

# DEADLY DUST

**The Silicosis Epidemic among Guangdong Jewellery Workers and the Defects of China's Occupational Illnesses Prevention and Compensation System**

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**China Labour Bulletin**

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and Compensation System

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# Contents

I. Introduction.....	2
The Silicosis Epidemic in Guangdong Province .....	3
Procedures for Seeking Compensation for Occupational Disability .....	6
Corporate Profits Put before Workers' Health .....	8
II. Occupational Silicosis in Guangdong: Seven Collective Cases.....	8
1. Lucky Gems and Jewellery Factory .....	9
2. Perfect Gem & Pearl Manufacturing Company .....	12
3. Art's King Gems Arts.....	14
4. Gaoyi Gems Company Ltd.....	15
5. Yee On Yantian Gems and Jewellery Factory, and Taiyang Songyuan Gems and Ornaments Company .....	17
6. Eryou Jewellery Materials Company .....	19
7. Hao Xin Precious Metals Jewellery Factory .....	22
III. Analysis of the Main Obstacles to Compensation .....	23
Jewellery Factory Owners: Showing Contempt for Workers' Rights.....	23
Inadequate Legal Safeguards for Occupational Illness Victims.....	25
Main Defects of the Administrative and Judicial Compensation Process.....	29
Local Governments: Neglecting the Health Rights of Workers.....	34
The Official Trade Union: Failing to Defend Workers' Interests .....	36
IV. Conclusions and Recommendations .....	37
General Recommendations.....	39
Reform of the Compensation Claims System .....	39
Recommendations to the ACFTU .....	40
Appendices	
1. Interview with Tang Manzhen, Wife of a Silicosis Victim.....	41
2. CLB's Case Intervention Work on Behalf of Silicosis Victims in Guangdong.....	43

## I. INTRODUCTION

In certain places in the world, an age-old scenario is being repeated. In the 16<sup>th</sup> century Agricola wrote of mines in the Carpathian mountains in Europe: “Women are found to have married seven husbands, all of whom this terrible consumption (silico-tuberculosis) has carried off to a premature death”. Only a few years ago certain villages in Northern Thailand were called “villages of widows” because of the large number of pestle-and-mortar-making workers who died early from silicosis.

— World Health Organization, May 2000<sup>1</sup>

This report, based on several collective cases in which China Labour Bulletin has been directly involved, describes and analyzes the wide range of difficulties that workers in one industry in China, the jewellery processing industry, encounter when trying to obtain compensation for workplace contracted silicosis.<sup>2</sup> According to the Chinese government, pneumoconiosis – of which silicosis and the “black-lung disease” that afflicts coal miners are the two most common forms – is the single most prevalent occupational illness in China today, accounting for as much as 80 percent of all such cases.<sup>3</sup> According to the Ministry of Health, there have been more than 580,000 cases of pneumoconiosis in China since the 1950s, and some 140,000 workers are said to have died of the disease; the current number of sufferers is reportedly 440,000. As the same official source notes, however, owing to the widespread lack of health check-ups among Chinese workers, “Experts estimate that the actual number of cases is around ten times higher.”<sup>4</sup> Moreover, “A further 10,000 or so new cases are currently emerging each year.”<sup>5</sup> And according to the World Health Organization (WHO), even ten years ago the annual death toll from silicosis in China was over 24,000.<sup>6</sup> All the signs indicate that, as a side effect of the country’s rapid economic development, the scale of the occupational silicosis epidemic in China is getting worse each year.

This report describes the widespread failure of local governmental and judicial authorities in Guangdong Province to apply and enforce existing labour protection laws and regulations, specifically those providing for access to compensation for occupational illness and injury. The available evidence suggests that the denial of compensatory justice to workers who contract silicosis and related occupational illnesses is often a result of collusion between business interests, local government, hospitals and the courts, which have a shared interest in downplaying the seriousness

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<sup>1</sup> WHO, *Fact Sheet No. 238: Silicosis*, Geneva, May 2000.

<sup>2</sup> The present report is an edited translation of a Chinese-language report published by China Labour Bulletin in August 2005, titled: *Beican de Jingdi Yu Weidao de Jiuji (Tragic Plight – Compensation Delayed)*; available at: <http://big5.china-labour.org.hk>.

<sup>3</sup> The Chinese word for pneumoconiosis is *chenfeibing*; and for silicosis, *xifeibing*.

<sup>4</sup> Press Office of the Ministry of Health, “10<sup>th</sup> International Conference on Occupational Respiratory Diseases (ICORD) Opens in Beijing Today,” 19 April 2005; available at [www.moh.gov.cn/](http://www.moh.gov.cn/).

<sup>5</sup> “Speech by Deputy Minister of Health, Jiang Zuojun, at the National Video and Telephone Conference on the Treatment and Prevention of Occupational Illnesses,” 16 March 2005; available at: [http://www.moh.gov.cn/public/open.aspx?n\\_id=9496](http://www.moh.gov.cn/public/open.aspx?n_id=9496).

<sup>6</sup> According to the WHO, “During the period 1991 to 1995, China recorded more than 500,000 cases of silicosis, with around 6,000 new cases and more than 24,000 deaths occurring each year mostly among older workers.” (See footnote 1.)

of the occupational health and safety situation in the province's jewellery-processing industry.

In addition, we provide a rough guide to the long and complex maze of administrative and judicial procedures that workers who contract workplace-related illnesses such as silicosis are required to navigate in their search for decent compensation from employers. At each stage of the process, the workers concerned are likely to face deliberate stonewalling and obfuscation from their employers; rejection of their compensation claims by administrative tribunals and court bodies on the flimsiest of procedural grounds; and sometimes even inaccurate or phoney diagnosis of their condition by the medical authorities responsible for certifying occupational illnesses.

The report also notes the dismal failure of China's sole legally permitted trade union body, the All-China Federation of Trades Unions (ACFTU), to play a constructive role either in combating the current epidemic of workplace-related silicosis among private-sector jewellery processing workers in southern China, or in supporting the efforts of workers who contract this deadly disease in seeking compensation from their employers through the official claims system.

Finally the report highlights the culpable failure of the jewellery processing companies involved in the seven cases detailed below – five of which are Hong Kong-owned – to provide even the minimum legally-required level of workplace health and safety equipment and procedures in their mainland China factories. In most cases, the local authorities have permitted them to continue flouting the country's work safety laws and regulations with impunity.

