Number of cases of dust diseases of the lungs in private industry by State, 2001.**  
 The number of dust diseases of the lungs within reporting States ranged from fewer than 50 cases to 200 in 2001. BLS reported 1,300 cases of dust diseases of the lung in 2001. Eight States (California, Illinois, New York, Oklahoma, Texas, Virginia, Washington, and West Virginia) reported 100 or more cases.  
 (Source: BLS [2002].)

[Download data in Excel format](#)   [Download image file in EPS format](#)

[NIOSH Home](#) | [NIOSH Search](#) | [Site Index](#) | [Topic List](#) | [Contact Us](#)

2-4



QUARRIES  
CONSTRUCTION  
ASPHALT  
WASTE MANAGEMENT

609 Perry Place  
PO Box 17  
Perry, KS 66073-0017  
Telephone 785-597-5111  
FAX 785-597-5117

---

## TESTIMONY

By the

**Hamm, Inc.**

Before the

**Senate Financial Institutions and Insurance Committee**

Regarding SB 512

An Act Enacting the Silicosis Claims Act

February 13, 2006

Madame Chair and members of the committee my name is Ramon Gonzalez III, I'm an employee of Hamm, Inc, located in Perry, KS and a member of the Kansas Aggregate Producers' Association and the Kansas Contractors Association. I would like to take the time to thank you for allowing us to appear before you today in support of SB 512. N.R. Hamm Quarry, Inc. and N.R. Hamm Contractor, Inc., the two major subsidiaries of Hamm, Inc., have been providing crushed limestone products and heavy-highway construction for the state of Kansas for over 52 years. Hamm, Inc. is an employee owned company employing 270 to 300 Kansas citizens in over 16 counties in NE Kansas.

We thank you for the opportunity to come before you today to express our support for SB512, regarding silicosis claims.

We have a very diverse group of operations and we feel it is in our best interest to purchase insurance that covers all of our operations instead of one policy that covers each industry specifically. We believe this benefits Hamm Inc. because it provides economies of scale, it spreads risk, it limits the possibility of having gaps in our coverage and it increases the number of insurance companies that will cover certain parts of our operations.

Unfortunately, despite this strategy, we have seen the number of insurance companies willing to write coverage for our company shrink in the last five years. This is mainly because a shift in insurance companies' willingness to underwrite exposures in either heavy highway companies, paving contractors, quarry operations or companies with large auto fleets. One or more of these exposures usually makes the majority of insurance companies decline even a quotation, regardless of our very good loss record. Last year we have now seen companies formally giving us quotations now declining because of a *perceived* silica exposure. The insurance company's fear of silica exposures is not

*Senate FI & I Com  
Attachment 3-1  
February 13, 2006*



unique to the mining and construction industry as I'm sure you will hear today. If industry can not obtain multiple, competitive quotes from insurance companies then this will only drive up our cost which must be passed on to all public and private construction projects throughout the State. Companies in states with silica reform laws will have multiple competitive insurance quotes providing a distinct competitive advantage when bidding public and private construction projects in Kansas. Hamm Inc. has brought aggressive competition when bidding KDOT, KTA and county projects throughout the state for the last fifty years saving millions in taxpayer dollars.

N.R. Hamm Quarry, Inc. also provides crushed limestone products to Kansas counties and municipalities to use on rural roads and parking lots. The dust emitted just by driving on these roads by the general public could lead to frivolous class action lawsuits against the counties, townships and the producer of the crushed limestone. We feel actual claims should be made if medical evidence is present as this bill allows. Absent a bill requiring no evidence of silicosis we feel this could lead to massive unwarranted settlements, a reduction in the number of quarry operators in Kansas, or even threats of class action from residents who may only want their road to be paved by the municipality.

We believe that Senate Bill 512 will reduce the apprehension to the insurance companies declining to quote insurance to Kansas employers solely based on silica exposure. We also believe the state of Kansas, business and industry benefit from the elimination of the possibility of frivolous class actions claims from silica, similar to other frivolous class actions claims made in other states.

In closing, we appreciate the opportunity to appear before you. We urge this committee to recommend this bill favorably for passage. I would be willing to answer any questions you may have at the appropriate time. Thank you.

