

**中国劳工通讯** China Labour Bulletin

**Research Reports**

## **The Hard Road:**

**Seeking justice for victims of pneumoconiosis in  
China**

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## Table of Contents

<b>Introduction</b> .....	1
<b>Chapter One: Legal and Regulatory Obstacles to Compensation</b> .....	5
<b>Requirement of a “current labour relationship”</b> .....	5
<b>No provision for continuing treatment costs</b> .....	7
<b>Unreasonable time limits on applying for work-related injury classification</b>	8
<b>Chapter Two: Obstacles Created by Employers</b> .....	10
<b>Forcing sick workers to leave the company</b> .....	10
<b>Colluding with hospitals to falsify or conceal post-employment medical     examinations</b> .....	12
<b>Changing the company’s “face”</b> .....	13
<b>Using economic power and political connections</b> .....	15
<b>Using the judicial process to stall for time</b> .....	16
<b>Chapter Three: Obstacles Created by the Authorities</b> .....	18
<b>Not recognizing diagnostic reports from other jurisdictions</b> .....	18
<b>Refusing to accept cases without proper documentation</b> .....	19
<b>Intransigence of arbitration and court officials</b> .....	21
<b>Chapter Four: Finding a Way through the Logjam</b> .....	24
<b>The case of the Leiyang migrant workers</b> .....	27
<b>Conclusions and Recommendations</b> .....	30
<b>Occupational-disease compensation process</b> .....	32
<b>Occupational disease prevention</b> .....	33
<b>Involve workers, trade unions and society in the prevention and     compensation process</b> .....	34
<b>Appendix</b> .....	37
<b>1. Legal case histories of the Lucky Jewellery workers</b> .....	37
<b>2. A letter to the leaderships of the Shenzhen Municipal Party Committee     and government from the Leiyang migrant workers</b> .....	39
<b>3. Translated transcript of video interview with Zhang Haichao</b> .....	43



*Nowadays, with such good government policies, if you can work, you can eat. But if, like me, you need medical help, then your life will be over. A nephew of mine died this summer; he was only 35 years old and had a three-year-old child. My wife asked me, what kind of family is this? It's been smashed apart.*

Xu Zhihui, a victim of final stage pneumoconiosis

## **Introduction**

Xu Zhihui was one of several hundred villagers from around Leiyang in the central province of Hunan who, in the 1990s, made the 500-kilometre journey south to work in the construction sites of Shenzhen. They worked day in, day out, drilling blast-holes into the bedrock and establishing the foundations for many of the city's best known skyscrapers. They laboured in dangerous, poorly ventilated caverns with little or no protection from the heavy, lung-clogging dust created by their drills. They endured this hardship primarily because the pay was good and they were completely unaware of just how debilitating the long-term effects of inhaling rock dust would be. Crucially, neither the building contractors nor the local authorities made any attempt to inform the workers about the hazards inherent in their jobs.

In 1999, several workers started to complain of exhaustion, and repeated bouts of influenza. Their strength declined and many returned home to Leiyang. In 2002, the first of 16 workers from the villages died of pneumoconiosis. Xu told China Labour Bulletin:

There were more than 40 from our village alone who came here to be drillers, and ten have already died. What does this mean? No family is complete. There are eight with stage-three pneumoconiosis like me, and four or five with stage two. There are only a few who haven't got sick. As a result, most of our fields are fallow, and some children can't go to school. It's quite tragic.

The plight of the Leiyang villagers has been replicated across the whole of China. Farmers who sought a better living for their families by working in mines, stone quarries, construction sites and gemstone factories all returned to their villages sick and dying from pneumoconiosis, the deadly lung disease that has become by far the most widespread occupational illness in China today.

In 2007, China's centres for disease control and prevention recorded 14,296 new cases of occupational disease, 10,963 of which were pneumoconiosis cases, about 77

percent of the total. These figures brought the total number of registered pneumoconiosis cases in China at the end of 2007 to 627,405.<sup>1</sup> Another 13,744 new cases of occupational disease were reported in 2008. Again the vast majority – 79 percent – were of pneumoconiosis.<sup>2</sup> However, countless other pneumoconiosis cases go unreported. Indeed, Chinese media reports and academic articles suggest that the real number of pneumoconiosis victims in China is much higher than the roughly 600,000 cases reported by the government.

The *Legal Daily* newspaper (法制日报), on 3 March 2010, estimated that there were “at least one million cases of occupational disease in China,”<sup>3</sup> and that around 90 percent of all occupational disease cases were of pneumoconiosis.<sup>4</sup> As early as in 2006, another report estimated the total number of coal miners alone in China with pneumoconiosis at more than one million.<sup>5</sup> This report pointed out that official statistics on the number of pneumoconiosis cases among coal miners came only from the larger, state-owned coal mines, while cases from smaller and unlicensed mines, which employed around half of all China’s miners, were ignored. The government’s centres for disease control and prevention report an overall pneumoconiosis prevalence rate among coal miners of two percent but a study of 971 workers in state-owned mines in Shandong in 2005 revealed a prevalence rate of four percent. Moreover, the report showed there was a clear correlation between disease prevalence and length of employment. The study found that while five percent of miners employed for six years had pneumoconiosis, that figure increased to 23 percent for miners employed 18 years or longer.<sup>6</sup> In addition, two other academic studies based on independent medical examinations, rather than official data, concluded that about ten percent of the high-dust-industry workers examined suffered from pneumoconiosis.<sup>7</sup>

The above reports indicate that there are probably more than one million people

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<sup>1</sup> Chinese Center for Disease Control and Prevention (CCDC), “[2007年全国职业病报告发病情况](#)” (2007 Report on the National Incidence of Occupational Diseases), 中国疾病预防控制中心网站 (CCDC website).

<sup>2</sup> Zhou Tingyu (周婷玉), “[2008年全国新发各类职业病 1.3万余例](#)” (Over 13,000 New Cases of All Types of Occupational Disease in 2008), taken from 新华网 (Xinhuanet.com).

<sup>3</sup> “[劳动法专家：防治职业病要特别强调政府责任](#)” (Labour law expert: Government responsibility needs to be stressed in the prevention of occupational diseases) 法制日报 (*Legal Daily*) 3 March 2010.

<sup>4</sup> “[开胸验肺](#)”催促职业病防治法修订 修订程序启动” (“Open chest operation” hastens revision of Law on Prevention and Treatment of Occupational Disease, revision already underway) 法制日报 (*Legal Daily*) 3 March 2010.

<sup>5</sup> Zhou Renjie (周人杰), “[全国估计 100 多万矿工患尘肺病, 死亡数是矿难 3 倍](#)” (Over One Million Coal Miners Estimated to Suffer from Pneumoconiosis; Death Rate Three Times Higher than Coal Mine Accidents), taken from 中国网 (China.com.cn).

<sup>6</sup> Wu Xixiang (吴希祥), Sun Zhijie (孙志杰) and Wang Ji (王姬) (2005) “[国有煤矿农民工尘肺发病状况调查](#)” (A survey on pneumoconiosis among rural migrant workers in state-owned coal mines) 职业与健康 (Occupation and Health) Vol. 21 No. 1.

<sup>7</sup> Li Jiasong (李家松) (2008). “[贵州省 1218 名接尘农民工患尘肺病调查](#)” (A survey in Guizhou of 1,218 rural migrant workers exposed to dust and suffering from pneumoconiosis), 工业卫生与职业病 (Work health and Occupational disease) Vol 34 No.6 pp. 356-358.

Tian Jiao (田娇) and Li Baolin (李宝林) (2005) “[煤矿工人 377 例离岗前尘肺和肺功能检查结果分析](#)” (Analysis of findings of an investigation into the pneumoconiosis and pulmonary function of 377 coal miners before termination of employment), 职业与健康 (Occupation and Health) Vol.21 No.2, pp.210-211.

suffering from pneumoconiosis in China today, possibly a lot more. However, until the Chinese government conducts a thorough survey of workers in high-dust industries across the country, including retired workers, the actual figure will remain unknown.

### **Pneumoconiosis: Definition and Prognosis**

Pneumoconiosis is a chronic respiratory disease caused by the inhalation of mineral dust over a long period of time. The buildup of dust leads to inflammation and fibrosis of the lungs. Sufferers initially complain of coughing, shortness of breath and influenza-like symptoms. As the disease progresses to stage two and the final stage three, victims lose their strength and eventually all ability to work. In the vast majority of cases, the disease is fatal.

There are several different types of pneumoconiosis, including asbestosis, but in China the two main types are coal workers' pneumoconiosis (black lung disease) and silicosis. Together they account for nearly 90 percent of all new pneumoconiosis cases reported in the country. Of the 10,963 cases officially reported in 2007, there were 5,351 cases of black lung disease, and 4,447 cases of silicosis.

Pneumoconiosis has a relatively long latent period; the length of time before symptoms manifest depends on the pathogenicity and the density of the dust inhaled. Between five and 20 years typically elapse from the time of first exposure to the appearance of clinical pneumoconiosis. Official figures in 2008 showed that new pneumoconiosis cases averaged 17 years' exposure, 2.4 years less than in 2007. In addition, there were 3,420 cases of less than ten years of exposure. Among workers exposed to highly concentrated levels of silica dust, however, the time elapsed between the first exposure and the appearance of clinical silicosis can be as short as one to three years.

At present, there is no treatment available to reverse the progression of pneumoconiosis. Treatment can only inhibit the development of the disease and lengthen the patient's survival time. However, such treatments, which include whole lung lavage, are expensive and beyond the reach of most migrant workers in China. Many of them have to rely on traditional herbal remedies to alleviate their pain and discomfort.

In 2005, China Labour Bulletin published a research report<sup>8</sup> which exposed the gross violations of occupational health and safety laws in Guangdong's gemstone factories, and analyzed the numerous and sometimes insurmountable obstacles faced by workers seeking compensation for silicosis. Lack of legal enforcement, the deceptive tactics used by employers, deficiencies in laws and regulations and bottlenecks in the

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<sup>8</sup> Deadly Dust: The Silicosis Epidemic among Guangdong Jewellery Workers. CLB Dec 2005.

labour dispute arbitration system all meant that compensation claims took years to process, and many were left unresolved.

This new report looks at some of the same gemstone factories investigated in 2005 to see if any improvements in workers' rights and working conditions have been made. It also utilizes CLB's now extensive legal casework data to examine more broadly and in greater detail the problems faced today by China's growing number of pneumoconiosis victims in their quest for justice. In particular, the study looks at the plight of individual workers from Lucky Jewellery, a gemstone factory in Guangdong, and the group of migrant construction workers from Leiyang, led by Xu Zhihui, in order to compare and contrast the effectiveness of individual and collective action for workers seeking compensation.<sup>9</sup>

The report examines and breaks down the myriad and interconnected obstacles faced by workers seeking redress for occupational illness, in particular the problems confronted by migrant workers with pneumoconiosis. It shows how laws and regulations designed to protect workers' rights and health can actually be a hindrance, since the idealized employee-employer relationship assumed in the law simply does not exist for the victims of pneumoconiosis. The report also looks at the obstacles created by employers who go out of their way to avoid paying the compensation their employees are legally entitled to. And it examines the problems caused by local officials, labour arbitrators and judges, who are more concerned with sticking to the letter of the law, and following rigid and unrealistic legal procedures, than seeing that justice is done. It shows how the relatively simple process of redress envisioned in the law has become a tangled path of obstacles that many workers, already debilitated by their disease and crippled with debt, cannot hope to overcome. It requires courage, strength and the utmost determination for the victims of pneumoconiosis even to embark on the road to redress, let alone get to the end.

Today, nearly five years after our initial report, it is unfortunately clear that not only are the problems we identified in Guangdong still unresolved, but that the increasing number of pneumoconiosis cases across the country have made the crisis even more acute and severe.

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<sup>9</sup> See Appendix for the legal case summaries of the workers at Lucky Jewellery in Guangdong, as well as a letter to the leaderships of the Shenzhen Municipal Party Committee and government by the Leiyang migrant workers.

## Chapter One: Legal and Regulatory Obstacles to Compensation

The guiding principle in Chinese law for the diagnosis and assessment of occupational disease and the calculation and award of benefits is to “protect the health and other relevant rights” of workers.<sup>10</sup> If workers are employed when an occupational illness is diagnosed, and the employers accept their legal liabilities, this principle can, of course, be realised. But for migrant workers with pneumoconiosis, the laws and regulations designed to help and protect them can create numerous obstacles, forcing victims to pay their own medical expenses for years on end, while waiting for the compensation they are legally entitled to.

### Requirement of a “current labour relationship”

China’s legal and regulatory framework governing occupational disease compensation prioritizes those workers who are still employed. While it is not impossible for workers to get compensation after they have left their jobs, the process is far more complicated and time consuming than for those still employed.