### **The Silicosis Epidemic in Guangdong Province**

Certain kinds of working environments produce harmful levels of silicon dioxide (SiO<sub>2</sub>) in the form of airborne crystalline silica dust, a workplace toxin that, if absorbed into the lungs over a protracted period of time, can easily lead to silicosis. A chronic and incurable lung disease, silicosis generally takes about eight years to develop before any symptoms appear. According to a mainland news report on the disease, "At present, there is no effective cure for silicosis anywhere in the world, and the illness often proves fatal. Those who contract silicosis are in effect placed under a 'suspended death sentence'."<sup>7</sup>

People working daily in any type of job where silica dust is produced, such as mining, tunnelling, stonework, foundry work, sand blasting, grass weaving, and the manufacture of glass, ceramics and fibreglass materials, are all at risk of developing silicosis unless appropriate occupational health and safety regimes are put in place and rigorously observed. The genesis of the illness is through the inhalation of free, respirable silica dust containing tiny particles of crystalline silica or other types of quartz, including cristobalite or tridymite, which are long and narrow in shape and therefore lodge in the lungs and cannot be expelled. These particles gradually sink into the lower half of the lungs, progressively debilitating the lungs' capacity to perform normally.

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<sup>7</sup> Tian Yanhong, "Dust from Stone-cutting Engenders Stubborn Illness – Guangdong's Jewellery-processing Industry under the Dark Shadow of Silicosis," *Zhongguo Jingying Bao* (China Business News), 29 August 2004.

Silicosis results in such chronic medical conditions as pulmonary tuberculosis, lung fibrosis and emphysema. The precise form and severity of the illness – acute, accelerated or chronic – depends upon the extent and duration of a worker’s exposure to airborne silica dust. In its later and more advanced stages, the condition becomes severely disabling. The mortality rate among silicosis sufferers is high, since the disease progresses long after exposure to the harmful dust has ceased. Many Chinese workers avoid seeking treatment when they begin to develop symptoms of the disease, however, because the medical costs are so high – as much as 5,000 to 10,000 yuan per month<sup>8</sup> – and so their conditions soon become even more intractable.

In April 2005, Huang Fei, deputy director of the Guangdong Health Department, informed a meeting of provincial health officials that a new spectrum of occupational illnesses has become steadily more prevalent among local workers over the past 10 years of the province’s rapid economic growth. According to Huang, these diseases will soon enter an epidemiological peak period, posing a major health threat to a wide range of workers in Guangdong and creating a major drain on the province’s resources. Over the past three years, silicosis has become especially prominent because of the dust-producing nature of many of the province’s manufacturing processes.<sup>9</sup> The sharp increase in the number of silicosis cases in Guangdong is said to be directly linked to the rapid growth of the local jewellery-processing industry. Indeed, according to another official source, as many as one third of the province’s silicosis cases originate from within this one industry.<sup>10</sup>

Yu Chaojun [from Eryou Jewellery] told us, “There were three windows in our workshop, but only one of them could be opened. The other two had been welded shut with iron strips along the outside. There was zero ventilation inside the workshop and the temperature was at least 40 degrees Centigrade. Dust and powder used to fly around everywhere, creating a dense fog. Although there were six electric fans hanging from the workshop roof, they were all clogged up with several centimetres of dust.

When you were grinding the gemstones, the water and the dust got separated, with the water draining away and the dust flying upwards; but the dust used to form a thick, damp fog all around you. Gemstone dust is even finer than flour – a mixture of ground glass and assorted powder. It was only after I fell ill with silicosis that I learned that the dust consists of extremely hard silicon dioxide.

– “Gems Plant ‘Creates’ 36 Silicosis Victims,” *Guangzhou Daily*, 24 August 2005

A two-year medical survey completed in 2004 examined the working environment at 800 different test sites within 152 jewellery-processing factories in the Shenzhen, Huizhou, Shanwei and Dongguan areas. According to the survey’s findings, the dust levels at 56 percent of these test sites exceeded the maximum legal limit, in some cases by as much as eight times. Of the 4,591 workers who took part in the survey, 137 were found to have developed silicosis. Moreover, the survey investigators were

<sup>8</sup> Ibid. Prior to China’s recent revaluation of the RMB Yuan, US\$ 1 equalled approximately 8.3 yuan. The current exchange rate is around 8.09.

<sup>9</sup> “Eleven New Kinds of Occupational Illness Discovered in Guangdong Over the Past Ten Years – Pneumoconiosis Especially Widespread,” *Yangcheng Wanbao* (Yangcheng Evening News), 12 April 2005. Huang Fei added that the cumulative total of silicosis-afflicted workers in the province was 15,000, of whom more than 5,000 had already died. However, he gave no indication of what period these figures referred to, or of what categories of patients they included. For example, the figures probably do not include workers whose “household residence” (*hukou*) was based outside of Guangdong Province – i.e. the great majority of the province’s silicosis victims.

<sup>10</sup> Tian Yanhong, op cit.

later informed by workers that the real situation was probably much worse than these numbers suggested: factory managers had cleaned up the production facilities prior to the survey, and most of those selected for medical examination had been healthy, recently-hired workers. In a sign of how severe the dust levels at many Guangdong jewellery-processing factories have become, the survey also found that although the normal incubation period for silicosis is around eight years, many of the sick workers identified had contracted the illness after only one or two years of working in the industry.<sup>11</sup> The wider scale of the silicosis epidemic in China can be gauged from the case of Zhong County in Sichuan, which supplies large numbers of rural migrant workers to work in the tatami weaving industry in Ningbo, Zhejiang. According to a local NGO that assists occupational injury and illness victims, there are currently an estimated two to three thousand silicosis sufferers in this one county alone.

#### WHO AND ILO DATA ON SILICOSIS WORLDWIDE

- During the period 1991 to 1995, China recorded more than 500,000 cases of silicosis, with around 6,000 new cases and more than 24 000 deaths occurring each year mostly among older workers...
- In India, a prevalence of 55 percent was found in one group of workers, many of them very young, engaged in the quarrying of shale sedimentary rock and subsequent work in small, poorly ventilated sheds. Studies on silicotic pencil workers in Central India demonstrated high mortality rates; the mean age at death was 35 years and the mean duration of the exposure was 12 years.
- In Brazil, in the state of Minas Gerais alone more than 4,500 workers have been diagnosed with silicosis. In drought-affected regions in the north-east of the country the hand-digging of wells through layers of rock with very high quartz content (97 percent), an activity that generates great quantities of dust in confined spaces, resulted in a prevalence of 26 percent of silicosis, with many cases of accelerated forms. The state of Rio de Janeiro banned sandblasting after a quarter of shipyard workers were found to have silicosis.
- In the USA, it is estimated that more than one million workers are occupationally exposed to free crystalline silica dusts (more than 100,000 of these workers are sandblasters), of whom some 59,000 will eventually develop silicosis. It is reported that each year in the USA about 300 people die from it, but the true number is not known.

