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No. 2011 20888

FILED
Chris Daniel
District Clerk
APR - 5 2011

Time: _____
Harris County, Texas
By _____
Deputy

TORY HOUSE, ET AL
Plaintiffs,

VS.

THE O'QUINN LAW FIRM, JOHN M.
O'QUINN & ASSOCIATES, L.L.P.,
THE ESTATE OF JOHN M. O'QUINN,
DECEASED AND ABEL MANJI
Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

11345

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE DISTRICT COURT:

COME NOW Plaintiffs, Tory House, Henry Adolphe, Juan A. Alaniz, Louie H. Albarado, Walter Albro Jr., Johnny Lee Allen, Benito Anaya, Haskell Andrews, Johnny Anzaldua, Jose Manuel Arujo, Matthew Auguste, Vickie Bachus, Individually and as Representative of the Estate of David Scott Bachus, Richard Bachus, Billy Wayne Bailey, Jack S. Baker, Lewis B. Bell Jr., Ramus Benoit, Armando Bermea, Donald Bianchin, Harald Bigham, James Blakeslee, Joe Boggan, Freddie C. Bracken, Raymond Branin, Joy L. Brewer, Individually and as Representative of the Estate of Granville Brewer Sr., Joe Franklin Bridwell, Donald Brooks, Hosea Brown, James Brown, Jerry W. Brown, Individually and as Representative of the Estate of A. R. Brown Jr., Thomas Brown, Jesus Buentello, Jesse Buitron, James Bush Jr., Dwight Cahanin, Terry Richard Calhoun, Heremenziado Campos, Jose Canales, Josephine Carmen, Refugio Carmona, Williams S. Carpenter, Raul S. Carrillo, Glenn Casteel, Jose Cavazos, Gilberto Cazares, Richard Chapa, Oscar Merado Chapa, James Clary, Jackie Coleson, Ella B. Coley, Individually and as Representative of the Estate of Arthur Coley, Frank Cook, Reynaldo Coronado, Kenneth Eugene Davis, Odell Davis Sr., Robert Dee

8978713

Sr., Gracie De Los Santos, Individually and as Representative of the Estate of Juan Francisco De Los Santos, Lynn J. Dempsey, Ira R. Doggett, James L. Duirden Jr., Linda Dunn, Individually and as Representative of the Estate of Glenn Dunn, Ruth Durham, Individually and as Representative of the Estate of Robert Durham, Clarence Earl, Russell Edwards, Lester Gregory Ener, Eugene Farren, Larry Featherston, Arthur Fletcher, Alvino Flores, Essie Fontenot, Philman Fontenot, James Gaboury, Herlindo Galindo, Adrianna Chaffin, Individually and as Representative of the Estate of Adalberto Garcia, Eleazar Garcia, Jimmy Garcia, Martin Rios Garcia, Raul Garcia, Alfredo Garibay, Fidel Garza, Jesus M. Garza, Emilio Gonzales, Miguel Gonzales, Richard Gonzales, Jose Gonzalez, Frances Gordy, Individually and as Representative of the Estate of William Gordy, Natividad Granado, Alton Graves, Jerry Greene, Lawrence Gutierrez, Roberto Guzman, Darnel Hamilton, Emil Jr. Hanzel, L. V. Hare, Wayne Harman, Dennis E. Harmon, Individually and as Representative of the Estate of Thomas Earl Harmon, R. D. Henderson, Blas G. Hernandez, Jose Francisco Hernandez, Lauriana Hernandez, Robert A. Hernandez, Ricardo Herrera, Lemuel Earl Hicks, Lazaro Hinojosa, Michael Hinson, Richard Howard, Norma Jackson, David H. Jaime, Alfredo Jimenez, Terry L. Johnson, Individually and as Representative of the Estate of Jake Johnson, Lonnie Johnson, Billie M. Jones, Individually and as Representative of the Estate of Ira Lee Jones, William George Jones, Richard L. King, Doward Kinney, Homer Kinney, Larry Klepac, Randall L. Land Sr., James G. Lashlee, Lovejoy F. Lashlee, Leroy Lewis, Conrad Lloyd, Ernesto G. Lopez, Bennie Maly, Delmos Odell Martin, Ronald A. Mayo, Clayton McQueen, Daniel Menchaca, Leroy Franklin Miles, Thomas Moorman, Little John Moreland, Otis Morton, David Charles Moye, Dwayne Pinkard, Socorro, Rodriguez, Jesse Ruiz, Kennard M. Rydolph, Mesindo Salazar, Lewis Victor Sanford, Lionel Santos, Caster Lee Schexnider, Willie Scott, Justlean Smith, Individually and as Representative of the Estate