The legal provisions dealing with the payment of occupational disease benefits such as medical expenses and loss-of-earnings compensation, for example, all indicate that having a current labour relationship with the employer is the key. Article 29 of the *Work-Related Injury Insurance Regulations*, for example, states:

For an employee<sup>11</sup> hospitalized for treatment of an occupational injury, the organization to which the employee belongs shall pay a hospital food subsidy and reimburse transportation and food expenses associated with out-of-area medical treatment.

Article 31 states:

During the period that an employee is not working due to a work-related injury or an occupational disease, the organization to which the employee belongs shall pay monthly wages and benefits.

And Article 49 of the *Law on Prevention and Treatment of Occupational Diseases* states:

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<sup>10</sup> The current laws and administrative regulations relevant to occupational disease diagnosis and assessment, classification of work-related injuries, and work-related injury benefits include the *Law of the People’s Republic of China on Prevention and Treatment of Occupational Diseases* (passed on October 27, 2001 by the National People’s Congress and implemented on May 1, 2002); *Management Regulations for Diagnosis and Assessment of Occupational Diseases* (Issued by the Ministry of Health on March 28, 2002 and implemented on May 1, 2002); the *Work-Related Injury Insurance Regulations* (issued on April 27, 2003 by the State Council and implemented on January 1, 2004); and the *Regulations on the Classification of Work-Related Injuries*, (issued on September 23, 2003 by the Ministry of Labour and Social Security and implemented on January 1, 2004).

<sup>11</sup> Article 61 of the *Work-Related Injury Insurance Regulations* defines an “employee,” as “a worker who has a labour relationship with the employer (including a *de facto* labour relationship), regardless of the form or duration of employment.” It is not specified whether or not employees who have terminated their employment relationship are as a matter of right included in this definition.

The employer shall pay the medical expenses during the period of medical observation and diagnosis of a patient with a suspected occupational disease.

The crux of the problem for the victims of pneumoconiosis lies in the long latent period of the disease. Often, when workers exhibit early-stage symptoms of pneumoconiosis, they think they have a bad case of influenza and simply leave their jobs and go home to recuperate. Other times, unscrupulous employers coerce or trick them into terminating the labour relationship. And thus, when more serious clinical symptoms appear a few years later, workers have no choice but to bear the cost of diagnosis, in-patient treatment and associated transportation, food and lodging themselves, costs that should have been borne by the employer if they were still employed.

In the era of privatized healthcare in China, just getting to see a doctor can be prohibitively expensive. Indeed, the cost of healthcare is routinely cited as one of the most pressing social and economic concerns of ordinary citizens across the country.<sup>12</sup> When Xu Zhihui and his co-workers from Leiyang traveled back to Shenzhen in the summer of 2009 to demand compensation from the local authorities, at first they had to pay all of their daily medical costs themselves. He told CLB at the time:

On average it was over 100 yuan per day. For one intravenous injection, in Shenzhen it was at least 100 yuan. If I had a fever, I needed at least three injections to get better. I would be better for less than a day and then it wouldn't work anymore, and I would need another injection. I have some co-workers here in even more serious shape; they have injections every day. Yesterday, one of them came with me to get an injection, and that one time cost over 500 yuan.

Many of the workers at Lucky Jewellery in Guangdong also had to pay for their own medical examinations, diagnosis and treatment. It cost Xiong Gaolin around 600 yuan to get examined at a Guangzhou medical clinic, while Yang Renbin paid thousands of yuan to get a diagnosis from Sichuan University's renowned West China Hospital for Occupational Diseases. The medical exam alone cost 1,850 yuan. In the end, Yang had to borrow more than 10,000 yuan to cover his medical and associated expenses. Yang's co-workers Ran Qimei and Chen Shisheng, a married couple from Ruichang in Jiangxi, borrowed nearly 20,000 yuan. But even that was not enough to make ends meet. Even while suffering from stage-two silicosis, Ran Qimei dragged herself into a factory to work 11-hour shifts every day. The burden of medical costs and debt repayments has been so great for some victims that they have taken their own lives in order to save their family from greater economic hardship.

Even if workers who have left their jobs do manage to get a formal diagnosis and

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<sup>12</sup> Chinese Academy of Social Sciences. “力挽狂澜：中国社会发展迎接新挑战 – 2008~2009年中国社会形势分析与预测总报告” (Turning the tide: New Challenges facing China's social development — Social Analysis and Forecasts 2008-2009) in Ru Xin (汝信), Lu Xueyi (陆学艺), Li Peilin (李培林) eds.-in-chief 2009年：中国社会形势分析与预测 (Analysis and forecasts of the state of Chinese society, 2009), Beijing: Social Sciences Academic Press (China), 2008, 1-14



disease classification, the disability benefits they are entitled to under the law cannot be paid out as a matter of course because they are based on an existing labour relationship. Article 34 of the *Work-Related Injury Insurance Regulations* states that employees assessed at a grade six disability,<sup>13</sup> the usual disability level for those with stage-one pneumoconiosis, should receive the following benefits:

A lump-sum disability payment equivalent to 14 months' wages. The employee's labour relationship shall be retained and the employer shall arrange for suitable employment. If a suitable post cannot be arranged, the employer shall pay a disability allowance each month equivalent to 60 percent of the employee's monthly wage. If the employee wishes to terminate their labour relationship, the employer shall pay the cost of medical treatment together with the lump sum disability allowance.

Clearly, if the employee has already been sacked, there can be no monthly wage on which to base their compensation, and the employer will certainly not hire them back and find a suitable post for them. All that the former employees can do is ask for a one-off lump-sum payment based on their last monthly wage. But because they have lost their job and often have no labour contract to prove prior employment, they have little or no bargaining power, and usually have to accept payments significantly lower than those they would be entitled to if they were still employed.

### **No provision for continuing treatment costs**

Pneumoconiosis patients require long-term care and continual treatment just to stay alive. The necessary specialist treatment is expensive and beyond the reach of the vast majority of migrant workers. And yet, China's current laws and regulations lack clear provisions for the payment of continuing medical treatment costs. Victims can only get a one-off lump sum payment based on previous earning power. Article 36 of the *Work-Related Injury Insurance Regulations* only provides that if an injured employee has a recurrence of the injury and it is determined that treatment is needed, the employee is entitled to work-related injury benefits from the employer or from the work-related injury insurance fund.

Once again, this legal provision is premised on the injured party still being employed or having work-related injury insurance. Pneumoconiosis sufferers who no longer have a labour relationship with their employers have no option but to go through a judicial review process in the courts when seeking continuing treatment costs from their former employer. However, all too often, such claims are ignored or rejected by the courts. For example, in the case of Lucky Jewellery employee Wang Fuquan, the Haifeng County Court asked the Guangdong Provincial Centre for Occupational Disease Prevention and Treatment to estimate Wang's continuing treatment costs. The

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<sup>13</sup> *The Standard Assessment of the Seriousness of Work-related Injuries and Occupational Diseases*, issued by the Ministry of Labour and Social Security in 1996, lists ten grades of disability, with Grade One being the most serious.

centre estimated that the cost of hospitalization for follow-up exams, observation, treatment and daily treatment expenses would be about 6,600 yuan a year. In addition, the Centre said Wang would need one lung lavage each year, at a cost of 23,000 yuan.<sup>14</sup> However, when the judicial review was completed, the court ignored these calculations, awarding Wang a “one-time work-related injury medical treatment compensation package” that reportedly included the daily treatment expenses of just 12,216 yuan. The court deemed that Wang could make “another legal claim for compensation should there be recurrence of the disease.”<sup>15</sup> The ruling clearly revealed the court’s complete ignorance of the nature of the disease in question.

In another case, reported in the Chinese media in 2009, Pu Zibing, a migrant worker from Chongqing, who contracted silicosis while working at an ore-grinding factory in Wenzhou, Zhejiang, was awarded 146,800 yuan in compensation by the local arbitration committee. But the company gave him just 75,000 yuan. After paying about 20,000 yuan in legal fees, he was left with only 50,000 yuan. At the time of the interview, Pu’s illness had worsened, but he did not dare go to hospital because he had long since used up the compensation award. To get by, he relied on his wife’s farming income and the 500 yuan his daughter sent home each month.<sup>16</sup>

Some pneumoconiosis victims do eventually receive additional compensation but by then it is usually too late. In 2002, for example, 48 pneumoconiosis victims from Shanyang in Shaanxi sued the Shaanxi Xinyuanke Industrial & Trading Company, along with 12 labour contractors who had arranged their employment, in Shaanxi’s Luonan County Court, for compensation. The case went on for three years, and in 2005 the claimants were awarded varying amounts of compensation. Two years later, 26 plaintiffs brought a second suit asking for continuing medical treatment costs from the same respondent. The case went through two hearings and a retrial. A decision finally came down in July 2009, with some plaintiffs receiving tens of thousands of yuan in compensation. However, by this time, 19 of the original 48 plaintiffs had died.<sup>17</sup>

## **Unreasonable time limits on applying for work-related injury classification**

The southern province of Guangdong has long been at the forefront of China’s economic development. It has also been at the forefront of China’s occupational disease epidemic. Although coal production has now ceased in the province,

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<sup>14</sup> Taken from 广东省汕尾市中级人民法院民事判决书(2007)汕中法民一终字第 109 号 (*Civil Decision of the Shanwei, Guangdong Municipal Intermediate People’s Court (2007)*, Shan Zhong Fa Min Yi Zhong Zi No. 109).

<sup>15</sup> 广东省海丰县人民法院民事判决书 (2006) 海法民一初字第 339 号 (*Civil Decision of the Haifeng County, Guangdong People’s Court (2006)*, Hai Fa Min Yi Chu Zi No. 339).

<sup>16</sup> [5名患矽肺病农民工等待赔偿5年去世](#) (Five Migrant Workers Suffering from Silicosis Die After Five Years Waiting for Compensation), 中国网 (*China.com.cn*).

<sup>17</sup> Xue Zhenyu (薛振宇): [山阳尘肺患者的最后挣扎](#) (The Final Struggle of the Shanyang Pneumoconiosis Sufferers), 华商报网络版 (*Chinese Business View*).

Guangdong still has large numbers of high-dust industries such as gemstone and jade processing, construction, sand-blasting and welding, resulting in large numbers of pneumoconiosis cases. According to official statistics, there were 2,418 new cases in the province from 1989 to 2004: it is estimated that at least 100 people in Guangdong die from the disease each year.<sup>18</sup> Doctors at occupational disease hospitals in Shaoguan, once the centre of the province's coal mine industry, report that the vast majority of their patients suffer from pneumoconiosis.<sup>19</sup>

In September 2008, the Guangdong Department of Labour and Social Security (now the Department of Human Resources and Social Security) issued a *Notice Regarding Further Improving the Province's Work-Related Injury Insurance System*. Article Two, Paragraph 1 of the *Notice* stipulates:

For entities under the administrative jurisdiction of Guangdong Province in which occupational diseases occur, if employees are diagnosed and assessed to have an occupational disease within two years of leaving the entity in which occupational diseases occur, and apply for classification of their disease within one year of the date of its diagnosis and assessment, labour and social security offices shall accept the application and classify the disease.

This provision enabled the victims of occupational diseases to pursue compensation even after termination of their labour relationship. It was hailed in the Guangdong media as “ending workers’ difficulties in getting their occupational diseases classified, with one stroke.”<sup>20</sup> However, the provision may actually make things worse for victims of diseases with a long latent period like pneumoconiosis because occupational disease prevention and treatment centres in Guangdong could refuse to perform a diagnosis and assessment for patients who applied more than two years after leaving their jobs. Indeed the Haifeng County Labour and Social Security Bureau specifically rejected Lucky Jewellery worker Yang Renbin’s application for compensation in 2008 on the grounds that over two years elapsed since he left his employer. He had been fired in 2005.

Guangdong’s two-year time limit may not have an adverse impact on work-related accident victims or those with an acute occupational disease, but for pneumoconiosis victims who only realize they are ill several years after leaving their jobs, it can be a serious problem, one that can effectively prevent them from getting any compensation at all.

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<sup>18</sup> Yang Xia (杨霞), [职业病防治严峻, 广东每年有100人死于尘肺病](#) (Grim Outlook for Preventing and Treating Occupational Diseases; 100 Die of Pneumoconiosis Yearly in Guangdong), 新华网 (Xinhuanet.com).

<sup>19</sup> CLB interviews, August 2009.

<sup>20</sup> Liu Qian (刘茜), [广东规定职工离职两年内查出职业病可定为工伤](#) (Guangdong Rules that Occupational Diseases can be Confirmed as Work-Related Injuries within Two Years of Leaving Employment), 南方日报 (Southern Daily), taken from 人民网-中国工会新闻 (People.com.cn/China Trade Union News).

## Chapter Two: Obstacles Created by Employers

The *Law on Prevention and Treatment of Occupational Diseases* stipulates that employers must provide employees with a safe working environment that conforms to national occupational health standards. Employers who cause serious harm to the health of their employees are subject to penalties such as suspension of operations, fines or closure, and may even bear criminal liability. According to the provisions of the *Work-Related Injury Insurance Regulations*, if the employer has not contributed to the work-related injury insurance fund when an employee contracts an occupational disease, the employer must pay the benefits and related expenses set in the *Regulations*. These are all fair and reasonable stipulations. However, such is the power of business in China today that many employers do not feel beholden to them. Unscrupulous employers will go out of their way to create as many obstacles for victims of occupational disease as possible in order to evade their legal responsibilities.