Diagnosis and health surveillance are essential components of any programme aiming at eliminating silicosis... However, surveillance should be considered as a complement to control strategies and never as a replacement for primary prevention.

The ILO/WHO International Programme on the Global Elimination of Silicosis, launched in 1995, aims at the global reduction and eventual elimination of silicosis. It includes:

- the formulation of national, regional and global action plans;
- mobilization of resources for the application of primary and secondary prevention;
- epidemiological surveillance;
- monitoring and evaluation of results; and
- the strengthening of the required national capabilities and the establishment of national programmes.

(WHO, *Fact Sheet No. 238: Silicosis*, Geneva, May 2000.)

<sup>11</sup> The survey was conducted by Dr. Zhang Donghui; for further details of the survey, see article by Tian Yanhong, op cit.

## Procedures for Seeking Compensation for Occupational Disability

In recent years, China's government and legislature have passed a number of core laws and regulations in the area of occupational health and safety. The most important of these are the *Law of the PRC on the Prevention of Occupational Diseases*, which came into force in May 2002, and the *Law of the PRC on Work Safety*, effective as of November that year. In addition, in December 1987 the State Council passed a set of administrative rules specifically addressing the problem of occupational silicosis and associated illnesses, the *Regulations of the PRC on the Prevention and Treatment of Pneumoconiosis*. Numerous other industry-specific health and safety regulations, for example for the coalmining industry, have also been passed in recent years. Taken together, these documents provide a fairly comprehensive set of legal safeguards for those working in high-risk industries in China. In practice, however, these laws and regulations are widely ignored, especially within the private sector, and government efforts in the areas of monitoring and enforcement are extremely weak. Secondly, the government has also passed, in recent years, a series of administrative regulations specifying the methods and procedure for authenticating occupational illnesses and injuries, and how to apply for compensation. The most important of these are the *Administration Methods for the Diagnosis and Authentication of Occupational Diseases* (May 2002); the *Methods for Authentication of Work-related Injury or Disability* (January 2004); and the *Regulations on Work-Related Injury and Disability Insurance* (January 2004.)

In cases where no dispute over the facts arises between employer and worker, the procedure for claiming compensation for workplace-related illnesses or injuries in China is briefly as follows.<sup>12</sup> After receiving an initial diagnosis from a general physician, the affected worker must then obtain a second diagnosis (*quezhen*), in the form of a certificate from an officially accredited hospital or clinic specializing in occupational illnesses and injuries, confirming that the illness or injury is in fact work-related.<sup>13</sup> Within one year of obtaining this certification, the affected worker or a close family relative must then go to the Labour and Social Security Bureau in the area where his or her employing company or factory is located and submit an application form for official certification of a work-related injury or disability (*gongshang rending*.) Once this has been obtained, the next step is to apply to the local Labour Capacity Authentication Committee for a determination of the precise level of occupational disability and reduced working capacity.<sup>14</sup> Once this process has

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<sup>12</sup> See: *Administration Methods for the Diagnosis and Authentication of Occupational Illnesses (Zhiyebing Zhenduan Yu Jianding Guanli Banfa)*, issued the Ministry of Health, 11 April 2002, and effective 1 May 2002.

<sup>13</sup> According to the relevant regulations (see preceding footnote), only hospitals or clinics accredited for this purpose by the Provincial Department of Health are authorized to certify occupational diseases. Strictly speaking, the sick worker does not have to go to a general physician first; he or she can go directly to an accredited occupational diseases clinic or hospital to be diagnosed. But in practice, most workers consult a general physician first.

<sup>14</sup> Under China's occupational injury and disease classification system, silicosis victims are assigned an illness severity rating based on an evaluation scale of 2 to 7, with 7 signifying full working ability and 2 a complete loss of working ability. A high score results in a determination of first-degree silicosis; at this stage, the respiratory system has been damaged, but with appropriate treatment the patient can still lead a semi-normal life. A medium score indicates second-degree silicosis; the patient's respiratory system has suffered serious damage and loss of function. A low score denotes third-degree silicosis; the patient will be heavily reliant on specialist medical treatment and be wholly unable to lead an independent life. (See: *Appraisal of Degree of Disability Arising from Work-related Injuries and*

been completed, the affected worker or an immediate family member can then apply to the local Labour and Social Security Bureau to receive work-related injury or disability insurance benefits (*gongshang baoxian daiyu*.)

Disputes with employers or government departments can, and often do, arise at any given stage of this process. When the dispute is with the government, the worker either can apply for an administrative review (*xingzheng fuyi*) of the official act or decision in question, or can sue the government via an administrative lawsuit. When the dispute is with the employer, the worker can seek resolution either through the local Labour Dispute Arbitration Committee (LDAC: an administrative body whose rulings are non-binding in nature) or by means of a civil lawsuit in the local courts.

Since May 2004, however, if defined by the authorities as being a labour dispute (*laodong zhengyi*), the case must first be heard by an LDAC before either party to the dispute can proceed to civil litigation.

A major defect of the system is that workers can only apply for resolution of the labour dispute on an individual basis. As yet, in China, collective labour dispute cases cannot be heard either by LDACs or by the courts – even though all the workers involved in the dispute are from the same factory and have the same kind of jobs, and even though they are all raising the same or similar demands (for example, for compensation for work-related silicosis.)

The above procedure, moreover, is an ideal one that assumes that the affected worker's employer had been paying regularly, as required by law, into their employees' work-related injury and disability insurance accounts during the period of employment. In practice, especially in the Guangdong private manufacturing sector, this is frequently not the case. Companies delinquent in this regard are technically obliged to pay the equivalent of the official insurance benefits out of their own funds to workers who contract occupational illnesses. In practice, though, sick workers usually encounter major obstacles and difficulties in getting their employers to obey this rule. First, companies often try to deny that they ever actually employed the affected workers, or else they deny that the occupational illnesses were caused by poor working conditions in their factories. Moreover, the employer's non-payment of labour insurance premiums is often accompanied by a failure to keep any actual employment records. In such cases, the affected workers are unable to obtain the proof of employment required by the government bodies responsible for authenticating and certifying occupational illnesses. Moreover, even when the requisite employment records do exist, many employers simply refuse to provide the workers with copies of these documents.

