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## HOUSTON

# Former silicosis clients sue deceased Houston lawyer's firm

By **Mike Tolson** | January 6, 2013 | Updated: January 7, 2013 8:19am



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In life, famed trial lawyer John O'Quinn was seldom far removed from controversy. As it has turned out, even death hasn't changed things much.

The latest legal dust-up involving O'Quinn, who died in a one-car traffic accident in 2009, took place in mid-December when a group of 31 former silicosis clients accused his law firm of failing to pay them settlements made on their behalf, instead using the funds as seed money to help finance an effort to turn their illness into a mass tort by enlisting tens of thousands of additional clients.

The ex-clients involved in the federal lawsuit, all from Alabama and Mississippi, claim they legitimately suffer from the respiratory ailment, a serious if uncommon occupational disease which is caused by exposure to fine-grained industrial sand that is used for a variety of manufacturing purposes. That explains why some of the companies they sued were willing to settle when medical evidence of their illness was produced, or so they claim.



Photo: Steve Campbell, Houston Chronicle



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### IMAGE 1 OF 2

5/16/06--Attorney John O'Quinn stands with a 1933 Duesenberg S J Riviera Sport Phaeton by Brunn, one of the favorites of his collection. Steve Campbell / Staff Photographer, Houston Chronicle

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But rather than disburse the funds from those settlements, O'Quinn's firm allegedly used them to help cover the expenses of escalating the litigation into a major enterprise with the potential for hundreds of millions of dollars - if not billions - in massive global settlements.

Their Houston attorney, Lance Kassab, did not respond to an interview request. The complaint he filed in district court, however, explained his case.

"At the end of the day," the complaint states, "the (O'Quinn) firm and its attorneys placed their interests and the interests of the screening companies involved above those of its clients. This is the sad reality of O'Quinn's approach to mass-tort litigation and this is the story of the residual victims of that approach, their clients."

The lawsuit echoes that of 3,500 former breast-implant clients who sued O'Quinn claiming they had been overcharged for expenses involved in the law firm's signature mass tort. O'Quinn always denied it, but the trustee of his estate eventually settled the lawsuit for \$46 million. This time, the ex-clients go much further.

### *Fees challenged*

In addition to not getting their settlement money, they allege that the law firm added frivolous and exorbitant sums to the expense ledger, failed to finalize settlements with some companies until it was too late to do so, paid improper referral fees to a medical screening company, failed to refund expense money and attorney fees the firm was given by other lawyers who had decided to withdraw from silica litigation, and allowed "legitimate" silicosis claims to be dismissed along with the thousands of baseless claims because it did not want to spend the time figuring out which of its clients actually were sick.

To that laundry list of allegations is added a coda perhaps even more interesting: These new plaintiffs essentially agree with the old accusations made against O'Quinn and other plaintiff lawyers involved in the silica litigation that the basis for the burgeoning mass tort was entirely bogus. Specifically, their lawsuit details what it calls an inappropriate and illegal relationship between O'Quinn and the medical screening companies who tested workers for impairment caused by their work in Gulf Coast shipyards and other industries. The result, the suit asserts, was that O'Quinn "multiplied the proceedings unreasonably and vexatiously" so as to provoke a large mass settlement rather than pursue legitimate individual cases

O'Quinn's firm, his estate, some of his former partners and other lawyers who were involved in the silica litigation were named as defendants. Among them is his primary former partner, Richard Laminack, who was heavily involved at the beginning of the litigation. Although Laminack did not respond to requests for comment, he has said previously that the lawsuit

basically restates allegations made in a similar lawsuit that was filed in 2011 and is now wending its way through the Harris County probate court that is handling O'Quinn's estate. He labeled the allegations "ludicrous."

### ***Huge verdicts won***

The plaintiff lawyer in the earlier suit, Jerry Pusch, said the case against O'Quinn's firm centers on settlements that were not handled properly, the same claim asserted by Kassab.

"Some men did receive some settlements timely and some did not," Pusch said. "In most instances, we had years and years of delays in not receiving settlements or not receiving them at all, and for completely unexplained reasons."

O'Quinn gained national recognition for scoring huge courtroom verdicts, often at the expense of large American corporations. He also earned more than his share of unflattering headlines, at various times accused of stiffing former partners, cheating his clients and violating bar rules for the manner in which he acquired new cases. One of the last big legal actions he was involved with was silicosis, which grew from a marginal occupational disease into a major legal story in just a few years thanks to the entrepreneurial efforts of his firm and a few others.

### ***Explosion of lawsuits***

In 2001 and 2002, O'Quinn and a handful of smaller plaintiff firms - hoping for a follow-up the highly lucrative asbestos litigation of the 1980s and '90s - began beating the bushes for anyone who had been employed where silica might have been used. The result of this effort was an explosion of lawsuits the likes of which is rarely seen. Texas got its share, eventually totaling about 7,500, but nothing like Mississippi. In just one year, 2002, one of the smallest states in the country went from 76 new silicosis suits to 10,642. By the end of 2004, that state's total topped 20,000.

The allegation of Kassab's lawsuit, at its heart, assails the business model that underlay much of the mass tort litigation of the last three decades. That depended on large corporate defendants being pushed to make overarching settlements because the sheer volume of lawsuits against them. The plan might have worked with silicosis, and things looked promising when a number of defendants began to settle cases en masse. Then came U.S. District Judge Janis Jack of Corpus Christi, who issued a scathing opinion in 2005 that all but

put an end to the business.

### ***Diagnoses criticized***

Jack found that the entire enterprise reeked of fraud and lawsuit abuse. She also singled out O'Quinn's firm for its part in helping to produce what she called bogus diagnoses "manufactured for money."

Whether the plaintiffs who filed the suit in December against O'Quinn, as well of those involved in the case under way in probate court, are in truth any sicker than the thousands of other former plaintiffs whose cases melted away is a fair question. Pusch insists his clients are, mentioning one that will go to trial in March.

But Danny Mulholland, a defense lawyer whose firm in Jackson, Miss., led the fight against the silica onslaught, has his doubts. Though not familiar with the recent O'Quinn lawsuits, he said that silicosis litigation largely ended after Judge Jack's ruling because there are so few people with the disease.

"We've been separating the wheat from the chaff for years now, and we've come up with a handful of cases that were legitimate or at least worth arguing about," Mulholland said. "There may be more yet found, but we are still talking about a fraction of a percent."

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