### Forcing sick workers to leave the company

As noted in the previous chapter, the current legal framework is designed around an existing labour relationship. Once an employee leaves the company, it is much more difficult for them to get compensation. As a result, when workers in high-dust industries exhibit early-stage symptoms of pneumoconiosis, many employers seek to get rid of them as quickly as possible. The Lucky Jewellery company in Guangdong used a number of methods to get rid of unhealthy employees, including offering workers a minuscule compensation payment to “leave and take care of their health,” accusing workers of breaking company rules and then firing them, or telling them they had to transfer to a less stressful position but not providing them with a new work position, thereby leaving them with no option but to resign.

On 6 September 2005, Yang Renbin was fired by Lucky for “inciting collective worker disturbances” and “inciting a strike”. This was just six months after he underwent a medical examination at the factory which indicated early symptoms of silicosis. The company argued during a labour dispute arbitration hearing that Yang had been fired because he left his shift six minutes early and got into an altercation with a security guard who stopped him. Later, he gathered a group of co-workers and went to the administrative department, resulting in a factory-wide work stoppage.<sup>21</sup> According to Yang, he only left his shift after being ordered to do so by his line manager. After he got into the altercation with security, about 20 of his co-workers came to his aid and they spent about 20 minutes discussing the situation with management. Yang said that three other workers, all of whom had suspected lung disease, were also fired

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<sup>21</sup> See “海丰县劳动争议仲裁委员会仲裁裁决书（海劳仲案字[2005]第 045 号）” (*Arbitration Decision of the Haifeng County Labour Dispute Arbitration Committee* (Hai Lao Zhong An Zi No. 045 [2005])).

by the company at the same time.

Liu Shigang was found to have shadows on his lungs during a medical exam in October 2007 but the company did not immediately inform him of the results. In December, management told Liu and ten other workers that they were in poor health, and that they must find other less demanding positions within the company. However, management said no other departments in the company would accept them, so they would have to resign. If they resigned, they would get a small amount of compensation; if they did not, they would be fired.<sup>22</sup> The company argued in court that Liu had simply refused the new position offered and that the two parties had negotiated a termination agreement.<sup>23</sup>

After Chen Shisheng was diagnosed in September of 2007 with an “increase in lung markings”, he requested a transfer to another position. The company, in a bid to force him out, arranged for him to work as a janitor, reducing his wages to a few hundred yuan per month. However, Chen resisted the pressure to leave and stayed at the company until he was finally forced out in January 2008. He told CLB:

I wouldn't go; I knew there was something wrong with my health, and I was certainly not going to leave. In January 2008, they got tough and said, you're going to go, no matter what. They did not give me a reason, they just said, we don't want you here. If you don't comply, we'll report you to the labour bureau. I was in the cafeteria one day when the security chief told me to come out. There were several of them waiting for me. I didn't know what was going on. Those people dragged me towards a car. I said, what is going on? They said nothing is going on; you get out.

Another Lucky employee, Xiong Gaolin, described the variety of tactics he had seen used by management to fire employees who exhibited early-stage symptoms of pneumoconiosis:

There were a few fired last year; one had started in 2000, another in 2001. They had a medical exam in August and, once the company understood the situation, they forced them to write resignation letters. If they didn't, they wouldn't get three months' wages in compensation.

These people had been taken to the Haifeng County Centre for Disease Treatment for an exam. When I went to the health inspection office, they showed me the files, and I saw that their results were all “increased lung markings”. The ones with that result were all made to write resignation letters and then paid a compensation of three months' wages. In the beginning, they

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<sup>22</sup>According to Article 32 of the *Law on the Prevention and Treatment of Occupational Diseases*, employers must transfer employees from their original positions, arranging suitable positions for them if their health is found through a medical examination to have been harmed during the performance of their duties.

<sup>23</sup> See “广东省海丰县人民法院民事判决书（2008）海法民一初字第 61 号” (*Civil Decision of the Haifeng County, Guangdong People's Court (2008)*, Hai Fa Min Yi Chu Zi No. 61).

were told they would be transferred to other positions and switched to other departments. Later they were told, you won't be transferred and you must write a resignation letter, saying only that you are "resigning to return home to celebrate the New Year". They couldn't write anything else; they couldn't write that they were ill. Only this way would they be given the three months' wages. They were told, if you don't write the letter by March or April we will find a reason to get rid of you, and by then you won't get a cent.

## **Colluding with hospitals to falsify or conceal post-employment medical examinations**

Article 32 of the *Law on Prevention and Treatment of Occupational Diseases* stipulates that employers must provide medical examinations prior to, during, and upon leaving employment for workers at risk of occupational disease. This provision is designed both to protect workers' rights and to determine the employees' health status on leaving their job so as to assess what liability if any should be borne by the employer.

In reality, however, some employers, in collusion with local occupational disease centres, are using these post-employment medical exams to their own advantage. If doctors at the centre have been bought off by the company, the results, if released at all, will almost certainly come back as negative for pneumoconiosis. Later, when the workers manifest clinical symptoms of pneumoconiosis, the employers can then produce the results from this post-employment exam to claim the disease was not contracted at their company.

One month after Yang Renbin was fired from Lucky Jewellery in September of 2005, he was taken to the Guangdong Provincial Occupational Disease Centre for a post-employment medical exam. The result was "an increase in lung markings and disorder, no abnormalities found in cardiopulmonary x-ray, recommend follow-up exam in one year." At this stage, Yang had already obtained a diagnosis from Sichuan University's West China Hospital for Occupational Diseases clearly stating he had stage-one silicosis. Regardless, the Haifeng County Labour and Social Security Bureau rejected his application for classification of his work-related injury, on the grounds that the exam results from the Guangdong Centre showed no occupational illness.<sup>24</sup>

Yang's co-worker, Chen Shisheng, claimed the Guangdong Centre deliberately withheld test results indicating silicosis from gemstone factory employees. He was diagnosed in January 2008 by the Guangdong Centre with "an increase in lung markings and disorder, and a small amount of shadow." The same month, the

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<sup>24</sup> See 海丰县劳动和社会保障局“工伤认定决定通知书(海劳社工字[2006]010号) (Haifeng County Labour and Social Security Bureau Notice on Decisions Recognizing Occupational Injuries (Hai Lao She Gong Zi No. 010 [2006])).

company forced him to resign. When he tried to get a more definitive diagnosis later, he was refused:

The key here is that you can't get evidence [of occupational disease] because they've bought off the provincial occupational disease centre. If you go for an exam, they won't give you the results. I asked several times and this is what they said. They said they no longer issued reports for "suspected dust-related occupational disease". They did before but then all those people from Lucky went after the company. Lucky told them not to issue those reports anymore.

Several workers from other jewellery companies in Guangdong also said they believed the doctors at the province's official diagnosis centres had been bought off or were in some way colluding with the companies to falsify the results of their exams. Luo Youzhong, a migrant worker from Chongqing, for example, was given a medical exam at the Guangdong Centre after he left Haifeng Globe Jewellery Co in 2003. The result was "no silicosis found." It was only three years later in 2006 that Luo was finally diagnosed with silicosis.<sup>25</sup> Luo further described how Globe Jewellery took 11 workers to the Haifeng County Centre for Disease Prevention and Treatment for a medical examination in January of 2003. They were not told the results. Luo believes the company had bribed the doctors at the centre. He says he saw the boss's representative giving the doctors performing the exams 100 yuan each, claiming it was an "overtime fee."

### **Changing the company's "face"**

The art of "face changing" (变脸) is an integral part of Sichuan opera in which the artist changes into many different masks in a short period of time, each representing a different character in the story. In real life, employers have used similar "face changing" tactics to evade their legal responsibilities to the victims of pneumoconiosis. When employers in high-dust industries discover a succession of pneumoconiosis cases among their employees, they sometimes move to another location, change the company name, change their investors and managers, or merge with another company. Once the company's face has been changed, workers who no longer have an employment relationship can find it increasingly difficult to locate their original employer. In order to find and confirm the original employer and factory, workers must go through a series of arbitration procedures to clarify the relationship between the current company and their former employer. Because of the complexities involved and the lack of transparency in company documentation, many arbitration claims are rejected by the authorities because an "inappropriate respondent" was cited or because they had "no jurisdiction over the dispute."

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<sup>25</sup> Zuo Zhiying (左志英), "为肺而战: 尘肺病工人维权陷入困境" (Fighting for One's Lungs: Workers with Pneumoconiosis in Dire Struggle to Defend their Rights), 南方都市报 (Southern Metropolis Daily), taken from 医网 (ewsos.com).

The face changing of Lucky Jewellery was particularly egregious. The company started life as the Lucky Jewellery Factory, established by Lucky Gems & Jewellery Factory, Ltd. of Hong Kong, in Shenzhen's Longgang district in 1984. In June 1997, the factory moved 50 kilometres up the road to neighbouring Huizhou's Huicheng district, changing its name to Huizhou Huicheng Lucky Jewellery Factory. In early 2005, the company moved again, the short distance to Haifeng county in the port city Shanwei, where it became Guangdong Lucky Jewellery Arts & Gifts Company.

Workers at Lucky claim that, between 1984 and 2002, the company never arranged for employee medical examinations, nor did it introduce any effective measures to lower the dust levels in the gemstone polishing workshops. Around 2002, a number of employees who had moved with the company from Longgang to Huizhou fell ill and paid out of their own pockets for medical examinations at a local hospital. Around 40 workers were diagnosed with silicosis, and sought compensation from the company. The Huicheng District Labour Dispute Arbitration Committee (LDAC) heard the case but incredibly ruled against the plaintiffs on the grounds that there was "no relationship between Huizhou Huicheng Lucky Jewellery Factory and the Lucky Jewellery Factory of Shenzhen."<sup>26</sup>

After the company moved again in 2005 to Haifeng county, changing its name to Guangdong Lucky Jewellery Arts & Gifts Company, workers who developed symptoms of silicosis experienced the same problem. In Ran Qimei's case, after she was diagnosed with stage-two silicosis in January 2006, she submitted an arbitration claim with the Huicheng District LDAC in Huizhou, naming the Huizhou Huicheng Lucky Jewellery Factory as the first respondent and Guangdong Lucky Jewellery Arts & Gifts Company as the second respondent. Her claim was rejected by the LDAC on the grounds that the second respondent was located in the Haifeng district of Shanwei and, as such the Huicheng LDAC had no jurisdiction over it.

Lucky Jewellery is certainly not alone, however, in using such "face changing" tactics to evade its responsibilities to silicosis victims. In January 2006, the Chinese media reported on a company in northeast China, the Harbin Hulan County Shuangjing Quartz Sand Factory, which was registered and established in 1995 but changed its commercial business licence and legal person status numerous times afterward. From 2000 onwards, more than 20 company employees contracted silicosis, and seven died. At that time, the majority of the workers had not signed a labour contract with the company, but it had long since stopped using the name Harbin Hulan County Shuangjing Quartz Sand Factory. The current Harbin Jinghua Silicon Materials Manufacturing Company Ltd. refused to provide the letters confirming an employment relationship needed by these employees to obtain a diagnosis from the

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<sup>26</sup> For a detailed analysis of this case, see CLB's 2005 report, [\*Deadly Dust: The Silicosis Epidemic among Guangdong Jewellery Workers\*](#).



local occupational disease centre.<sup>27</sup>

## Using economic power and political connections

In China's labour market, the power of employers far outstrips that of employees. Very often the only way for workers to protect their interests is through collective action, staging strikes and protests that force the local government to intercede in the dispute. Individual workers can use the arbitration and judicial systems to seek redress but victims of pneumoconiosis, already weakened by their illness and saddled with huge debts from their medical expenses, can find it almost impossible to get the compensation they are legally entitled to. And when the employer is one of the most powerful men in the county, with friends and cronies throughout the government, the position of pneumoconiosis victims is even direr.

Xiao Huazhong is a retired worker from eastern Sichuan's Qu county, now in his early 60s. He worked in a local coal mine from 1995 to 2003, when he left due to poor health. In April of 2007, he was diagnosed with stage-three coal worker's pneumoconiosis by Sichuan University's West China Hospital for Occupational Diseases. But when Xiao went to the coal mine owner, Liao Xing'an, to seek compensation, he was repeatedly refused. Liao was a member of the Dazhou People's Congress and vice chair of the Qu County Industry Federation. He had a vast network of connections in local government and no one dared refuse him.