Whenever these various complications arise, the affected worker's quest for compensation will develop from being a purely administrative procedure into being a labour dispute (*laodong zhengyi*). As noted above, in such cases the worker concerned must first approach the LDAC in the area where the employing company is located and apply for an arbitration ruling on his or her claim to be made. If dissatisfied with the arbitration ruling, the worker may then file a lawsuit against the employing company in a local court and seek a judicial ruling on the matter. As a final recourse,

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*Illnesses [Zhiye Gongshang Yu Zhiye Bing Zhican Chengdu Jianding]*, Ministry of Health, Ministry of Labour and Social Security, and ACFTU, 1996.)

an appeal against an unfavourable ruling can then be lodged in a higher court. As the case studies below demonstrate, however, the overly complex administrative and judicial procedures that must be navigated amount to a virtually insuperable obstacle course for many occupational illness victims.

### **Corporate Profits Put before Workers' Health**

According to an industry publication, well over 2,000 factories in Guangdong Province currently produce jewellery items for export, accounting for more than 50 percent of the total gold, silver and gemstone jewellery produced in China. The province has become the largest jewellery and gemstone producing area in the country. According to the Guangdong customs service, during the first six months of 2005, the province's jewellery manufacturers exported a total of US\$1.32 billion worth of goods (including precious metals items, semi-precious stones and costume jewellery.) This was 22.9 percent more than during the same period of the previous year and accounted for 54.1 percent of the nation's total jewellery exports.<sup>15</sup>

In view of the highly developed nature of the Guangdong-based jewellery-processing industry and the widespread extent of the current silicosis epidemic amongst its workforce, the neglect of the basic health needs of workers detailed in this report is both unconscionable and inexcusable. It constitutes a gross example of the kind of bad corporate citizenship and lax government oversight that has become all too common within private-sector manufacturing in China since the start of the country's economic reform programme some 25 years ago. Especially since the wholesale adoption of the "socialist market economy" in 1992, such neglect of workers' rights has even formed an integral part of the government's low-cost labour model of national economic development. The net result might best be described as: "privatization without a human face."

It should be noted that the present report is essentially a work in progress: many of the individual compensation claim cases described below remained unresolved at the time of writing. The fact that several of these silicosis-related claims cases have been dragging on for years without resolution, however, is itself an indication of the overall severity of the problem.

## **II. OCCUPATIONAL SILICOSIS IN GUANGDONG: SEVEN COLLECTIVE CASES**

During 2004-05, China Labour Bulletin monitored the cases of around one hundred workers in seven Guangdong jewellery-processing factories who had contracted silicosis and were seeking compensation from their former employers. After adopting four of these cases as CLB Case Interventions,<sup>16</sup> we began assisting some of the

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<sup>15</sup> "Guangdong's Gem Exports Tower over Competitors," *International Commercial Journal (Guoji Shang Bao)*, 29 July 2005.

<sup>16</sup> For details of this programme, see CLB's website: [www.clb.org.hk](http://www.clb.org.hk) ("Case Intervention Programme"). When CLB adopts a labour rights case under the Case Intervention programme, it becomes an active player within the case, as distinct from merely monitoring and reporting on it. CLB provides the workers concerned with direct advice and assistance, often by finding local lawyers to represent them in court actions against employers and local government authorities. In cases where worker activists have been detained and prosecuted by the police, we find lawyers to help them mount an effective defence against the charges. Over the past three years, CLB has intervened in situations

silicosis-afflicted workers by providing them with legal advice and finding mainland lawyers to represent them in their compensation claims, either via negotiations with their former employers or through administrative and judicial proceedings, and by providing them with the requisite moral and financial support.

In carrying out this collective case work, CLB cooperated with other Hong Kong-based labour rights groups in liaising with silicosis-afflicted workers and compiling individual case information; published a series of news reports and press releases to draw international attention both to the victims' plight and to the wider silicosis epidemic in Guangdong; brought several of the affected workers and their family members to Hong Kong to stage protests at jewellery company headquarters and at local jewellery trade fairs, and to seek negotiations with company representatives and be interviewed by the press; and launched an international online campaign on the CLB website calling on the Chinese authorities to take firm and effective measures against the silicosis epidemic in Guangdong.<sup>17</sup>

The following provides a brief overview of the seven cases involved.<sup>18</sup>

- **Case 1: Lucky Gems and Jewellery Factory**

Lucky Gems and Jewellery Factory Ltd (*Liqi Baoshi Chang*) is a Hong Kong-headquartered, China-based jewellery manufacturing company with a large export market. Its main manufacturing unit is the Lucky International Holdings Haifeng Industrial Zone, located in Haifeng County, Shanwei City. (The factory was originally located in the Longgang District of Shenzhen, under the name Pinghu Bainikang Lucky Gems and Jewellery Factory, and then in Huizhou, under the name Huizhou Huicheng Lucky Jewellery Factory) The company's director is Wong Shing Wah.

Lucky Jewellery is a member of the Hong Kong Jewellery Manufacturers Association and actively participates in international jewellery fairs and exhibitions. Its production facilities have been certified as ISO 9000 compliant (an international standard for product quality management). The company's product list is extensive. The main categories are semi-precious stones, pearl jewellery, carat gold jewellery, silver jewellery inlaid with semi-precious stones, costume jewellery, watches and clocks, carvings, ornaments and other gift items such as decorative globes made out of semi-precious materials.<sup>19</sup>

Between 1984 and 2002, the factory expanded its labour force tenfold, from 200-300 employees to more than 3,000. During this period, according to CLB's sources, management failed to arrange any periodic health checks for the workers as required by law, and it took no effective measures to improve the working environment and reduce the high levels of dust in the workplace. In early 2005, CLB compiled case

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ranging from individual injuries' compensation cases to large-scale collective cases involving hundreds of different workers, and has undertaken pro-worker litigation within all three major branches – civil, criminal and administrative – of the Chinese legal system..

<sup>17</sup> For details of the CLB online campaign, see: [www.clb.org.hk](http://www.clb.org.hk) (*Campaign: "Compensate Chinese Jewellery Workers Suffering from Silicosis!"*) See also the Hong Kong Christian Industrial Committee's campaign against silicosis: [www.luckygerms.info/index.htm](http://www.luckygerms.info/index.htm).