of Eugene Smith, Robert K. Sonnier, Individually and as Representative of the Estate of David Sonnier, Riley Splitter, John Starrett, Antoinette L. Stinson, Individually and as Representative of the Estate of Jeff Stinson, Jr., Vernon T. Swallows, Leeland Temple, Henry Thomas, Joseph Reid Thompson, Jesus Tijerina, Columbus Tippet, David Torres, Herbert F. Trahan, Iradell Tutt, Eleanor Ueckert, Individually and as Representative of the Estate of Harry Ueckert, Ruben Vasquez, Peggy Vaughn, Individually and as Representative of the Estate of Louie H. Vaughn, George Vega, Ernesto Vera, Jr., Georgina Villarreal, Individually and as Representative of the Estate of George Villarreal, Jesus Villareal, John William Wade, Bobby Frank Weatherly, Willie Carl Wedgman, T. J. Williams, Ronnie Lee Woods, Carroll L. Yancey, Individually and as Representative of the Estate of Carroll J. Yancey, and file this Original Petition against DEFENDANTS, THE O'QUINN LAW FIRM, JOHN M. O'QUINN & ASSOCIATES, L.L.P., THE ESTATE OF JOHN M. O'QUINN, DECEASED, AND ABEL MANJI, and respectfully state as follows:

I. SELECTION OF DISCOVERY LEVEL

1.1 Discovery should be conducted in accordance with a tailored Level 3 discovery control plan under Texas Civil Procedure Rule 190.4.

II. PARTIES

2.1 Plaintiffs are individuals who are residents of the State of Texas.

2.2 John M. O'Quinn & Associates, PLLC d/b/a The O'Quinn Law Firm has its principal place of business at, 2300 Lyric Center, 440 Louisiana Street, Houston, Texas 77002. The O'Quinn Law Firm may be served with process by service upon its registered agent David L. Griffis at Crain, Caton & James, 1401 McKinney Street, Suite 1700, Houston, Texas 77010.

2.3 John M. O'Quinn & Associates, L.L.P. was merged into John M. O'Quinn &

Associates, PLLC which has its principal place of business at, 2300 Lyric Center, 440 Louisiana Street, Houston, Texas 77002. The O'Quinn Law Firm may be served with process by service upon its registered agent David L. Griffis at Crain, Caton & James, 1401 McKinney Street, Suite 1700, Houston, Texas 77010.

2.4 The Estate of John M. O'Quinn may be served with process by service upon the Executor of the Estate, T. Gerald Treece, through the Estate's attorney Sharon B. Gardner, at 1401 McKinney, Suite 1700, Houston, TX 77010.

2.5 Abel Manji is an attorney with the O'Quinn Law Firm which has its principal place of business at, 2300 Lyric Center, 440 Louisiana Street, Houston, Texas 77002. This defendant may be served with process at his place of employment at 2300 Lyric Center, 440 Louisiana Street, Houston, Texas 77002.

III. JURISDICTION AND VENUE

3.1 This Court has jurisdiction over all parties and all claims asserted herein. Each party to this lawsuit is a resident of the State of Texas, the claims asserted herein are all state law claims and no claim is asserted under any federal law, rule or regulation, and the amount in controversy is within the jurisdictional limits of this Court.

3.2 Venue is proper in Harris County, Texas on numerous grounds, including that the causes of action accrued, in whole or in part, in Harris County, Texas and numerous of the Defendants have their principal place of business or reside in Harris County, Texas. Thus pursuant to the provisions of §§15.002, 15.005, 15.006, and 15.031 of the Texas Civil Practice & Remedies Code, venue is proper in Harris County, Texas.

IV. BACKGROUND FACTS

4.1 During their working lives, Plaintiffs were workers in plants, refineries and construction worksites in various Texas worksites. After being occupationally exposed to silica-containing products and materials, Plaintiffs were diagnosed with silica related diseases. Due to having silica related diseases, Plaintiffs employed the Defendants on a contingency fee basis and issued them a Power of Attorney to represent them in claims against manufacturers and distributors of silica related products, materials, and protective equipment. During the course of Plaintiffs' silicosis lawsuits, Defendants were to prosecute their lawsuits to a conclusion. During the course of representing the Plaintiffs, the Defendants:

1. The Defendants incurred unnecessary and excessive expenses on the Plaintiffs' silicosis lawsuits. And then the Defendants recouped the unnecessary and excessive expenses from Plaintiffs' settlements.
2. The Defendants forwarded settlement documents to the Plaintiffs and recommended that the Plaintiffs accept the settlement offers. Plaintiffs provided the Defendants with signed and notarized settlement documents and to this day the Plaintiffs have not received the settlements. After more than three years there has been no explanation or communication as to the completed settlements.
3. The Defendants were negligent in the handling of bankruptcy claims for bankrupt silica defendants including but not limited to the bankrupt defendant Clemtex, Inc.
4. The Defendants did not distribute certain settlements for years after the Defendants had received the settlements.
5. The Defendants delayed communicating to the Plaintiffs for several years certain significant issues as to their silicosis lawsuits to the detriment of the Plaintiffs.