**Xiao Huazhong outside his home in Longtan village, Sichuan**

With the help of CLB, Xiao filed several lawsuits seeking occupational illness compensation but the local government, hospitals and courts all sided with Liao Xing'an. After he lost his first lawsuit, Xiao filed an appeal, which was due to be heard on 24 December 2008. However, five days before the appeal hearing, on 19 December, Xiao was ordered by the village government to attend a "mediation

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<sup>27</sup> “[黑龙江呼兰县职业性矽肺病事件调查](#)” (An Investigation of Work-Related Silicosis in Hulan County, Heilongjiang), 生活报 (*Life Daily*), taken from 新浪网 (*Sina.com*).

meeting” chaired by the county court and attended by the mine management bureau head, deputy head of the village government and deputy head of the county labour bureau, Chen Yue. The respondent, Liao Xing’an, did not attend.

During the meeting, deputy village head Li allegedly said: “Don’t sue; you are poor and sick, the government issues annual hardship allowances. As last year, it will provide 300-400 yuan to tide you over the New Year Festival. And next year you will get a basic subsistence allowance. But if you still want to sue, we will charge you with making malicious accusations and lock you up!”

Xiao ignored the threats from the local government and went ahead with the appeal. But on the morning of the trial, deputy labour bureau chief Chen Yue personally delivered the *Qu County Labour and Social Security Bureau Document (2008) No. 106* to the presiding judge Hu Guangjun, which claimed Xiao did not have an employment relationship with the mine owned by Liao Xing’an at which Xiao had worked from 1999 to 2002. On 5 January 2009, Xiao Huazhong telephoned Judge Hu to discuss the case and was advised to drop the matter as soon as possible.

A family friend described Xiao’s current condition:

It’s very serious. He can’t work now and has gone back to the countryside. He can’t farm, either. His wife can’t do it, either, so they both rely on their children, who give them a few hundred yuan each month. This is how he gets by.

## **Using the judicial process to stall for time**

The basic principle of China’s laws and regulations covering work-related injury insurance is the diversification of risk (分散风险) for employers.<sup>28</sup> The laws and regulations are not designed to punish employers who fail to provide their workers with work-related injury insurance and then refuse to pay compensation. Regardless of the nature of work-related injury or occupational disease, and regardless of how long the judicial process takes, the liability of employers remains limited to the level of compensation set out in the *Work-Related Injury Insurance Regulations*. Thus, if the *Regulations* stipulate that the employer should pay 50,000 yuan, he will never have to pay more than 50,000 yuan, no matter how long proceedings last. Employers faced with work-related injury and occupational disease lawsuits therefore actually have an incentive to delay proceedings for as long as possible, safe in the knowledge they will not suffer punitive penalties. The legal fees incurred in filing an appeal are negligible for employers but for an already impoverished worker they can be prohibitive and many litigants give up the fight. Only a very determined complainant like Luo Youzhong will push on to the end.

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<sup>28</sup> See the general provisions section of the *Work-Related Injury Insurance Regulations*. Article 1 states that the primary objective of those regulations is to “diversify employers’ work-related injury risk.”

Luo Youzhong was diagnosed with stage-three pneumoconiosis by the Guangdong Centre in February of 2006. In April, the Haifeng County Labour and Social Security Bureau classified his work-related injury. In May of that year, he was assessed at a grade three disability by the Shanwei Municipal Labour Capacity Assessment Committee. In response, his employer Haifeng Globe applied to the Shanwei Municipal Labour and Social Security Bureau for an administrative review. After the application was rejected, the company took the Haifeng County Labour and Social Security Bureau to court, demanding a revocation of the classification of Luo's work-related injury. This was upheld by the Haifeng County Court. Luo told CLB he was convinced that the company's court victory was due in no small part to influence peddling: "Haifeng Globe's legal representative, a man named Chen, is the brother-in-law of the director of the Haifeng County Court's executive office," he said. Afterward, Luo and the Haifeng labour bureau both separately appealed to the Shanwei Municipal Intermediate Court, which upheld the original decision. In June of 2008, Luo applied for a retrial in the Guangdong Provincial High Court. He telephoned the court many times and even went to the court house in person but was always stopped outside the gate. The court only accepted the case at the beginning of 2010 but at the time of writing no date for hearing had been set. When Luo was interviewed for this report, he was coughing so violently, he found it difficult to talk.

## Chapter Three: Obstacles Created by the Authorities

The doctors, government officials, arbitrators and judges responsible for assessing and ruling on occupational disease cases can be both a help and a hindrance to victims of pneumoconiosis. If these actors in positions of authority took a sympathetic and considerate approach, victims could in theory obtain redress relatively quickly. But all too often officials simply do not care about the victims; they are overly rigid in their interpretation of the law and procedural regulations. Moreover, as noted above, they can be unduly influenced or even bought off by local enterprise bosses.

### **Not recognizing diagnostic reports from other jurisdictions**

Article 40 of the *Law on Prevention and Treatment of Occupational Diseases* and Article 10 of the *Management Regulations for Diagnosis and Assessment of Occupational Diseases* both state that workers can choose to have their work-related injury or illness diagnosis performed either at the employer's location or at the occupational disease centre where they reside. In theory, these provisions should help those migrant workers suffering from pneumoconiosis who have already left their jobs and have returned to their home towns. In reality, however, officials in the employer's location will hardly ever accept occupational illness diagnoses from other regions. Instead, they demand that victims get a new diagnosis at the occupational disease centre in their own jurisdiction. The work-related injury assessment authorities claim they are "guaranteeing the solemnity of the process" and "avoiding fraudulent practices" but the refusal to accept outside diagnosis really stems from the mistrust between different local governments, especially between urban and rural governments, as well as the desire of local authorities to protect their own economic interests.

After Luo Youzhong was diagnosed with "no silicosis" during a 2003 exam at the Guangdong Centre for Occupational Disease Prevention and Treatment, he returned to his hometown near Chongqing and was diagnosed by his local occupational disease centre with stage-two silicosis. However, when he brought the diagnosis certificate from that centre to the Haifeng County Labour and Social Security Bureau, the bureau refused to accept it on the grounds that "the diagnosis documentation provided does not confirm to application requirements." It was not until February of 2006 that Luo finally obtained a diagnosis from the Guangdong Centre; by that time, the disease had already progressed from stage two to stage three.

The same bureau refused to accept the diagnosis of stage-one silicosis Yang Renbin had obtained from the nationally renowned West China Hospital for Occupational Diseases in September of 2005. The bureau stated that the diagnosis was invalid, ordering him to obtain a diagnosis at the Guangdong Centre. The Guangdong Centre in turn told him to return to the West China Hospital to get their diagnosis revoked.

Yang spent more than 1,000 yuan on transportation costs alone, traveling back and forth between these two places.

Perhaps the best known example of a local authority refusing to accept an outside diagnosis occurred in summer of 2009. Zhang Haichao, a 29-year-old villager from Henan, had worked for several years at an abrasive materials factory in Xinmi, near the provincial capital Zhengzhou, breathing in clouds of dust every day. In the latter half of 2007, he began to suffer from a cough and tightness in his chest. He checked into several local and national hospitals, all of which confirmed pneumoconiosis. However, Zhang was told he needed a formal diagnosis from the Xinmi Centre for Disease Control and Treatment. The centre initially refused to examine him because his former employer did not provide the necessary documentation and proof of employment. When the centre finally agreed to see him on 25 May 2009, it diagnosed Zhang with tuberculosis and not pneumoconiosis. Although it is impossible to prove corruption or collusion between the centre and the factory, it seems remarkable that any medical professional could have mistaken pneumoconiosis, a disease caused by dust inhalation, with tuberculosis, one caused by a bacterial infection.

Angered by the misdiagnosis, Zhang took the drastic step of undergoing a thoracotomy at another hospital in Zhengzhou. The operation on 22 June 2009 revealed that his lungs were indeed clogged full of dust, the diagnosis unmistakably was of pneumoconiosis.<sup>29</sup> The furor created by the case led to Zhang eventually being awarded 615,000 yuan in compensation in a mediated settlement with his former employer. But, as Zhang was the first to admit, few other workers have been as fortunate. Zhang has now dedicated the rest of his life, estimated at another six years, to helping as many other migrant workers as possible.<sup>30</sup>

The rejection of legally valid diagnoses from other jurisdictions puts migrant workers with pneumoconiosis at a severe disadvantage right from the outset for the redress process. They are forced to play on the employer's turf, where, as we have seen, local authorities are all too often subject to the money and political influence of the enterprises which are the subject of the workers' complaints.

## **Refusing to accept cases without proper documentation**

One of the first steps in the process of making a claim for work-related injury or occupational disease compensation is to produce evidence of an employment

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<sup>29</sup> “[农民工为维权开胸验肺证明自己患尘肺](#)” (Migrant Worker Undergoes Open-Chest Surgery to Prove he has Pneumoconiosis and Defend his Rights), 河南日报 (*Henan Daily*), taken from 腾讯网 (*QQ.com*); Zhang Han (张寒), “[开胸验肺者称07年防疫站发现肺异常未告知](#)” (Man Undergoing Open-Chest Surgery not Notified when Disease Prevention Centre Found Lung Abnormalities in 2007), 新京报 (*bjnews.com.cn*), taken from 腾讯网 (*QQ.com*); Qu Changrong (曲昌荣), “[‘开胸验肺’事件进展：专家确诊张海超患尘肺病](#)” (Open-Chest Surgery Incident Unfolds, Experts Confirm Zhang Haichao has Pneumoconiosis), 中央政府门户网站 (*Central People's Government of China website*).

<sup>30</sup> See Appendix 3.

relationship with the enterprise responsible for said injury or illness. On paper this is a perfectly reasonable requirement, except that for migrant workers in China, it is one that can often be impossible to fulfill.

The vast majority of China's pneumoconiosis victims were employed in small- and medium-sized private enterprises such as mines, construction sites and workshops that even after the implementation of the *Labour Contract Law* in 2008, failed to provide their workers with a written employment contract. Other forms of written evidence of employment, such as pay slips or work identity cards are usually left behind by workers when they quit their jobs because the workers do not think they will ever need them again. To make matters worse, many employers never had a business licence or operating permit, making them very difficult to track down again when workers return seeking compensation. The reason these unlicensed businesses could operate freely is quite simply that local governments were incapable or unwilling to effectively monitor and supervise them.<sup>31</sup>

Even if pneumoconiosis sufferers do retain some evidence of their labour relationship and do manage to locate their former employers, it can still be difficult to file a compensation claim because many of the other documents needed for the diagnosis of an occupational disease are in the hands of the employer. According to the provisions of Article 11 of the *Management Regulations for Diagnosis and Assessment of Occupational Diseases*, when applying for a diagnosis of an occupational disease, one must provide evidentiary documents including: 1) employment history; 2) a copy of occupational health monitoring files; 3) occupational health examination results; 4) test and evaluation documents from the work site regarding harmful occupational disease factors over the years; and 5) other necessary documents required by the diagnosis authority. All these documents should be included in an employee's personnel file or in the company's occupational disease prevention and treatment programmes. Under these circumstances, no matter whether workers are still employed or no longer have a labour relationship with their employers, it is virtually impossible for them to obtain such documents from their employers because no employer will deliberately incriminate itself. As Lucky Jewellery employee Xiong Gaolin explained:

I went to two hospitals on July 15, 2008: Guangzhou No. 12 Hospital and the Guangdong Centre. Their reports were identical: both said "increased lung markings", and "recommend follow-up exam in three months." I felt I had something to go on and so I went back to the company and asked them to give me the necessary documentation, because the provincial occupational disease centre has this regulation that they want evidence of an employment

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<sup>31</sup> Among 16 million employers across the nation in 2005, only 75,000 were inspected by the occupational health authorities, meaning only one in 210 organizations were inspected. See Zhou Renjie (周人杰) and Zeng Xiaolin (曾晓琳), "全国估计 100 多万矿工患尘肺病, 死亡数是矿难 3 倍" (National Estimate of Over One Million Miners with Pneumoconiosis, Deaths Three Times Higher than in Mine Accidents), 中央电视台"经济半小时,"(China Central Television's *Economy in Half an Hour* programme), 中国网 (*China.com*).

history. But the company said my illness was my own fault and refused to give me the documents.

Zhang Baohe, a migrant worker from Zhangjiakou in Hebei, had been working in the Datai Coal Mine in the rural Beijing district of Mentougou since 1985. In 2007, he was diagnosed with stage-one coal worker pneumoconiosis, and assessed at a grade seven disability by the Mentougou District Labour Capacity Assessment Committee in Beijing. Zhang, who often has trouble breathing, felt the assessment level was too low and asked for a review by the Beijing Municipal Labour Capacity Assessment Committee. But the mine refused to give him the documents he needed. He told CLB:

I went to the Beijing Labour Capacity Assessment Committee, which said, you have not gone through any of the procedures. They wanted to use Mentougou's assessment, evidence of the diagnosis record a work-related injury... and also a certificate of occupational disease diagnosis.

In October 2007, the Ministry of Health issued an administrative document entitled *A Response to Certain Questions Regarding the Work of Diagnosing and Assessing Occupational Diseases (Wei Jian Du Fa [2006] No. 429)*. It states that when a party is unable to provide copies of occupational health files, or test or evaluation results showing a history of occupational disease hazards at a work site, the health authorities of local governments may still accept applications for the diagnosis and assessment of an occupational disease.<sup>32</sup> However, local officials rarely acknowledge this document and insist on the production of written evidence they know cannot be produced. Some may simply be trying to lighten their work load, while others clearly side with the employers.