<sup>18</sup> CLB adopted the following four cases as Case Interventions: Lucky Jewellery, Perfect Gems, Gaoya Gems, and Eryou Jewellery Case information and data current as of November 2005.

<sup>19</sup> See: [www.luckygems.com.hk](http://www.luckygems.com.hk)

details of some 46 Lucky Jewellery workers who had contracted silicosis at the factory; the workers, all male, were rural migrant workers from Sichuan, Hunan, Jiangxi, Henan and other provinces, and all had been employed by the company as stonecutters and polishers. Other workers from the factory learned that they had silicosis only after quitting their jobs and returning to their hometowns; they reportedly neither sought, nor knew they were entitled to seek, any compensation from the company.

During 2001–03, some of the workers who had begun to feel ill sought medical examinations at their own expense and were diagnosed as having silicosis. In due course, Lucky Jewellery provided 21 of the 46 workers whose cases CLB was monitoring with “allowances” of between 20,000 and 100,000 yuan each. After signing an agreement with the company to the effect that this “privately concluded” the matter, the workers concerned then either quit their jobs and returned to their hometowns or continued working in their original jobs at the factory.

The other sick workers, however, simply quit their jobs and returned home because they were unable to tolerate the bad working conditions at Lucky Jewellery and were anyway too weak to continue working. At that time, none of them received any financial compensation from the company. Once home, their health situations deteriorated steadily, despite prolonged medical treatment of various kinds. They were later diagnosed, either by local occupational diseases clinics or by the Guangdong Provincial Hospital for the Treatment and Prevention of Occupational Illnesses, as suffering from varying levels of silicosis. At the time of writing, two of the 46 affected workers had already died of the illness.

“On 25 July 2004, I started to feel ill... The hospital told me I had a problem with my lungs, and that unless I stayed in the hospital for the next six to nine months I wouldn’t get any better... But the company wouldn’t allow me to check into the hospital for treatment, so there was nothing for it but to go back to work.

Not long afterwards I started feeling unwell again, with pains in my chest and completely drained of energy. My legs felt weak and I would stagger around all over the place while walking. My fellow workers used to say: ‘Why do you keep coming to work when you’re so ill? You must care more about the money than about your life!’”

– Lou Yizhong, a stonecutter from Yee  
On Yantian Gems; CLB case file, 20  
March 2005

During 2003-04, altogether 39 silicosis sufferers from the Lucky Jewellery factory tried to obtain compensation through various channels. Some claimed compensation directly from the company; others applied to their local Labour and Social Security Bureau for payment of work-related injury/disability benefits; and others lodged compensation claims with the Huicheng District LDAC in Huizhou City. However, none of these various channels proved effective.

Lucky Jewellery resorted to a wide range of excuses and pretexts to avoid paying compensation to the workers, all of whom had no longer been employed by the company for various periods of time. These ranged from the claim that no employment relationship had ever existed between the workers and the company; to the claim that there was no connection between the present Huicheng Lucky Gems and Jewellery Factory in Huizhou and the former Pinghu Bainikang Liqi Jewellery Plant in Shenzhen (where most of the affected workers had actually been employed); to the claim that “medical diagnoses made by clinics in other parts of the country are

invalid here” (i.e. in Guangdong.) Moreover, the local Labour and Social Security Bureaus rejected the great majority of the workers’ applications for work-related injury/disability insurance benefit on the same general grounds as those put forward by the company.

According to CLB’s case records, altogether 18 silicosis-afflicted workers from Lucky Jewellery then lodged arbitration claims with the Huicheng LDAC; as many as 14 of these claims were rejected, on the grounds either that the relevant time limit had been exceeded or that “insufficient evidence of an employment relationship” had been provided. Among the four cases that the LDAC did agree to hear, only one of the workers involved accepted the final arbitration ruling.

In the end, therefore, 17 of the affected workers had to file court lawsuits against Lucky Jewellery in pursuit of their compensation claims. In both the initial hearings and at the appeals stage, the courts determined that 12 of the plaintiffs, subsequent to their departure from Lucky Jewellery, had not been employed in any other dust-filled working environments; the workers therefore had contracted silicosis while working at Lucky Jewellery and the company should bear liability for their medical condition. The courts ordered the company to pay compensation to the 12 plaintiffs (in the form of “lump-sum work-related injury/disability allowance,” “disabled person’s early retirement payment” and “disabled person’s supplementary living allowance”) in amounts ranging from 60,000 to 170,000 yuan each.

Subsequently, many other silicosis-afflicted workers from the Lucky Jewellery factory (including some of those whose claims had already been upheld by the court) began collectively to petition the Huizhou municipal government. As a result of this pressure, the local government actively intervened in the case, and in late 2004 and early 2005 the company finally paid out compensation sums ranging from 50,000 to 200,000 yuan to 31 of the sick workers.

However, five of the original group of 46 affected workers – Li Weizhong, Yang Renping, Wang Zuihong, Liu Huaifu and Liu Zhongwu – had still received no compensation from the company, so CLB began providing them with legal advice and assistance. (Liu Huaifu and Liu Zhongwu eventually gave up their quest for compensation and went back to their hometowns.) On 2 February 2005, Yang Renping and Li Weizhong came to Hong Kong, with the help and support of several Hong Kong-based labour rights groups, and visited the headquarters of Lucky Jewellery Factory Ltd in an attempt to meet with the company’s director, Wong Shing Wah. After several hours, Wong granted them a brief meeting, at which the two workers pressed for compensation for themselves and Wang Zuihong, and also for two other former Lucky Jewellery workers, Liu Sanhui and Wu Zhaomin, who had earlier received partial compensation of 60,000 and 70,000 yuan respectively. At the same time, the Hong Kong-based groups approached Lucky Jewellery’s overseas buyers, and also the Hong Kong Jewellery Manufacturers Association, to request that they investigate the company’s handling of the whole affair.

Finally, on 12 March 2005, Lucky Jewellery’s director met with the five workers concerned in Huizhou and began negotiations for a settlement. The same evening, the company agreed to provide the three workers who had previously received nothing – Li Weizhong, Yang Renping and Wang Zuihong – with 200,000 yuan in

compensation each. The two workers who had already been partially compensated, Liu Sanhui and Wu Zhaomin, each received additional compensation of 60,000 yuan. Apparently fearing that these settlements would be taken as a precedent by other silicosis-affected former workers, in the end Lucky Jewellery refused to provide any of the five workers with actual copies of the signed compensation agreements. However, a few days later, all received the promised compensation.