V. PLAINTIFFS' CAUSES OF ACTION

Plaintiffs sue Defendants for damages as follows:

- 5.1 **Professional Negligence.** Defendants failed to act or to provide such legal advice and

services to Plaintiffs as a reasonable and prudent attorney or law firm would have done under the circumstances. The conduct of Defendants in breaching their duties was unreasonable, outrageous, imprudent, and was in clear violation of all applicable standards of professional conduct.

5.2 Plaintiffs were at all times dependent upon Defendants' actual and implied representations of their absolute loyalty, and competency to represent the best interests of Plaintiffs. Defendants actually and implicitly assured Plaintiffs that they would protect Plaintiffs' rights against the Silicosis Defendants in their silicosis lawsuit. Moreover, the Defendants, undertook to represent Plaintiffs on all the occasions as aforementioned, assuring Plaintiffs that they would do whatever is necessary to protect the rights of the Plaintiffs, and that they were capable and competent to do these things and that Defendants would, at all times, exercise the degree of skill, knowledge, and care required and expected of a reasonably prudent lawyer or attorney performing the same or similar services for such clients. Defendants failed to comply and breached these assurances, duties and expectations, and such misconduct, whether acts of omission or commission, proximately caused, and continues to cause, actual and inherent damages to Plaintiffs for which they now sue. Such conduct by Defendants is not only negligent, but the acts complained of above amount to gross negligence for which each and all of Defendants are liable to Plaintiffs in exemplary damages for which they now sue.

5.3 Professional Negligence Per Se. The Texas Supreme Court has adopted the position of Section 288B of the Restatement (Second) of Torts that the violation of a legislative enactment or an administrative regulation which is adopted by the court as defining the standard of conduct of a reasonable man, is negligence itself. In that regard, Defendants violated the following, but not limited to, Texas Disciplinary Rules of Professional Conduct promulgated by the Texas Supreme

Court: Rule 1.03, Rule 1.14, Rule 2.01 and Rule 8.04. Defendants inexcusable, violations of the statutory or administrative regulations governing their profession constitute negligence per se. Such negligence per se by Defendants proximately caused, and continues to cause, actual and inherent damages to Plaintiffs for which they now sue. Moreover, the foregoing misconduct amounts to gross negligence for which each and all of Defendants are liable to Plaintiffs in exemplary damages for which they now sue.

5.4 Breach of Fiduciary Duties, Fraud and Constructive Fraud. Defendants have a fiduciary duty which extends to and protects (or is suppose to protect) the Plaintiffs. Defendants breached their fiduciary relationship as set out above and as will be set out in greater detail upon the completion of discovery and investigation. The conduct of Defendants, was deceptive, fraudulent, misleading and was in violation of their fiduciary duties to the Plaintiffs.

5.5 By operation and as applied by law, an attorney-client relationship existed between Defendants and Plaintiffs. Plaintiffs were entitled to the rights, benefits and protection of the attorney-client relationship from Defendants. Defendants owed Plaintiffs the highest obligations and duties of a fiduciary, including but not limited to honesty, candor, loyalty, utmost good faith, and diligence. In total disregard of these duties and the attorney-client relationship, Defendants, in their acts of conversion, failed to represent Plaintiffs' best interest of the attorney-client relationship, and, in fact, represented Defendants' own interests above those of Plaintiffs. Such conduct constitutes a breach of Defendants' fiduciary duty to Plaintiffs. The breach of fiduciary duty by Defendants proximately caused and continues to cause damage to Plaintiffs for which they now sue the Defendants jointly and severally.

5.6 Plaintiffs have relied on the actual, implied and/or implicit representations of the

Defendants in their fiduciary capacity to act with absolute loyalty, candor, honesty, openness, without any deception. The conduct of Defendants of violating the duties owed to Plaintiffs clearly demonstrates the fraudulent nature of Defendants' representations, all to the harm, detriment and damage to Plaintiffs. Such conduct of the Defendants amounts to actual and constructive fraud perpetrated on the Plaintiff.

5.7 Further, Plaintiffs allege that the acts complained of above amount to gross negligence and ill will to damage Plaintiffs for which each and all of Defendants is liable to Plaintiffs in exemplary damages for which they now sue. Plaintiffs are also entitled to recover all attorneys' fees previously received by Defendants from Plaintiffs cases.

5.8 Further, Plaintiffs request an accounting for a number of expenses that were assessed and charged to them by Defendants which are believed to be excessive in nature. Such overcharging and assessments would amount to additional fraud and breach of the fiduciary duties owed to the Plaintiffs, and of which can only be determined by a true and accurate accounting by Defendants.