## **Intransigence of arbitration and court officials**

If China's work-related injury and occupational illness compensation system worked properly, there would be no need for workers to file claims in the Labour Dispute Arbitration Committees and civil courts: The injury or illness would be diagnosed and classified, the victim's working capacity assessed and their benefits calculated and awarded. However, as we have clearly seen above, for victims of pneumoconiosis in particular, the system does not work. All too often, victims are forced to go to the arbitration committees and courts in their search for justice. But arbitrators and judges – like doctors and government officials – can be unsympathetic, overly concerned

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<sup>32</sup> The relevant portion of the Ministry of Health's *Response to Certain Questions Regarding the Work of Diagnosing and Assessing Occupational Diseases* states, "If an applicant for occupational disease diagnosis and assessment is unable to provide the materials described in Article 11, Paragraphs 2 and 4 of the *Management Regulations for Diagnosis and Assessment of Occupational Diseases* because an employer has not undertaken occupational health monitoring and protections for labourers or testing and evaluation of work site occupational disease hazards, the occupational disease diagnosis and assessment authorities may accept the application and make a diagnosis and assessment according to the provisions of Article 42, Paragraph 2, based on an account in the applicant's own words and materials provided by relevant entities and individuals (including health monitoring authorities and qualified health services organizations)."

with documentation and procedures, and sometimes overtly hostile to workers seeking compensation.

Arbitration committee and court officials seem overly swayed or convinced by the arguments of employers who deliberately force employees to resign once they discover early signs of occupational disease. Officials will accept at face value, for example, that the two sides agreed to terminate the labour relationship or that the employer had already paid out economic compensation.

Not long after Chen Shisheng was diagnosed with an “increase in lung markings and disorder, and a small amount of shadow” by the Guangdong Centre, Lucky Jewellery drove him out and forced him to sign a “compensation agreement” that stipulated a one-time compensation package of just 5,232 yuan. Moreover, once Chen accepted payment, the agreement stipulated it would be his final and total compensation and that Chen would not pursue the company in the future for wages, overtime, or any other form of compensation. However, when he realized that his illness was worsening, Chen filed a claim for the restoration of his labour relationship with Lucky Jewellery at the Haifeng County LDAC on the grounds that he had been unfairly dismissed. He cited a notice sent by the company’s human resource office which stated:

The company’s Human Resources Department formally notified you in writing on 25 January 2008 that your labour relationship shall be terminated on 29 January... please go to the Finance Department to collect your wages. If you do not collect them within a certain time, your voluntary separation will be processed according to the provisions of the law and your wages will be deemed forfeited.

The Haifeng LDAC however stated that the employer and employer had reached a “compensation agreement” on the basis of negotiation, thereby rejecting Chen’s claim.<sup>33</sup>

If they cannot win their arbitration hearing, some determined pneumoconiosis victims go to court. They are automatically entitled to do so after an LDAC ruling. However, without compelling new evidence or proof of official misconduct or error, few judges will rule against an LDAC decision.

China’s *Law on the Prevention and Treatment of Occupational Diseases* technically gives pneumoconiosis victims the right to a civil hearing even without going through prior arbitration. Article 52 states that occupational disease patients have the right to civil compensation according to civil law, as well as the right make compensation claims for injury against their employers. However, a December 2003 Supreme People’s Court (SPC) interpretation means that the lower courts hardly ever accept personal injury lawsuits from victims of occupational disease. Article 11 of the SPC’s

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<sup>33</sup> See “海丰县劳动争议仲裁委员会仲裁裁决书（海劳仲案字[2008]第 006 号）” (*Arbitration Decision of the Haifeng County Labour Dispute Arbitration Committee* ( Hai Lao Zhong An Zi No. 006 [2008])).



*Interpretation of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury* stipulates that, “when employers cause personal injury in the course of employment activities, it falls within the scope of the labour relationship and the work-related injury insurance system.” Article 12 provides that:

If labourers are with employers that should participate in the work-related injury insurance plan and are personally injured in the course of performing employment activities, the labourer or his close relatives that wish to make a claim in the People’s Court against the employer for civil compensation liability are notified to do so according to the provisions of the Work-Related Injury Insurance Regulations.

Thus when retired Sichuan miner, Xiao Huazhong, filed a personal injury lawsuit against his former employer in the Qu County Court in 2008, the court in the trial of the first instance determined that Xiao should have applied to the labour bureau for work-related injury classification and work capacity assessment after he had been diagnosed with an occupational disease.<sup>34</sup> In Xiao’s appeal, the Dazhou Municipal Intermediate Court upheld the decision of the first court, indicating that a person who does not submit to work-related injury classification and labour dispute arbitration cannot bring a lawsuit for personal injury compensation based on the work-related injury insurance system.<sup>35</sup>

The government officials, arbitrators and judges who decide occupational disease cases do have discretionary powers: if they were willing to show a modicum of initiative, they could easily waive certain rules and regulations when they clearly do not apply or actually obstruct the course of justice. Unfortunately, too many officials only care about the rules governing compensation claims and care little about the people actually filing the claim.

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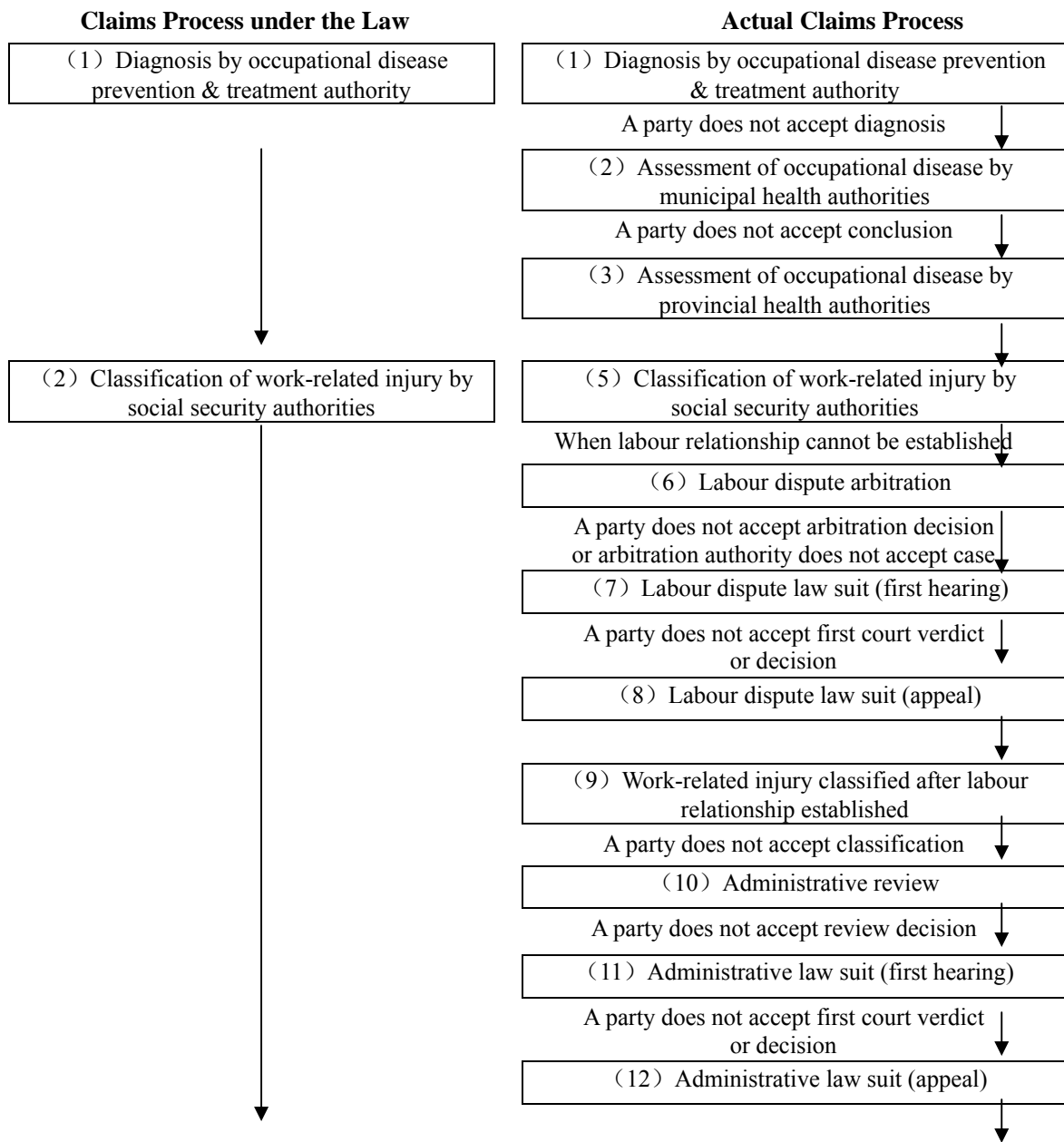
<sup>34</sup> See “四川省达州市中级人民法院民事裁定书（2009）达中民终字第18号” (*Civil Decision of the City of Dazhou, Sichuan Intermediate People’s Court (2009), Da Zhong Min Zhong Zi No. 18*).

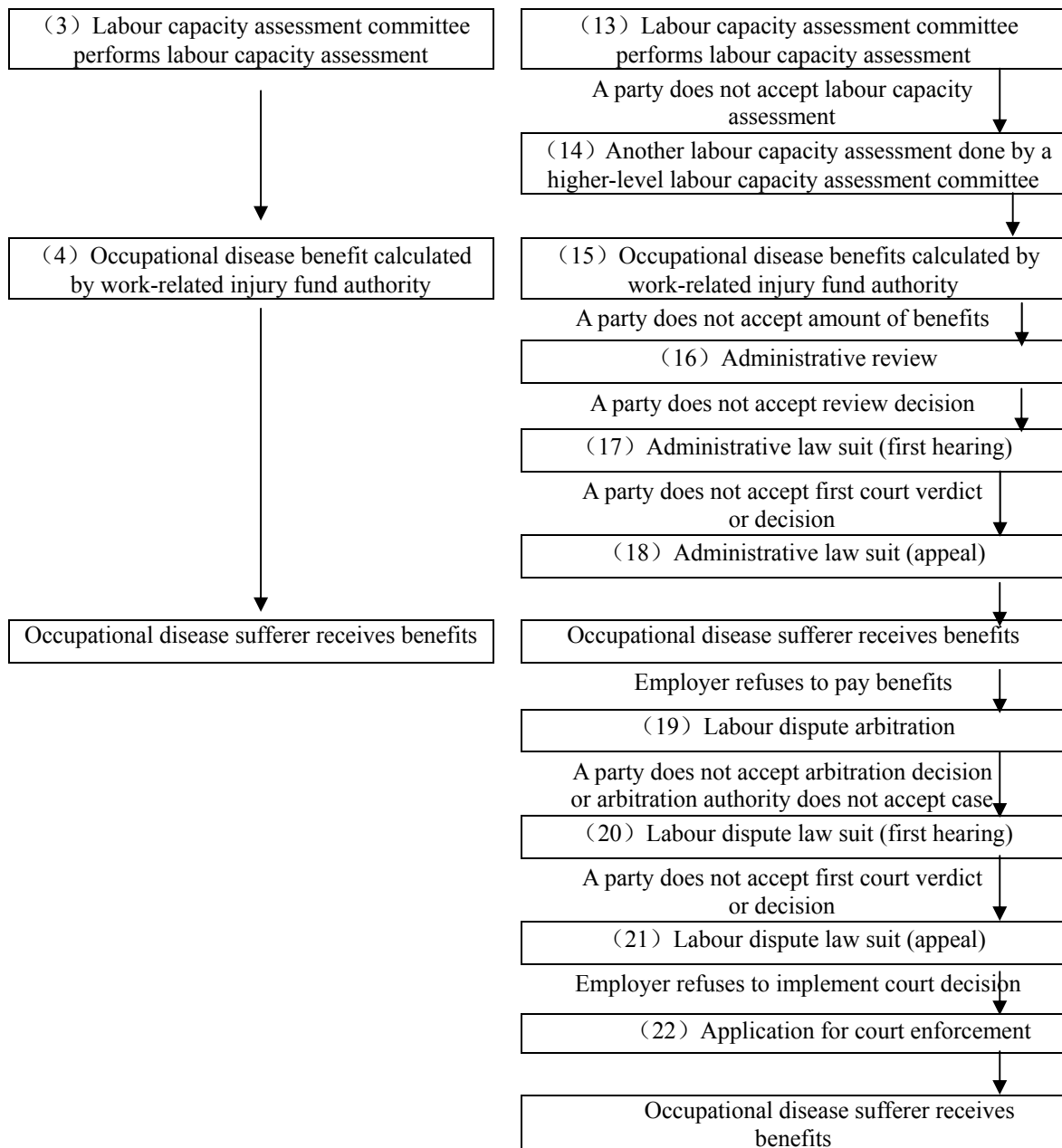
<sup>35</sup> *Ibid.*

## Chapter Four: Finding a Way through the Logjam

When all the obstacles described in the preceding chapters combine, they can produce an almost impenetrable logjam for victims of pneumoconiosis seeking redress. What should be a relatively straightforward four-stage process of disease diagnosis, classification, labour capacity assessment and benefits calculation can, if the worker does not have proper documentation and the employer and the authorities refuse to cooperate, turn into a convoluted marathon of up to 22 steps, including administrative reviews, labour dispute arbitration, civil and administrative lawsuits. See below.