**HARSHMAN CONSTRUCTION L.L.C.**  
**R.R.1 BOX 21A**  
**CEDAR POINT, KS 66843**  
**620-274-4377**

**TESTIMONY**

Date: February 13, 2006

Before: The Senate Committee on Federal & State Affairs

By: Warren Harshman, Harshman Construction, L.L.C. and  
Vice President, Kansas Aggregate Producers Association

Regarding: SB 512 – Silicosis Claims

Good Morning Madame Chair and Members of the Committee:

My name is Warren Harshman, of Harshman Construction, located in Cedar Point, Kansas. Harshman Construction is a family owned business established in 1978; providing crushed limestone products to both the public and private sectors at 16 different locations throughout central and south central Kansas. In many cases we are among the highest paying employers within the counties in which we operate. I am currently serving as the Vice President of the Kansas Aggregate Producers' Association and a member of the Kansas Contractors Association. On behalf of myself and my colleagues, I appreciate the opportunity to appear before you today in support of SB512.

My company is among many that can be classified as a typical small Kansas business commonly found in rural areas such as Peabody or Cherokee. As you also have been told many times before, businesses such as ours are finding it ever more difficult to survive in today's modern climate. Please note I did not say it is "difficult to compete in today's modern climate". We welcome competition, as it is a basic driver of our economy. What we are concerned about is the ability to **survive and compete at all**, given the risky environment in which we all operate. In many cases risk can be shared by the purchase of insurance, but sometimes it cannot. This is true concerning the subject before you today. In recent months we have not been able to secure liability coverage for a claim involving silicosis. In effect, this places our business and our net worth at risk in the event a silica claim is filed, whether it is based on medical fact or mere perception. In Kansas, unlike the eastern United States, the actual silica content of our rock is very low and in some cases not even measurable. Yet the liability is great, as many claims can be generated by a perceived exposure as compared to an actual exposure.

At this point, I wish to stress that we are not seeking to avoid a legitimate claim for which we may or may not be liable. SB 512 would simply require a bona fide medical diagnosis of silicosis to exist prior to filing a claim.

*Senate FI & I Com*  
*Attachment 4-1*  
*February 13, 2006*

As I make my living by crushing rock, I will leave the detailed explanations of this bill to others. But I wish to close by simply stating that this bill is very important. Without its passage the basic sustainability of our business will be threatened, as we simply have no coverage for this liability. Please be assured that Harshman Construction has neither the coverage nor sufficient net worth to pay the astronomical legal fees generated by a need to defend every potential claim known or unknown. Surely it is in the interest of business, legitimate claimants and the citizens of Kansas to give your favorable recommendation to this bill.

Thank you for your time and attention. I will be happy to respond to any questions at the appropriate time.

A handwritten signature in black ink that reads "Warren Harshman". The signature is written in a cursive, flowing style.

Warren Harshman

# Legislative Testimony

SB 512

February 13, 2006

Testimony before the Kansas Senate Financial Institutions  
and Insurance Committee

By Lew Ebert, President and CEO



**THE KANSAS  
CHAMBER**

The Force for Business

835 SW Topeka Blvd.

Topeka, KS 66612-1671

785-357-6321

Fax: 785-357-4732

E-mail: [info@kansaschamber.org](mailto:info@kansaschamber.org)

[www.kansaschamber.org](http://www.kansaschamber.org)

Chairman Teichman and members of the committee;

The Kansas Chamber and its over 10,000 members support SB 512, medical criteria for silica claims. Silica litigation has followed the same path as asbestos litigation and while not as well known, could harm industries in the same manner.

Asbestos plaintiffs have become silica plaintiffs in mass tort litigation. As asbestos and silica-related diseases may be disappearing from American hospitals, lawsuits by alleged victims are on the rise. Companies have paid out an estimated \$70 billion on approximately 730,000 asbestos injury claims, making it the most expensive type of litigation in U.S. history. Because the system is clogged with questionable asbestos lawsuits, people who truly have been injured by exposure are not receiving the compensation they need and deserve. Additionally, the asbestos litigation system has forced bankruptcy on more than 70 companies, costing as many as 60,000 Americans their jobs. Total corporate asbestos liability is now expected to exceed \$200 billion. The problem is also escalating as plaintiffs who have already received a recovery in asbestos claims are double-dipping and filing silica lawsuits. Silica litigation is a real problem and many feel that it is on the same litigation path as asbestos.