5.9 Fraudulent Inducement to Enter an Agreement and Breach of Agreement. Defendants, breached their agreement and authority concerning Plaintiffs by deceitfully failing to carry out their obligations thereunder, as stated above and by violating the implied covenant in such an agreement to act in good faith, be honest, truthful and forthright, and deal fairly with Plaintiffs, and not assess fraudulent and excessive expenses to their cases.

5.10 Negligent Misrepresentation. Section 531 of the Second Restatement of Torts provides that one who makes a fraudulent misrepresentation is subject to liability to the person or class of persons whom he intends or has reason to expect to act or to refrain from action in reliance upon the misrepresentation. Based on the aforementioned conduct, Defendants negligently

misrepresented material facts (whether positive statements or by silence) to Plaintiffs. Such conduct was intended to, and did induce Plaintiffs to act against their best interests. All of the aforementioned conduct has proximately caused, and continues to cause, damage to Plaintiffs for which they now sue. Moreover, the foregoing misconduct amounts to gross negligence and ill will to damage Plaintiffs for which Defendants are liable to Plaintiffs in exemplary damages for which they now sue.

5.11 Unjust Enrichment. To the detriment of Plaintiffs, after being deceived by Defendants, these Defendants continue to unjustly retain the attorneys' fees previously received. Therefore, in addition to the damages requested below, Plaintiffs request that a constructive trust be imposed against Defendants and that Defendants be ordered to deposit all such fees into the registry of the Court. Plaintiffs further request that, upon final hearing, the attorneys' fees previously received by Defendants be disgorged and returned to Plaintiffs, along with any and all fraudulent expenses and overcharging of expenses assessed against and paid by the Plaintiffs to Defendants. All of such conduct on the part of the Defendants as above alleged was a legal cause, proximate cause, and/or producing cause of injury and damages to Plaintiffs.

5.12 Conspiracy, Aiding and Abetting, and Negligent Undertakings. In addition to allegations stated throughout this petition, the Plaintiffs have sued the Defendants in their capacity as conspirators, aiders and abettors, and negligent undertakers. The Defendants willfully suppressed the truth as to the activity and inactivity taking place as to the Plaintiffs' silicosis lawsuits. The co-conspirators include the Defendants in this lawsuit and other individuals and entities. The Defendants and others either:

- a. actively took part in the suppression, concealment and misrepresentation of

- activity and/or inactivity on Plaintiffs' silicosis lawsuits, or
- b. furthered the plan or plans by cooperation and request, or
 - c. lent aid or encouragement to the actual wrongdoers, or
 - d. ratified and adopted the wrongdoer's acts done for their benefit.

VI. PLAINTIFFS' DAMAGES

6.1 As for all of the foregoing causes of action, Plaintiffs have suffered and seek to recover all actual and inherent damages allowed by the laws of the State of Texas jointly and severally against the Defendants in excess of the minimum jurisdictional limit of this court. Plaintiffs also seek the forfeiture and disgorgement of all of the fees previously received by Defendants from their cases, the return of all fraudulent expenses and assessments, reasonable attorneys' fees incurred by Plaintiffs in the prosecution and/or appeal of this suit, pre-judgment and post-judgment interest at the highest rate of interest as allowed by law, and costs of court.

6.2 Defendants conduct was grossly negligent, fraudulent, deceitful, and in conscious disregard of the rights and welfare of Plaintiffs. Plaintiffs ask the jury to assess such amounts as they think are reasonable and appropriate as exemplary damages against Defendants in order to set an example for others, and especially other lawyers and law firms similarly situated and as punishment for Defendants for their outrageous conduct.

6.3 Plaintiffs are entitled to recover reasonable attorney's fees under the common law, and statutorily under TEX.CIV.PRAC.&REM.CODE §38.001, because Defendants breached their duties and obligations. Therefore, Plaintiffs request the jury to assess reasonable attorney's fees in an amount justified by the evidence and as may be proven upon trial of this cause, jointly and severally against Defendants.


VII. JURY DEMAND

7.1 Plaintiffs request a trial by jury of all issues of fact in this case.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon final trial Plaintiffs have judgment against Defendants and recover damages from Defendants, in the total sum of their damages, actual and exemplary, in an amount greatly in excess of the minimal jurisdictional limits of the Court, plus costs of Court, attorney's fees, pre-judgment and post-judgment interest allowed by Texas law, and for such other and further relief, general and special, legal and equitable, to which Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,


JERRY PUSCH
TBA# 16410500
2701 Louisiana Street
Houston, TX 77006
(713) 225-9700
FAX (713) 523-4150
ATTORNEY FOR PLAINTIFFS