### A comparison of the compensation process according to law and the process in reality





Based purely on the relevant provisions of China’s procedural laws, it would take about four and a half years (54 months) to complete all 22 steps. This, of course, assumes the whole process runs smoothly and does not take into account the time needed for the claimant to collect evidence and prepare documents, nor does it include time used up through the deliberate delaying tactics used by employers and the authorities.<sup>36</sup>

For poorly educated and impoverished migrant workers, already debilitated by their disease and burdened by debt, this process can become a nightmare. Just about the

<sup>36</sup> In Ran Qimei’s case, for example, neither party accepted the court verdict in the first hearing and both appealed to the Shanwei Municipal Intermediate Court. That court stated, however, that because one of the parties was a Hong Kong company, it could not directly serve them with legal documents. Moreover, the court had to publish a notice three months prior to each session announcing the court date.

only way to successfully negotiate all of these obstacles is with the help of specialist legal advice and assistance, which most victims cannot afford. China Labour Bulletin, through its labour rights litigation programme, has attempted to help as many victims as possible get through the system, and many victims did indeed receive substantial compensation. For some, however, compensation came too late.

Deng Wenping, a migrant worker from Sichuan, was one such case. Deng was hired in November of 1997 to work as a gemstone cutter at the Hong Kong-owned Perfect Gem and Pearl Factory in Boluo county, Huizhou. In late 2000, he was diagnosed by the Guangdong Centre with stage-two silicosis. In April of 2001, he signed a “mediation agreement” with the company, accepting 90,000 yuan in economic compensation. The actual agreement was for 100,000 yuan but the factory manager took 10,000 yuan as a “commission”. In October of 2002, Deng’s disease progressed to stage two-plus, and he asked for additional compensation from the company. He was refused point blank. He filed a claim at the Boluo County LDAC, which refused to take his case on the grounds that “the application date exceeded the time limit provided by law.” Deng then filed a personal injury lawsuit with the Boluo County Court and Huizhou Municipal Intermediate Court, both of which were rejected again for “exceeding time limits”. In April 2004, when his disease had progressed to stage three, Deng once again applied for arbitration at the Boluo County LDAC, and this time was refused on the grounds that he had previously “signed an economic compensation agreement” with the company. This reason was also used by the courts when the case went to them again.

In the end, it took the personal intervention of Huang Liman, the chair of the Guangdong Provincial People’s Congress Standing Committee, for Deng Wenping to get his compensation. During an inspection of the Huizhou Municipal Court, Huang ordered the judges to reconsider their verdict. On 13 July 2005, the Huizhou Court issued a civil mediation letter (2005) Min-Zi-Zai-Zi No. 28, which awarded Deng a lump-sum compensation of 230,000 yuan.<sup>37</sup> Six months later in January 2006, Deng succumbed to his illness and passed away in his home town in Sichuan.

However, a more recent CLB case shows that when victims of occupational disease act together, they can sometimes force the authorities to make rapid concessions.

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<sup>37</sup> Tian Xiangyue (田霜月), Gao Jing (高镜), and Xue Min (雪敏), “[省人大主任亲自督办讨赔偿，川籍民工获赔23万](#)” (Provincial People’s Congress Chair Personally Supervises Compensation Claim, Sichuan Migrant is Compensated 230,000 yuan), 南方都市报 (*Southern Metropolis Daily*), taken from南方网 (*Southern.com*).

## The case of the Leiyang migrant workers



**Some of the Leiyang workers gathered in their Shenzhen hotel, 31 July 2009**

In May 2009, a group of nearly 180 workers from Leiyang traveled to Shenzhen to track down their previous employers and demand occupational illness compensation. They had all been employed as pile-blasting and drilling workers in Shenzhen in the 1990s, establishing the foundations for dozens of the city's skyscrapers and other building projects, including the subway. The long hours spent in dangerous, poorly ventilated construction sites with little or no protection from the clouds of rock dust meant that they all eventually contracted pneumoconiosis. At least 15 of their colleagues had already died of the disease before the group undertook the trip back to Shenzhen.

Soon after arriving in the city, the workers went to the Shenzhen Hospital for the Prevention of Occupational Diseases (SHPOD) seeking an official diagnosis. However, without corroborating evidence from their employers, SHPOD refused to confirm that their illnesses were work-related. Frustrated by the hospital's intransigence, the workers staged a demonstration outside the Shenzhen municipal government on 15 June 2009.

In order to defuse the situation, the Shenzhen government agreed to talk to the workers. It provided daily allowances for medical examinations and sent medical staff to Hunan to examine workers who were not well enough or could not afford to travel to Shenzhen. The Leiyang government too sent officials to Shenzhen to meet the workers and to negotiate with the Shenzhen government.

However, because none of the workers had signed a contract with their employers or

subcontractors, by the end of July, the Shenzhen government could only verify that 17 of the workers had actually worked in the city. On 29 July, the government offered those workers whose employment relationship could not be confirmed a one-off “charitable” payment of 30,000 yuan each. Angered by this derisory offer, the workers staged another protest in front of the municipal government building. During this demonstration, some of the workers fell seriously ill. One, Xu Zezhi, subsequently died.

### **A meeting with Xu Zezhi**

In early August, a labour activist met Xu Zezhi and his colleagues at their hotel. Two weeks later Xu passed away. This is his account of that meeting:

I had gone upstairs to the third floor of the Yangma Hotel in Bantian and in the first room on the right, I saw him. I recognised him from his photograph in the *Hunan Morning Post*. He saw me coming and tried his best to stand up. His throat moved slightly, but he was unable to speak. He was skin and bone; a gust of wind could have blown him away.

I walked across the corridor and greeted the other workers. They all came out of their rooms to see me; all of them were thin and weak. Pneumoconiosis, this incurable disease, had laid low these proud men who used to earn their living from hard manual labour.

In a room at the end of the corridor, I sat and chatted with a few of their representatives. Xu Zezhi came too, supported by others, and sat next to me. I remember, on that very hot summer day, I held his hand tightly. He was different from the other workers who were all trying to get a word in; from the beginning to the end, he said nothing. It was not because he didn't wish to speak but to open his mouth and speak was an act of extreme physical hardship.

On 5 August, on the advice of CLB, the workers filed an administrative lawsuit against the Shenzhen Health Bureau, accusing it of having failed in its legal duty to enforce laws and regulations designed to protect workers' health. Therefore, the bureau was itself responsible for their occupational illness, the workers argued. This turned out to be the decisive moment in their struggle. In order to avoid getting sued, the Shenzhen government arranged for another employment confirmation exercise and proposed a better compensation plan for those who had not been able to confirm their employment relationship.

By the end of August, 28 workers had their employment relationships confirmed,

largely based on documents issued by the government (blasting work permits and social insurance cards, etc). Those workers with a confirmed relationship, whose employers had contributed to the work-related injury insurance scheme, would get compensation from the work-related injury insurance fund. For example, Xu Zhihui, who was assessed at a grade two disability, received 290,000 yuan in compensation. Workers whose employment status could not be confirmed were given significantly more than the original government offer: 70,000 yuan for workers with stage-one pneumoconiosis, 100,000 yuan for those with stage two, and 130,000 yuan for stage three. However, the offer for stage-two and stage-three victims was still less than what they would have been entitled to if they'd had a labour contract and their employer had contributed to the work-related injury insurance scheme. The majority of workers accepted the government's offer, however, and returned to Leiyang. The Shenzhen government paid the Leiyang workers an estimated 14 million yuan in all in compensation.

The collective action of the Leiyang workers and the extreme individual action of Zhang Haichao, mentioned above, both show that when local authorities are put under pressure, through demonstrations, media exposure or legal action, they can make a determined effort to resolve occupational illness disputes quickly and effectively. However, this is clearly not the best way to deal with such issues. All these actions only became necessary because of the failings of the current system. There is a clear and urgent need for wide-ranging reforms of the work-related injury and occupational disease compensation system, so as to make it easier for victims to initiate claims, make it more difficult for employers to dodge their responsibilities, and make officials more accountable to the public.

## Conclusions and Recommendations

On 3 March 2010, China's official *Legal Daily* newspaper announced that Zhang Haichao's dramatic and highly publicized open-chest surgery the previous year had brought public awareness of occupational disease in the country to a new level and had "hastened revision" of the *Law on the Prevention and Treatment of Occupational Diseases*. The process of revision was already underway, the *Legal Daily* said, and the revised law should be on the books by the end of 2010.<sup>38</sup> The *Work-Related Injury Insurance Regulations* are likewise currently being revised in response to concerns, about pneumoconiosis victims' rights in particular, raised during a public consultation period last year.

The fact that the government is now keenly aware of the country's occupational disease crisis, and is seeking to remedy the problem by revising existing laws, is a welcome step. However, as we have seen in this report, the deficiencies of China's laws and regulations related to occupational disease are only a small part of an extremely complex problem. Problems with the law, in particular legal and administrative procedures, need to be fixed as soon as possible. More importantly, however, these laws have to be enforced judiciously and fairly, employers must be made to honour their legal obligations and officials in charge of disease diagnosis, assessment and compensation must adopt a more humane and considerate approach to the thousands of pneumoconiosis victims who come before them each year.

This report has identified four key issues and failings in the current system of occupational disease compensation.

- **Failure to account for the realities faced by migrant workers.** The majority of migrant workers employed in high-dust-industries such as mining, quarrying and gem stone polishing are poorly educated and are unaware of the hazards of long-term dust inhalation. Moreover, employers do not inform employees of the dangers or provide them with protective clothing or equipment. Most workers do not have employment contracts, and many are forced out of work as soon as they begin to exhibit early stage symptoms of pneumoconiosis.
- **Failure to account for the long latent period of pneumoconiosis.** Most pneumoconiosis victims will have left their jobs for several years before the disease becomes seriously debilitating. However, regulations in Guangdong exclude workers who have left their employer for more than two years from obtaining an official diagnosis. Pneumoconiosis is an incurable chronic disease that requires lifelong medical treatment. Yet, there is currently no legal provision for continuing medical expenses to be included in compensation payments. As a result, many workers'

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<sup>38</sup> [“开胸验肺”催促职业病防治法修订 修订程序启动](#) (“Open chest operation” hastens revision of Law on Prevention and Treatment of Occupational Disease, revision already underway) 法制日报 (*Legal Daily*) 3 March 2010.



families are saddled with huge medical debts after their one-off compensation award runs out.

- **Employers can easily evade their legal obligations.** Unchallenged by an effective trade union or rigorous legal enforcement, employers have licence to exploit loopholes in the law or even blatantly flout the law in order to avoid paying their employees compensation for pneumoconiosis. Employers in the jewellery industry, in particular, use legally-mandated medical examinations to discover workers with early-stage pneumoconiosis and devise means to terminate their labour relationship. Some employers collude with or pay off government officials and medical practitioners responsible for disease diagnosis and assessment. Enterprises also change the company name, location or legal representative as a means of evading compensation payments.

- **Authorities are overly bureaucratic and unsympathetic to the victims of pneumoconiosis.** Many of the above failings could be resolved or neutralized if the authorities in charge of the occupational disease compensation system took a more proactive and sympathetic approach. Generally, however, their stance has made matters worse. They demand that workers show evidence of an employment relationship even when they know it is impossible for them to do so. They refuse to accept occupational disease diagnoses from hospitals outside their jurisdiction and all too often accept the boss' side of the story at face value. As a result, what should be a relatively straightforward compensation process of disease diagnosis, classification, labour capacity assessment and benefits calculation can, if the worker does not have proper documentation and the employer and the authorities refuse to cooperate, turn into a convoluted marathon of up to 22 steps including administrative reviews, labour dispute arbitration, and civil and administrative lawsuits. This process can last several years, even a decade or more, by which time the victim may have already passed away or have only a few months left to live.

Behind all of these problems are two fundamental issues: The lack of effective worker representation on the one hand, and the collusion between local government and business on the other. Workers have little or no power to demand that employers provide them with a safe working environment and with work-related injury insurance. Neither can they insist that local government officials enforce relevant labour and workplace health and safety legislation. Local governments and business, on the other hand, are concerned with little other than economic growth, the former because that is how their success and overall performance is measured, the latter, clearly because greater economic growth means greater profits.