Because silica claims and diagnosis have mirrored asbestos litigation, Kansas, like other states, is seeing an insurance marketplace that is excluding companies with silica exposure. We need to address the concerns of these industries so that they can continue to compete in Kansas and employ Kansas workers. SB 512 will not cut off litigation for silica claims where the injured party truly is suffering an injury. With this bill in place, we believe that the insurance market may open up and again offer insurance to the affected industries.

We urge you to support SB 512. Thank you for your time and I will be happy to answer any questions.

*Senate FI; I Com  
Attachment 5-1  
February 13, 2006*

*The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.*

Kansas Association of Insurance Agents



Testimony on Senate Bill 512  
Before the Senate Financial Institutions & Insurance Committee  
By Larry Magill  
February 13, 2006

Thank you madam chair and members of the committee for the opportunity to appear today in support of SB 512, the silicosis claims act. My name is Larry Magill and I represent the Kansas Association of Insurance Agents. We have approximately 425 member agencies across the state and another 125 branch offices that employ a total of approximately 2,500 people. Our members write roughly 70% of the business property and liability insurance in Kansas and 35% of the personal insurance. Independent agents are free to represent a number of different insurance companies.

For a number of years we have supported at the federal level asbestos reform that would require a claimant to have more than an exposure to a substance to make a claim, tying up the courts and tying up limited funds that could be going to seriously injured persons. In the case of asbestos litigation, we have seen the devastating effects of allowing claims to go forward when there is no medical evidence of injury. The U.S. House is now including silicosis in their proposed legislation.

At least one state, Ohio, has acted since Congress has so far failed to act. It is our understanding that this bill is based on Ohio's legislation. We support the concept that mere exposure is not a sufficient basis for making a claim and urge the committee to act favorably on this bill.

*Senate FI&I Com.  
Attachment 6-1  
February 13, 2006*



Testimony on Senate Bill 512  
**Senate Financial Institutions and Insurance Committee**

By Charles L. (Chip) Wheelen

February 13, 2006

We appreciate this opportunity to comment on SB512. We do not have a position either in support of or opposition to the bill. We are, however, concerned about certain definitions contained in section one. We have drafted amendments to section one that would address our concerns, and a copy of those amendments is attached to this statement.

As you probably know, under the Kansas Healing Arts Act there are three separate branches of the healing arts; allopathic medicine (M.D.s), osteopathic medicine (D.O.s), and chiropractic (D.C.s). Two of those branches are authorized to practice medicine and surgery and are normally referred to throughout the *Kansas Statutes Annotated* as physicians (D.O.s and M.D.s). It is noteworthy that section one of SB512 does not include a definition of "physician." You may wish to add a definition of "physician" meaning a person licensed to practice medicine and surgery in this state, or a person licensed by the state board of healing arts to practice medicine and surgery.

Many physicians pursue board certification after they have completed their residency training in a medical specialty. Some physicians obtain additional training and also become certified in a subspecialty. There are two separate, but similar governing authorities that approve those medical specialty boards which are allowed to test applicants and grant subspecialty as well as specialty certification.

The governing authority established by the American Osteopathic Association is the American Osteopathic Bureau of Osteopathic Specialists. The AOBOS supervises 18 different certifying boards for osteopathic physicians. The governing authority established by the American Medical Association is the American Board of Medical Specialties. The ABMS supervises 24 different certifying boards for allopathic physicians.

Our requested amendments would simply acknowledge that there are two parallel systems whereby a physician may become board certified in a particular field of medical expertise. A letter from the American Osteopathic Association supporting our request is attached for your review.

We respectfully request that you adopt our amendments prior to taking action on SB512. Thank you for your consideration.