Subsequently, several new cases of silicosis came to light at the Lucky Jewellery factory. Two workers, Yang Renbin and Liu Dabing, were diagnosed by the local occupational diseases clinic as having first-degree and second-degree silicosis respectively; and a manager at the factory was also diagnosed with the illness (stage of illness unknown.) In addition, two female workers, Ran Qimei and Jiang Xueying, were also suspected of having contracted silicosis. At the time of writing, the women were still trying to get the company to provide them with copies of their employment records so that they could apply for occupational illness certification.

- **Case 2: Perfect Gem & Pearl Manufacturing Company**

The Perfect Gem & Pearl Factory (*Liya Baoshi Chang*) is located in the Xiaojin Administrative District of Luoyang Township, Boluo County, in Huizhou City. The factory was set up in December 1995 and is wholly owned by the Hong Kong Perfect Gem & Pearl Manufacturing Company, whose chairman is Chi Chao Ming. In 2002, the factory employed around 150 workers. The factory's main business is in processing all kinds of artificial stones, semi-precious stones, ornaments and decorative objects, stones set in precious metals, and costume jewellery.

According to former workers at the factory, Perfect Gem did not arrange for any of its workers in the stone cutting and polishing division to undergo periodic medical examinations, as required by law, either before they began work or during their period of employment. Also, the company reportedly failed to inform the workers of the danger they faced of contracting an occupational illness such as silicosis, or of what the long-term medical consequences could be. Moreover, the company provided no effective air ventilation and dust-extraction measures or equipment in the factory, nor did it issue the workers with any kind of reliable or effective safety gear.

According to the workers, the company had even sealed up all the workshop windows in an effort to prevent burglaries, thereby ensuring that workers were obliged to operate for protracted periods of time in an extremely hazardous dust-filled environment. As a result, many of the workers eventually contracted silicosis.

In March 2005, China Labour Bulletin intervened in the compensation claim cases of five former Perfect Gem workers – Deng Wenping, Yu Dashu, He Chengquan, Zhou Changyong and Xu Yundong – all of whom had been diagnosed in mid to late 2000 as suffering from first-degree silicosis or worse. After mediation efforts by the local government, the company had agreed to pay the five workers lump-sum compensation payments of between 28,000 yuan and 100,000 yuan each. As part of this agreement, their employment relationship with the company was terminated. After returning to their hometowns, however, they were unable to get proper medical treatment for their condition and their health situations sharply deteriorated. They quickly realized that their working lives had by now come to an end, and that their lump-sum

compensation awards would be insufficient to cover either their continuing medical care needs or the long-term living expenses of their families.

In late 2004, all five workers were re-examined at the Guangdong Provincial Hospital for the Treatment and Prevention of Occupational Diseases, and their medical conditions were found to have substantially worsened. They were then examined again by the Huizhou Municipal Labour Capacity Appraisal Committee to determine their levels of work-related disability and the extent of their loss of capacity to work,<sup>20</sup> and all had their ratings increased on both counts. When the workers subsequently approached Perfect Gem for further compensation, however, the company flatly rejected their requests.

On 3 December 2002, Deng Wenping had applied to the LDAC of Boluo County (where the Perfect Gem factory was then located) for an arbitration ruling on his compensation claim, but his application was denied on the grounds that he had “exceeded the time limit for seeking arbitration.” He thereupon filed a court lawsuit against the company, but he lost the case at both the initial hearing and the appeal stage. Subsequently, Deng’s medical condition deteriorated from advanced second-degree to third-degree silicosis, and on 27 August 2004 he filed a second lawsuit against Perfect Gem on the grounds that the extent of his work-related disability had officially risen to level 3. This time, both the initial trial and the appeal courts rejected his case on the grounds, “Your original agreement [with the company] was lawful and remains in force.”

In late 2004, Yu Dashu, He Chengquan, Zhou Changyong and Xu Yundong filed separate arbitration claims with the Boluo County LDAC. Although the LDAC endorsed some of the workers’ demands, none of them accepted the compensation awards offered, and with CLB’s assistance they went on to file compensation lawsuits against the company.

In June 2005, CLB and several other Hong Kong-based labour rights groups held a series of public events in Hong Kong, attended by members of Deng Wenping and Yu Dashu’s families, to highlight the plight of the silicosis-afflicted workers. As a result of these actions, the chairman of Perfect Gem agreed to start negotiations with the workers in Huizhou. In July, Yu Dashu finally received 225,000 yuan in compensation from the company and Deng Wenping received 230,000 yuan; and in October, the Boluo County Court mediated an out-of-court settlement awarding He Chengquan 290,000 yuan in compensation. At the time of writing, Zhou Changyong and Xu Yundong were still pursuing compensation lawsuits against the company and no verdicts had been delivered. According to the five men, several other former workers from the Perfect Gem factory are also now suffering from silicosis, but their names and contact details are as yet unknown.

Wu Anguo, a worker at the Eryou Jewellery Factory, said that when new workers joined the company, no one informed them that this type of work could give them silicosis. And later, no one ever arranged for them to get health checkups. There was almost no protective equipment installed, and only in the first half of last year did the company start issuing the workers with even the most basic type of facemasks. “By the time I started feeling unwell and saw a doctor, it was already too late: I had first-degree silicosis,” said Wu.

– “Gems Plant ‘Creates’ 36 Silicosis Victims,” *Guangzhou Daily*, 24 August 2005

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<sup>20</sup> See footnote 13 above.