In light of all these wide-ranging, complex, intertwined and systemic obstacles to redress for the victims of pneumoconiosis, China Labour Bulletin makes the following three sets of recommendations:

## **Occupational-disease compensation process**

**Laws related to occupational disease benefits should be clarified and simplified**, so that migrant workers can clearly understand the rights and the benefits they are entitled to. Moreover, **specific legal and administrative procedures for handling pneumoconiosis cases** need to be established. Alternatively, courts and government agencies should be given much greater flexibility or discretion in dealing with these cases. Specifically, it should be made easier for workers to verify their existing or previous employment relationship, apply for and receive the necessary documentation, use diagnoses from other jurisdictions and extend the time limit for classification of occupational injuries.

Pneumoconiosis victims should be allowed to file personal injury lawsuits seeking compensation from their employer directly in the courts, without first having to go through labour arbitration or the occupational disease classification process. Since pneumoconiosis is almost by definition an occupational disease, **courts should accept cases based purely on the fact that the plaintiff is suffering from the disease**. The court will then determine through its own procedures whether or not the current or former employer is liable to pay compensation. Furthermore, courts in both personal injury and labour dispute cases should always take continuing medical treatment costs into account when making their rulings, so that victims do not have to make additional claims in the future if their condition worsens or the original lump-sum award runs out.

Currently, the only way for migrant workers suffering from pneumoconiosis to get compensation is to travel back to the city or district where the disease was contracted and initiate proceedings there. For workers already weakened and impoverished by their illness, just getting on the bus or the train can be a step too far. Moreover, those who can make the trip are usually met with indifference, obfuscation or even outright hostility from their former employers and the local government. In order to obviate the need for such arduous, traumatic and all too often fruitless journeys, local governments in regions with large numbers of pneumoconiosis victims, such as Leiyang, for example, should **establish special committees** composed of officials from the health, occupational safety, human resources and social security departments and the judiciary, for liaising and negotiating with local governments in the employers' area on behalf of the victims. The committee should gather evidence from the workers and present a forceful case for compensation to the employers and local government in the employers' area. Meanwhile, the government should ensure that all victims living within its jurisdiction, who hitherto have been unable to secure compensation, receive the local minimum subsistence allowance as well as all necessary medical care at the government's expense.

Local governments in regions with concentrations of high-dust industries, on the other hand, should **impose a levy on enterprises** (based on their production value and or

the density of dust produced) and use that revenue to **establish a fund for the treatment and support of pneumoconiosis victims**. The fund should be kept in a dedicated bank account and administered by government officials in a manner similar to the wage arrears contingency funds established by many urban governments to help construction workers obtain unpaid wages. These funds should be distributed to pneumoconiosis victims who have difficulty proving their labour relationship or whose former employer has gone out of business or cannot be found. Crucially, the fund should be available to all pneumoconiosis victims who contracted their illness in local enterprises, regardless of whether or not they currently reside within the local government's administrative area.

## **Occupational disease prevention**

The above recommendations, while important, still only cover those workers who already have pneumoconiosis and those who will develop the disease in the future. The key challenge, of course, is to prevent as many workers as possible from contracting the disease in the first place.

The onus for occupational disease prevention in China currently falls on individual enterprises and local government departments. The workers, the one group with the greatest vested interest in a safe working environment, have virtually no say in the matter. Enterprises are required by law to provide workers with protective equipment and an overall safe working environment; they should constantly monitor and guard against workplace hazards, and keep detailed records of employees' health status. The reality, of course, is that most small- and medium-sized private enterprises and household workshops in China do not meet all of their legal obligations and many do not fulfill any of them. Moreover, there are many unlicensed businesses that are completely unsupervised and never inspected by local governments.

There is an urgent need therefore for **local governments to take a more proactive role** in enforcing China's occupational health and safety laws and ensuring that the rights and health of workers in small-scale and unlicensed enterprises in particular are properly protected. While making sure that well-established enterprises in their jurisdiction adhere to the provisions of the *Law on Prevention and Treatment of Occupational Diseases*, local governments should in addition actively seek out small-scale and unlicensed enterprises so as to directly implement and manage the employee health record system on their behalf. The first step would be to **establish a strict employment registration system for those workers at risk of exposure to high levels of dust**, requiring employers to submit basic information on relevant personnel and regularly report on personnel changes. The fact that the government was actively monitoring them would make employers more aware of their health and safety responsibilities. The records created could also serve in the future as evidence of an employment relationship

in pneumoconiosis cases, thus facilitating the compensation process.

At present, the government still lacks accurate statistics on China's most prevalent occupational disease. Official statistics are limited to cases diagnosed by government-sanctioned occupational disease centres, and ignore all those victims who cannot, for a variety of unacceptable reasons, get an official diagnosis. If the government is to effectively tackle the occupational disease epidemic, it needs to know precisely how serious the problem is. The central **government should conduct regular surveys on the prevalence of pneumoconiosis**, focusing primarily on migrant workers in small- and medium-sized private enterprises in high-dust industries. Ideally, these surveys should be carried out once every three to five years, with the costs shared by the government and employers. If, during these surveys, high concentrations of pneumoconiosis cases are detected, the local government should step in and take remedial measures to improve working conditions, for example by ordering the installation of dust-extraction facilities, the use of wet production methods to dampen down airborne dust, or by changing raw materials in order to reduce dust.

One of the key reasons for the high number pneumoconiosis cases in China today is migrant workers' lack of knowledge about the hazards of long-term dust inhalation. This is directly related to the failure of the government over the last two decades to disseminate information about the disease and about the rights of employees to a safe work environment. The government needs to make up for lost time and **initiate a comprehensive public education campaign** in all branches of the media, to ensure that workers in high-dust industries are not only fully aware of the risks of their jobs but also of their rights to redress should they be injured or fall ill at work.

### **Involve workers, trade unions and society in the prevention and compensation process**

All of the above measures will have limited impact, however, if workers continue to be excluded from workplace health and safety supervision and management. CLB has consistently advocated the establishment of **workers' health and safety committees** in mines, quarries, factories, construction sites and other high-dust environments. These committees should hold regular meetings with the management to discuss workplace safety and potential hazards, and develop remedies to those hazards. The committees, moreover, should be empowered to halt production when an acute danger is detected, resuming work only when the hazard has been averted.

The best way to set up and run these committees is through an enterprise trade union democratically elected by the workforce. Indeed, there is a clear need and an opportunity for China's sole legally mandated union, the **All-China Federation of Trade Unions (ACFTU)**, to actively organize unions in high-dust industries, and assist workers in establishing health and safety monitoring committees in single

enterprises and regional committees in areas with large numbers of small enterprises. When conditions permit, regional trade unions should encourage and guide enterprise unions in collective bargaining with the aim of establishing a **specific collective agreement on occupational health and safety** that would ensure all workers are properly protected and have work-related injury insurance.

Regional **unions should also provide legal and financial assistance to pneumoconiosis victims**, helping them claim compensation and providing food and lodging expenses for those who have to travel back to their employer's location to seek compensation. These activities would not only be of direct benefit to the workers, they would help raise the profile and improve the image of the ACFTU in the eyes of migrant workers.

Finally, given the extent of the problem, and the failure thus far of the government and the trade union to deal with it, there is an additional need to **allow non-governmental organizations and other social groups to become actively involved**. Such groups should be permitted and encouraged to: inspect working conditions at high-dust enterprises, and report any problems to the government; monitor the pneumoconiosis diagnosis and work-related injury classification process, take reports from workers, and make inquiries of the government; and represent pneumoconiosis victims in administrative proceedings, arbitration hearings and in the courts. Encouraging greater social participation will, in addition, help increase public awareness of the medical issues and legal problems surrounding occupational disease.

Pneumoconiosis is the number-one occupational disease in China, with an estimated one million or more current cases. Moreover, because of the nature of their employment and the nature of the disease, migrant workers with pneumoconiosis face greater difficulty than almost anyone else in obtaining legally mandated compensation. Frustrated by the system, by employers' attempts to evade their responsibilities and by the hindrance and obfuscation of government officials and the judiciary, many victims nowadays resort to extreme actions, staging personal and collective protests in order to put pressure on the government to resolve their grievances. Unless the government introduces widespread and systemic reform to improve workplace health and safety, make it simpler and less time consuming for pneumoconiosis victims to get compensation, and, crucially, involve workers and the trade union in the process, the problems will only get worse and the number of such protests by workers will increase.

## **CLB's recommendations at a glance**

### **Occupational-disease compensation process**

- Laws related to occupational disease benefits should be clarified and simplified.
- Establish specific procedures for handling pneumoconiosis cases or allow the courts and government agencies greater flexibility in dealing with these cases.
- Since pneumoconiosis is almost by definition an occupational disease, courts should accept cases purely on the fact that the plaintiff has the disease.
- Establish local government committees to negotiate with governments in the employers' area on behalf of pneumoconiosis victims.
- Impose a levy on high-dust enterprises and use that revenue to establish a fund for the treatment and support of pneumoconiosis victims.

### **Occupational disease prevention**

- Local governments need to take a more proactive role in enforcing China's occupational health and safety laws. Specifically, establish a strict employment registration system for those workers at risk from exposure to high levels of dust.
- The central government should conduct regular surveys on the prevalence of pneumoconiosis.
- Government should initiate a comprehensive public education campaign to ensure that workers are not only fully aware of the risks of their jobs but also of their rights to redress should they be injured or fall ill at work.

### **Involve workers, unions and society in prevention and compensation process**

- Establish workers' health and safety committees in high-dust industries.
- The All-China Federation of Trade Unions should become more active in organizing unions, monitoring legal compliance and in providing assistance to victims of occupational disease.
- Allow and encourage non-governmental organizations and other social groups to actively monitor occupational diseases and assist victims.

## Appendix

### 1. Legal case histories of the Lucky Jewellery workers

Of the six individual plaintiffs in these cases, only one, Wang Fuquan, has so far received anything like appropriate compensation.

**Chen Shisheng** and **Ran Qimei**, a husband and wife from Ruichang, in Jiangxi. Ran began working as a stone cutter at the Lucky Jewellery Factory in Shenzhen, in February of 1990. She met and later married Chen who was working as security guard at the time. Chen started working as a stone cutter at Lucky in 1997, while Ran left the company in 2002 for birth of their second child.



Ran began to feel ill in 2005. In January 2006, she was diagnosed by the Guangdong Centre with stage-two silicosis. She filed a claim with the Huicheng District LDAC asking for compensation totaling over one million yuan, including a one-time disability compensation payment, a disability allowance, annual medical checkup fees, and living expenses incurred while not working. Her claim was rejected by the LDAC and she filed a lawsuit with the Huicheng District Court in November 2007. In May of 2009, the court ruled that the company should pay just 20,000 yuan in compensation. Neither party accepted the ruling and the case was appealed to the Huizhou Municipal Intermediate Court. Decision is pending.

In January of 2008, Chen was diagnosed by the Guangdong Centre with an “increase in lung markings and disorder, and a small amount of shadow.” The same month, the factory forced him to resign and sign a “compensation agreement” giving him just 5,232 yuan. He later applied to the Haifeng County LDAC for the restoration of his labour relationship and payment of overtime. In April of 2008, the LDAC ruled the “compensation agreement” between the two parties was valid and rejected Chen’s claim. He filed a lawsuit with the Haifeng County Court. After his case was rejected, he filed an appeal with the Shanwei Municipal Intermediate Court in March of 2009. The judge in that case proposed a “mediation agreement” with the factory, which would give Chen a one-time compensation payment of 10,000 yuan. He rejected the offer.

**Liu Shigang**, also from Ruichang, began working as a stone cutter at the Lucky Jewellery Factory in Huicheng in March of 2002. In December of 2004, he moved with the factory to Haifeng county. He was forced to resign with three months’ wages in compensation after he was found to have a lung problem during a routine company medical examination in October 2007. He approached the Guangdong Centre, which

recommended he return for a follow-up exam in three months. In December 2007, he filed a claim in the Haifeng County LDAC for unpaid overtime and compensation. On 8 January 2008, the LDAC rejected his case on the grounds that “the employer has already paid economic compensation.” Liu then filed a lawsuit and lost both the first trial and the subsequent appeal. In September 2009, he sent a letter to the Ministry of Health describing how he had been unable to obtain a diagnosis for pneumoconiosis. The Ministry turned his letter over to the Guangdong provincial health office. In November, he received confirmation of his diagnosis of stage-one pneumoconiosis. At the time of writing, he was in the process of applying for classification of his work-related injury.

**Yang Renbin**, from Guang’an in Sichuan, began working as an engraver at the Lucky Jewellery Factory in Shenzhen in 1993. He was fired on 6 September 2005 for “inciting collective worker disturbances” and “inciting a strike”, just six months after the Guangdong Centre conducted medical tests at the factory, the results of which were withheld from the employees. On 8 September, he traveled to Sichuan University’s West China Hospital for Occupational Diseases and was diagnosed with stage-one silicosis. Lucky Jewellery then arranged for him to be examined at the Guangdong Centre on 16 October and the result was “no silicosis found.” Only when he was reexamined by the Guangdong Centre in July 2008, was he formally diagnosed with stage-one silicosis. Yang applied again to the Haifeng County Labour and Social Security Bureau for the classification of his work-related injury, but that was denied. On March 30, 2009, he filed an administrative lawsuit with the Haifeng County Court, asking for the decision of the Haifeng County Labour and Social Security Bureau to be overturned. He lost, and appealed to the Shanwei Municipal Intermediate Court.