*Senate FI & I Com  
Attachment 7-1  
February 13, 2006*



AMERICAN OSTEOPATHIC ASSOCIATION

142 East Ontario Street, Chicago, IL 60611-2864 312 202 8000 | 800 621 1773

February 10, 2006

The Honorable Ruth Teichman  
Chair  
Financial Institutions and Insurance Committee  
Kansas State Senate  
300 Southwest 10<sup>th</sup> Avenue  
Topeka, KS 66612-1504

Re: **SB 512**

Dear Senator Teichman:

The American Osteopathic Association proudly represents its professional family of more than 56,000 osteopathic physicians (D.O.s), promotes public health, encourages scientific research, serves as the primary certifying body for D.O.s, and is the accrediting agency for all osteopathic medical colleges and health care facilities.

The member boards of the AOA and the American Board of Medical Specialties (ABMS) certify only those individuals who have completed an approved education program and evaluation process which includes an examination designed to assess the knowledge, skills and experience required to provide quality patient care in that specialty. Only the AOA and ABMS tie certification to post-graduate training, ensuring that the highest levels of training and education have been achieved prior to certification.

The AOA understands that SB 512 will be considered at a committee hearing on Monday, February 13. The AOA respectfully requests that SB 512 be amended to recognize specifically AOA and ABMS board certification in the definitions provided in Section 1 of the bill. Specifically, the AOA requests that the definitions for Board-certified internist, Board-certified occupational medicine specialist, Board-certified oncologist, Board-certified pathologist and Board-certified pulmonary specialist be amended to recognize the AOA and ABMS as the certifying bodies for these physician specialists.

The AOA's eighteen certifying boards strive to improve quality of care through rigorous certification requirements that include residency training in the various specialties. The American College of Osteopathic Internists certifies physicians as internists but also in the subspecialties of oncology and pulmonary diseases. The American Osteopathic Board of Pathology certifies D.O.s seeking to become pathologists. The American Osteopathic Board of Preventive Medicine certifies osteopathic physicians seeking a subspecialty in Preventive Medicine/Occupational-Environmental Medicine.

By amending SB 512 to recognize AOA and ABMS as the certifying bodies, you will ensure that physicians who have completed rigorous education and training programs in their specialties treat patients in Kansas.

Thank you in advance for your consideration of our comments regarding SB 512. If you have any questions or would like to discuss this issue further, please contact Linda Mascheri, Director, AOA Division of State Government Affairs, at 800-621-1773 ext. 8184.

Sincerely,



Philip L. Shettle, D.O.  
President, American Osteopathic Association

CC: John Strosnider, D.O., AOA President-Elect  
Phillip Accardo, D.O., Chair, AOA Department of Governmental Affairs  
Boyd W. Bowden, II, D.O., Chair, AOA Bureau of State Government Affairs  
John Crosby, JD, AOA Executive Director  
Michael Mallie, Director, AOA Department of State, Specialty & Socioeconomic Affairs  
Linda Mascheri, Director, AOA Division of State Government Affairs  
Charles Wheelen, Executive Director, Kansas Association of Osteopathic Medicine



# SENATE BILL No. SB 512

By Committee on Financial Institutions and Insurance

2-6

7-4

9 AN ACT enacting the silicosis claims act.

10

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. As used in this act, unless the context otherwise requires,  
13 the following words and phrases shall have the meanings ascribed to them  
14 in this section:

15 (a) "AMA guides to the evaluation of permanent impairment" means  
16 the American medical association's guides to the evaluation of permanent  
17 impairment (fifth edition 2000) as in effect on the effective date of this  
18 act.

19 (b) "Board-certified internist" means a ~~medical doctor who is cur-~~  
20 ~~rently certified by the American board~~ of internal medicine.

21 (c) "Board-certified occupational medicine specialist" means a ~~med-~~  
22 ~~ical doctor who is currently certified by the American board of preventive~~  
23 ~~medicine in the specialty of occupational~~ medicine.

24 (d) "Board-certified oncologist" means a physician who is ~~currently~~  
25 ~~certified by the American board of internal medicine~~ in the subspecialty  
26 of medical oncology.

27 (e) "Board-certified pathologist" means a physician who is ~~currently~~  
28 ~~certified by the American board~~ of pathology.