- **Case 3: Art's King Gems Arts**

Art's King Gems Arts (Shenzhen) Co Ltd (*Yisheng Baoshi Gongyipin (Shenzhen) Youxian Gongsi*), established in 1996, was initially located in Henggang Township in the Longgang District of Shenzhen. In May 2001, the company moved its manufacturing facility to Qiaotou Township in Dongguan City and changed its name to Art's King Gems Arts (Dongguan) Co Ltd (*Yicheng Gongyi Shipin (Dongguan) Youxian Gongsi*.) The factory is wholly owned by the Hong Kong-based Art's King Enterprises Company Ltd. According to its website, Art's King Enterprises was established in 1980 and is one of China's best-known exporters of semi-precious stone products.<sup>21</sup>

A worker who joined the Art's King Gems factory as a stonecutter and polisher in October 1996, Tang Sheng, reports that working conditions at the factory were particularly bad and that the company failed to provide staff with any of the requisite safety equipment or protective gear. In May 2000, Tang quit the company because he was feeling unwell. A year later, in May 2001, the Guangdong Provincial Occupational Diseases Diagnostic and Appraisal Committee confirmed that Tang was suffering from second-degree silicosis. The same month, the factory was relocated to Dongguan.<sup>22</sup>

Tang Sheng spent most of the next three and a half years fighting for compensation through the administrative and judicial claims system. Soon after leaving his job at Art's King Gems, he and some friends rented space at another company, the Ju Zhao Gems and Handicrafts Factory, to conduct their own jewellery-processing business. A month after learning that he had silicosis, on 28 June 2001 Tang lodged a claim for compensation with the Longgang District LDAC in Shenzhen. However, he named the Ju Zhao Gems and Handicrafts Factory as the respondent in the case, rather than Art's King Gems, and the Longgang LDAC rejected his application on the grounds that there was "no evidence of a labour relationship between the two parties." On 8 November 2001, Tang lodged a second compensation claim with the same LDAC, but naming Art's King Gems Arts (Shenzhen) as the respondent. This time, his application was rejected on the grounds: "The factory in question has relocated to Dongguan City, so this committee has no jurisdiction over the case." By now understandably confused, Tang next, between December 2002 and September 2003, tried to sue the Ju Zhao Gems and Handicrafts Factory for compensation in the Shenzhen courts, but he lost the case at both the initial trial and upon appeal on the

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<sup>21</sup> See: [www.artsking.com.hk](http://www.artsking.com.hk). The company imports around 80 different kinds of rough stone from India, South Africa, Brazil, Australia and the US, including tiger's eye, rock crystal, rose quartz, amethyst, labradorite, rhodochrosite, onyx and aventurine. Its website states: "We specialize in producing with high quality and excellent workmanship...Our products include bead items, necklaces, bracelets, pendants, earrings, rings, handcrafted articles, carvings & ornaments and gift items made with semi-precious stones... There are more than 400 skilled workers, experienced technicians and administrative personnel in our own factory in Guangdong province."

<sup>22</sup> According to Tang Sheng, five other workers subsequently contracted silicosis while working at the company's Dongguan factory. They first applied for compensation through the local LDAC, but their claims were unsuccessful. They then filed compensation lawsuits against the company in the Changping District Court, and were awarded sums of between 30,000 yuan and 100,000 yuan each – quite insufficient to cover their future long-term medical expenses and living costs.

same grounds as before: that there was no evidence of an employment relationship between him and the company.

In June 2004, Tang filed a second compensation lawsuit, this time with the Dongguan Municipal Court (the company had relocated to Dongguan in 2001), and naming Art's King Gems Arts (Shenzhen) as the defendant. However, the Guangdong Provincial Higher Court then intervened to order that the case instead be heard by the Longgang District Court in Shenzhen, the city where the Art's King Gems factory had been located when Tang first joined the company. (This, it should be noted, was the same city whose Longgang LDAC had informed Tang, three years earlier, that it had "no jurisdiction" over the case because the company had relocated elsewhere.) Finally, on 1 November 2004, the Longgang District court ordered Art's King Gems Arts (Shenzhen) to pay Tang a total of 207,360 yuan in compensation, including a lump-sum work-related disability payment and a disabled person's early retirement award.

This was a victory in name alone, since the company in question no longer existed and so there was no chance of the verdict actually being implemented. Also, the award only covered a small portion of Tang's compensation claim: in particular, it included nothing to pay for his long-term medical treatment needs. Tang lodged an appeal later that month, and a hearing was held on 14 June 2005 at the Shenzhen Municipal Court. As of early November, no verdict had been announced. Perhaps the most striking aspect of this case, aside from the sheer length of time it has taken, is that no official from any of the various agencies responsible for dealing with Tang's compensation claim has ever sought to guide or advise him as to the key procedural and jurisdictional issues involved. He has been left to work all these out by himself.

- **Case 4: Gaoyi Gems Company Ltd**

Gaoyi Gems Company Ltd (*Gaoyi Zhubao Youxian Gongsi*) is wholly owned by Hong Kong investors. Founded in November 1991, the company was originally known as the Gaoya Jewellery Manufacturing Plant (*Gaoya Shoushi Zhipinchang*) and was based in Baihua Township in Huidong County, Guangdong. In late 2000, the company relocated to Ketang Township in Haifeng County, the jewellery-manufacturing centre of Guangdong Province, and changed its name to the present one. The chairman of the company is Wong Siu Yik.

Gaoyi Gems' parent company is the Hong Kong-based Ko Ngar Gems Factory Ltd. According to its website, Ko Ngar Gems is a manufacturer, wholesaler and exporter of all kinds of semi-precious stones and has more than ten years of business experience in Hong Kong. "Our factory is located in China where over a thousand skilled and well-trained workers produce comprehensive gemstone items under strict quality controls."<sup>23</sup> The company produces a wide range of jewellery products and ornaments, including beads, loose strands, necklaces, bracelets, carvings, decorative globes, fountains, clocks, tumble stones, rings, pendants, and cabochons. It also produces more than 50 types of semi-precious stone items, such as lapis lazuli, blue lace agate, aquamarine, kunzite, amethyst, malachite, rutilated quartz, agate, jasper, coral and turquoise.

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<sup>23</sup> See: [www.kongargems.com](http://www.kongargems.com)

In 1993, a worker named Feng Xingzhong started working at the Gaoya factory as a stonecutter and polisher. In May 2000, following health checkups on all the workers, the factory manager informed Feng that he had contracted tuberculosis and told him to take sick leave and get medical treatment. Feng received the sum of 2,000 yuan from the company and then went back to his hometown to seek treatment. But his health situation continued steadily to worsen. On 28 September 2002, he was examined at the West China Occupational Diseases Hospital of Sichuan University, and shortly afterwards the Sichuan Provincial Pneumoconiosis Diagnostic Unit confirmed that he was suffering from second-degree silicosis.

On 17 November 2002, Feng Xingzhong lodged a compensation claim with the LDAC of Haifeng County, to where the company had by that time relocated under the new name of Gaoyi Gems. Although less than 60 days had elapsed since Feng's confirmed diagnosis of silicosis in September that year, the Haifeng LDAC nonetheless rejected his arbitration application on the grounds that he had "exceeded the [60-day] time limit for applying". Feng then pursued a compensation lawsuit against Gaoyi Gems, first at the Haifeng County Court and later (on appeal) at the Shanwei Municipal Intermediate Court. Both courts dismissed Feng's case on the grounds that there had been "no employment relationship" between him and the Gaoyi Gems Factory. On 24 January 2005, Feng lodged a second application for arbitration of his compensation claim, this time at the Huidong County LDAC and naming the Gaoya Jewellery Manufacturing Plant (the factory's original name and location) as the respondent.