**Wang Fuquan**, from near Dazhou in Sichuan, started working as a stone cutter at the Lucky Jewellery Factory in Shenzhen in November of 1995 and moved with the company to Haifeng county. In July 2005, he was diagnosed by the Guangdong Centre with stage-two silicosis. His work-related injury was classified by Haifeng County’s Labour and Social Security Bureau on 23 January 2006. The Shanwei Municipal Labour Capacity Assessment Committee assessed him at a grade four disability on 7 March 2006. Wang filed a complaint with the Haifeng County LDAC, demanding payment of expenses and continuing medical treatment costs. The case went through arbitration, first hearing and appeal, as well as a judicial review. In December 2007, the Shanwei Municipal Intermediate Court awarded Wang a total of 175,208 yuan including continuing medical expenses, to be paid by the company. Ultimately, Wang agreed to a private settlement, receiving 240,000 yuan in compensation from the company, on the condition that he abandon his claims for continuing medical treatment costs.





**Wang Fuquan**

**Xiong Gaolin**

**Xiong Gaolin** (above right), from Lezi county in Sichuan, began working as a stone cutter at the Lucky Jewellery Factory in Shenzhen in 1997. In July 2008, he was diagnosed by the Guangzhou No. 12 People’s Hospital with “pneumoconiosis (silicosis) not ruled out” and, in October, the Guangdong Centre diagnosed “suspected pneumoconiosis (silicosis)”. The Centre examined Xiong again in January 2009 and diagnosed stage-one-plus silicosis. He received a formal classification of his work-related injury in May. However Xiong did not apply for an assessment of his ability to work because the labour capacity assessment authorities had told him that once he began that process, he would not be able to request lung lavage treatment from the company.

## **2. A letter to the leaderships of the Shenzhen Municipal Party Committee and government from the Leiyang migrant workers**

June 20, 2009

Dear Sirs,

We are a group of migrant workers from the Daozi township of Leiyang city in Hunan. We worked for several years in underground pile-blasting works in Shenzhen. As a result of dust exposure in the pneumatic drilling stage of this work, we are now suffering in differing degrees from occupational pneumoconiosis. The impact of this disease has been severe. It has already caused the deaths of 15 of us, and 10 more are no longer able to work in any capacity. The remaining few dozen of us are less badly affected, but still cannot do heavy physical labour. We suffer constant pain, impairing our ability to do household chores. We have grown increasingly indebted and our

lives have become very hard.

However, in all this time, neither our employers nor any public authority have provided us any medical or work-related illness compensation.

We have expended our bodily strength and in some cases sacrificed our lives at the construction sites of the [Shenzhen] Special Economic Zone. Amid the current campaign to consolidate the rule of law and prioritize the individual in society, we earnestly hope the government will help us obtain the compensation due to us.

Dozens of us moved to Shenzhen from 1992 onwards, when the first big projects got underway, until the present, to work as pneumatic drillers in underground pile-blasting. Companies we have worked for as construction team members include Hongkun (formerly Sanlian) blasting company, Huaxi blasting company, Heli blasting company, Zhongren construction group company, Haofengda Blasting Engineering Co. Ltd., and Longcheng blasting company. As underground blasting operatives, we participated in many landmark projects, including Diwang Building, SEG Plaza skyscraper, Panglin Plaza, AVIC Plaza, Shenzhen Civic Centre, Shenzhen Convention and Exhibition Centre and the Shenzhen Metro Line No. 1.

At the time, we were mainly attracted to this work by the relatively high wages and low skill requirements. The blasting companies that took us on failed to clearly explain the grave health risks of pile-blasting. Over the years, dozens of us poorly educated, ill-informed farmers set off in groups to work at the blasting sites of Shenzhen after word-of-mouth introductions from other villagers.

According to incomplete statistics, most pile-blasting in Shenzhen since 1992 has been done by contract labourers brought in from the countryside. We would like to emphasize that as pneumatic drill operatives, we have made a considerable contribution to the rapid development of Shenzhen. For some of us, it was at the cost of our lives.

Poor ventilation at these underground drilling sites combined with high dust density leads to high levels of dust inhalation. The long working hours make contraction of pneumoconiosis a near-certainty in this work. Without immediate rest and treatment after a diagnosis, the disease relentlessly worsens. When the final stage is reached, treatment is basically no longer possible. In the end, you just choke to death.

National laws and regulations require that employers install protective equipment and provide underground workers with protective gear. They must also conduct safety training for workers and buy work-related injury insurance for them.

However, during the early years of this drilling work, our employers were only interested in profits and took no notice of laws and regulations. They failed to arrange insurance or organise safety training, and made us work in appalling conditions. Even the most basic dust masks had to be completely worn out before being replaced. In addition, our knowledge of the legal requirements was inadequate and we did not know how to protect ourselves. We had no idea what severe risks we were exposing ourselves to.

In 1999, those of us with long histories in underground drilling work began to show symptoms of illness. We did the rounds of local hospitals and clinics, large and small – Hunan Xiangya Hospital, PLA 169 Hospital in Hengyang, Leiyang Municipal People's Hospital, Leiyang Chinese Medicine Hospital, Leiyang Municipal Occupational Disease Prevention and Treatment Centre – but were told our condition was untreatable.

The first of a string of fatalities occurred then. To date, the following members of our group have died: Xu Liuyi, Xu Wucong, He Zhuancheng, He Xiangbao, Xu Baichun, Xu Longgu, Xu Xinchun, Xu Fucheng, Xu Yilong, Li Cheng, Chen Changlong, Huang Dingguo, Tan Binghe, Tan Manhe and Xu Xiaowu. These men were all in the prime of their lives and the pillars of their households.

For example, two brothers, Xu Liuyi and Xu Wucong, had their 80-year-old mother and young children to support. Now things are very difficult for their household.

He Zhuancheng died in 2004. His youngest son was less than six months old then. Now the children are in the care of their grandfather in his 60s. When He Xiangbao, undergoing treatment at PLA 169 Hospital, learnt his illness was incurable, he told doctors to stop, went home and took poison.

After the three brothers Xu Xinchun, Xu Baichun and Xu Xiaowu died, there was only one brother left, Xu Chunlin. When he too contracted the disease, nobody was left to look after their aged mother.

More than 30 people forming 11 groups from Shuangxi village in Daozi went to Shenzhen to operate pneumatic drills. In addition to ten fatalities already, Xu Ruinai, Xu Shuzhong, Xu Ruibao, Xu Zhihui, Xu Zuoqing, Xu Zuobin, He Jiguo, He Xincheng and others have lost the ability to work. The others are all undergoing treatment. These losses have taken a toll on the village economy too. Due to the manpower shortage, large areas of agricultural land are lying waste.

China today is committed to building a harmonious society that puts people first. The rule of law is becoming more and more firmly established. In recent years in

particular, there has been steady progress toward a full set of labour legislation. Laws and regulations relating to occupational diseases include the *Law on Prevention and Treatment of Occupational Diseases*, the *Work-related Injury Insurance Regulations*, the *Safe Production Law* and the *Labour Law*.

These measures were all promulgated and came into force after 1992, and mostly do not have retroactive effect. But the *Work-related Injury Insurance Regulations* do contain retroactive provisions. We workers who contracted pneumoconiosis from underground drilling work demand full entitlement to occupational illness and injury insurance and medical treatment as provided by State regulations.

Based on the *Work-related Injury Insurance Regulations*, we would like to present the following demands in particular. We earnestly hope the competent authorities will assist us in realizing them.

(1) In accordance with the *Work-related Injury Insurance Regulations*, we demand official recognition that our illnesses are work-related.

(2) Based on the official standards for confirmation of ability to work, we demand health examinations under said standards and payment of corresponding disability allowances.

(3) We demand treatment for our work-related conditions, based on the relevant regulations.

(4) In accordance with regulations on death grants, we demand payment of victims' funeral subsidies, pensions and lump-sum payments of work-related death subsidies for dependants.

### **3. Translated transcript of video interview with Zhang Haichao**

During the 2010 National People's Congress, the official media interviewed eight ordinary people who had made the headlines over the previous year. Zhang Haichao was one of the eight. [Click here](http://news.qq.com/zt/2010/Chinese/zhc.htm) to view the video or paste the following link into your browser <http://news.qq.com/zt/2010/Chinese/zhc.htm>.

#### **The Final Six Years**

##### The Future of Migrant Worker Zhang Haichao

He is 29 years old this year. But because he has contracted pneumoconiosis, he only has about six more years to live.

Video clip:

Zhang: This illness, pneumoconiosis, is very serious. It is an acute disease that usually takes six or seven years from its onset until the end of life. So, now I hope I can live until the age of 35. This is what is generally agreed upon by the experts.

Text:

There is someone from our village who got pneumoconiosis, and he was okay in the first year, but died the next year. In my situation now, I would be content to live to the age of 35. It's not that I'm pessimistic, but this is the reality.

—Zhang Haichao

#### **Memories**

Photo montage:

Voiceover: At the age of 28, Zhang Haichao, who worked in hazardous occupations for more than three years, including the operation of stone crushing and pressing machines, suspected that he'd contracted pneumoconiosis at work. He spent a year going back and forth to numerous hospitals in Zhengzhou and Beijing to seek verification, strongly contesting the diagnosis given by the Zhengzhou Centre for Occupational Disease Treatment and Prevention, the legally-mandated occupational disease authority in Zhengzhou. With nowhere else to turn, Zhang Haichao ignored his doctors' attempts to dissuade him and requested a thoracotomy (open-chest surgery) to examine his lungs, which proved that he had indeed contracted pneumoconiosis. When Zhang's surgery was reported by the media, the Henan Provincial Party Committee and the provincial government both took careful note.

Video clip:

Zhang: After I went to the Zhengzhou Occupational Disease Centre, I was very angry, very dissatisfied with the diagnosis they gave me, because I had given them a lot of medical evidence provided by grade-three, class-A hospitals. This evidence had already ruled out the possibility of tuberculosis for me. Even the examination they gave me in their own hospital did not show the symptoms of tuberculosis. But their diagnosis was that it was merely tuberculosis. I was very unhappy with this diagnosis.

So, I underwent this (thoracotomy) operation. There were only two possible results. The first was that this was indeed occupational pneumoconiosis. If so, there was some hope for my future medical treatment and the protection of my legal rights. The second possibility was that it was not occupational pneumoconiosis. If not, that would be much better. I would be able to get effective treatment and there would even be the possibility of a cure.

I could accept either result, so I made this choice. I didn't hesitate at all. It's not that I was brave or had to drum up so much courage to make this decision. After the doctor explained it to me I didn't hesitate. I said, let's do it!

## **Changes**

Text:

Zhang Haichao's surgery has changed the entire occupational disease assessment process in Henan province, but...

Video clip:

Zhang: Here in Henan, an occupational disease centre can now (make an assessment) without documentation. If the employer does not recognize the labour relationship, or you can't provide documentation for another reason, you can have three co-workers sign their names for you and go to get an occupational disease diagnosis. But even when you've got this diagnosis, it is very difficult to go forward. It takes a very long time.

## **Responsibilities**

Text:

Zhang Haichao has turned from someone defending his own rights and interests into a

spokesman for the rights of migrant workers across China. He has been interviewed by the media more than 100 times to date. He has also assisted migrant workers over the Internet, by telephone and by writing letters. He answers on average two letters a day from migrant workers.

Video clip:

Zhang: I have bought a lot of legal books about the *Law on Prevention and Treatment of Occupational Diseases*, especially about compensation for occupational injuries. I've read a lot about it. I basically understand the issues, including the procedures. Anyway, how do I say it, I'm doing the best I can to provide them with some assistance.

### **The Future**

Video clip:

Zhang: Sometimes I feel like my current expectation to live to age 35 is very high. I worry about my family. After all, my parents raised me this far, and now I won't be able to take care of them in their old age and fulfill my duty to them as a son. I'm also rather worried because I have a child, who is only a little over three years old now.

### **A Message to the National People's Congress and Chinese People's Political Consultative Conference**

Video clip:

Zhang: When migrant workers get this disease, the effects are very serious. How do I say it? Now, our country does not track the numbers very thoroughly, but there are more than 600,000 victims of pneumoconiosis. Along with each victim, there is a family that may be on the brink of disintegration. I hope for a good system that can resolve the problems of migrant workers with occupational disease, especially in getting compensation and medical treatment.

Text:

In the New Year, I will join the Chinese Coal Workers' Pneumoconiosis Treatment Foundation, helping those migrant workers who are alone and without help. I may not have much strength left, but I will work as hard as I possibly can to do it.

—Zhang Haichao