29 (f) "Board-certified pulmonary specialist" means a physician who is  
30 ~~currently certified by the American board of internal medicine in the~~  
31 subspecialty of pulmonary medicine.

32 (g) "Certified B-reader" means an individual qualified as a "final" or  
33 "B-reader" as defined in 42 C.F.R. section 37.51(b) as in effect on the  
34 effective date of this act.

35 (h) "Civil action" means all suits or claims of a civil nature in a state  
36 or federal court, whether cognizable as cases at law or in equity or ad-  
37 miralty. Civil action does not include any civil action:

38 (1) Relating to workers' compensation;  
39 (2) alleging any claim or demand made against a trust established  
40 pursuant to subsection (g) of 11 U.S.C. section 524(g) as in effect on the  
41 effective date of this act; or

42 (3) alleging any claim or demand made against a trust established  
43 pursuant to a plan of reorganization confirmed under Chapter 11 of the

(b) "Board certified" means the physician is currently certified by one of the medical specialty boards approved by either the American board of medical specialties or the American osteopathic bureau of osteopathic specialties. [and re-letter ensuing]

physician who is board certified in the specialty

physician who is board certified in the specialty of preventive medicine and the subspecialty of occupational or environmental

board certified in the specialty of internal medicine and

board

in the specialty

board certified in the specialty of internal medicine and

7-5

1 in any way related to inhalation of, exposure to, or contact with mixed  
 2 dust. Mixed dust disease claim also includes a claim made by or on behalf  
 3 of any person who has been exposed to mixed dust, or any representative,  
 4 spouse, parent, child or other relative of such person, for injury, including  
 5 mental or emotional injury, death, or loss to person, risk of disease or  
 6 other injury, costs of medical monitoring or surveillance or any other  
 7 effects on such person's health that are caused by such person's exposure  
 8 to mixed dust.

9 (o) "Mixed dust pneumoconiosis" means the interstitial lung disease  
 10 caused by the pulmonary response to inhaled mixed dusts.

11 (p) "Nonmalignant condition" means a condition, other than a diag-  
 12 nosed cancer, that is caused or may be caused by either of the following,  
 13 whichever is applicable:

14 (1) Silica, as provided in section 2 and amendments thereto;

15 (2) mixed dust, as provided in section 3 and amendments thereto.

16 (q) "Pathological evidence of mixed dust pneumoconiosis" means a  
 17 statement by a board-certified pathologist that more than one represen-  
 18 tative section of lung tissue uninvolved with any other disease process  
 19 demonstrates a pattern of peribronchiolar and parenchymal stellate (star-  
 20 shaped) nodular scarring and that there is no other more likely explana-  
 21 tion for the presence of the fibrosis.

22 (r) "Pathological evidence of silicosis" means a statement by a board-  
 23 certified pathologist that more than one representative section of lung  
 24 tissue uninvolved with any other disease process demonstrates a pattern  
 25 of round silica nodules and birefringent crystals or other demonstration  
 26 of crystal structures consistent with silica in the lung parenchyma (well-  
 27 organized concentric whorls of collagen surrounded by inflammatory  
 28 cells) and that there is no other more likely explanation for the presence  
 29 of the fibrosis.

30 (s) "Physical impairment" means:

31 (1) A nonmalignant condition that meets the minimum requirements  
 32 of subsection (c) of section 2, and amendments thereto, or lung cancer  
 33 of an exposed person who is a smoker that meets the minimum require-  
 34 ments of subsection (c) of section 2 and amendments thereto;

35 (2) A nonmalignant condition that meets the minimum requirements  
 36 of subsection (b) of section 3, and amendments thereto, or lung cancer  
 37 of an exposed person who is a smoker that meets the minimum require-  
 38 ments of subsection (c) of section 3 and amendments thereto.

39 (t) "Premises owner" means a person who owns, in whole or in part,  
 40 leases, rents, maintains or controls privately owned any land or body of  
 41 water, or any buildings and structures on those lands or bodies of water,  
 42 and all privately owned and state-owned lands or bodies of water leased  
 43 to a private person, firm or organization, including any buildings and

(t) "Physician" means a person licensed by the state board of  
 healing arts to practice medicine and surgery. [and re-letter  
 ensuing]