On 20 May 2005, the Huidong LDAC instructed Gaoya Jewellery to pay Feng Xingzhong a lump-sum work-related disability award of 19,350 yuan, plus 12,900 yuan in reimbursement for medical fees, and also a disabled person's allowance of 806.25 yuan per month for the rest of his life. LDAC rulings are non-binding in nature, however, and since Gaoya Jewellery had already relocated its production facilities to another jurisdiction, there was virtually no chance that this arbitration ruling would be enforced. On 24 June, therefore, Feng brought a civil lawsuit against Gaoya Jewellery in the Huidong County Court; the hearing took place on 27 September, but at the time of writing no judgment had been announced.

Another former worker at the Gaoya Jewellery Manufacturing Plant who had contracted silicosis, Wu Guojun, first joined the company as a stonecutter and polisher in 1993. In March 2001, after undergoing a factory-arranged medical examination, Wu was informed by a manager that he had contracted hepatitis, and was told to take sick leave and seek medical treatment. The company gave him 10,000 yuan (a sum that included his wages for February and March), supposedly to pay for his medical expenses. At the same time, however, Wu had to sign a document agreeing to terminate his employment with the company. On 26 November 2002, he was examined at the Sichuan Provincial Pneumoconiosis Diagnostic Unit and was informed that he was suffering not from hepatitis, but from advanced second-degree silicosis. When Wu then sought compensation from the company, his request was refused on the grounds: "You've already signed the agreement."

On 30 December 2002, Wu Guojun filed a lawsuit against Gaoyi Gems Factory in the Haifeng County Court and the case was accepted for trial. From then until 10 July 2003, however, the case remained stalled because Gaoyi Gems had filed a

“memorandum of no jurisdiction” with the court, claiming that the case was a labour dispute and not a civil compensation case. The local courts of first and second instance offered conflicting opinions on this point, with the appeal court ruling that it was indeed a labour dispute, so the case could not proceed. In June 2004, Wu applied to the Haifeng County Labour Bureau for official certification of work-related disability, but this was denied on the grounds that he had “exceeded the [one-year] time limit” for applying. He then filed an administrative lawsuit in the local county court challenging this decision by the Haifeng Labour Bureau, but the court upheld it and his appeal to the Shanwei Intermediate Court on this count was also rejected. On 28 February 2005, the West China Occupational Diseases Hospital at Sichuan University re-examined Wu and informed him that his condition had worsened: he was now suffering from third-degree silicosis – the last stage of the illness.

On 14–20 June 2005, both Wu Guojun and Feng Xingzhong came to Hong Kong to stage public protests outside the Ko Ngar Gems company’s head office and at the Hong Kong Jewellery Fair, and following these actions the company

agreed to commence negotiations with the two men. However, when they finally met with Gaoyi Gems officials on 25 June in Haifeng, the company again rejected Wu Guojun’s request for compensation on the grounds that he had “already been compensated” (a reference, no doubt, to the miserly 10,000 yuan that the company had given him in March 2001 to treat his “hepatitis.”) In late August 2005, CLB hired a lawyer for Wu Guojun and he began preparing to file another compensation lawsuit against Gaoyi Gems.

“I still don’t understand how I came down with this occupational illness. There’s pus in my phlegm now. In our workshop, a sharp smell used to hit your nostrils as soon as you walked in. It was awful. We had more than 300 electric [cutting] machines in the workshop, and as soon as the shift started the noise used to make you feel dizzy and your head would start spinning. When the whistle blew, we had to put on these terrible, low-quality rubber masks. The elastic was so tight around your head that it restricted the blood supply and you couldn’t get enough oxygen.”

– Li Jiaquan, a worker from the production department of Yee On Yantian Gems; CLB case file (undated entry)

- **Case 5: Yee On Yantian Gems and Jewellery Factory, and Taiyang Songyuan Gems and Ornaments Company**

The Yee On Yantian Gems and Jewellery Factory (*Yi'an Yantian Baoshichang*) is located in Yantian Village, Fenggang Township, in Dongguan City. It is part of the Yee On Jewellery and Accessories Factory Company Ltd of Hong Kong. According to the company’s website, “Yee On Gems & Jewellery Factory Co Ltd is one of the world’s leading manufacturers and exporters of semi-precious stones, freshwater pearls, *mabe* pearls and watches in Hong Kong as well as selling its products worldwide.” In addition, it produces “major materials like turquoise, sea bamboo coral, shell and strawberry quartz” in a varied and wide ranging collection of gem products. Moreover, “Its modernized and well-equipped factory in Yantian in China has nearly 30,000 square meters of space with more than 3,000 skilled craftsmen and workers. It puts great technological emphasis on the processing of selecting, cutting, crafting, polishing and drilling accompanied with strict quality control.”<sup>24</sup>

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<sup>24</sup> See: [www.yeongems.com](http://www.yeongems.com)

Taiyang Songyuan Gems and Handicrafts Company Ltd (*Taiyang Songyuan Baoshi Gongyi Youxian Gongsi*) is located in New Sun Industrial City, in Lin Village in Tangsha Township, Dongguan City. The factory performs much of the initial processing of semi-precious stones for Yee On Gems.

Between 1994 and November 2002, six workers – Su Mingguo, Gao Fei, Chen Jianliang, Lou Yizhong, Li Jiaquan and Tan Xin – started working for Yee On Gems and Taiyang Songyuan in the semi-precious stones workshops.<sup>25</sup> During 2004-05, the six workers were diagnosed as having various lung illnesses, but when they asked their employers to provide copies of their employment records so that they could obtain official certification of their medical conditions from the Dongguan Hospital for the Treatment and Prevention of Occupational Diseases, company managers refused to fulfil these requests.

Other workers at the two factories also developed similar lung complaints, and after seeking medical examinations at their own expense and having their conditions diagnosed as being silicosis, they approached the companies for compensation, but all to no avail. Some of the sick workers then staged demonstrations and blocked the factory gates, but after several months of fruitless further effort, most of them simply quit their jobs and returned to their hometowns.

During the first few years of their employment, according to the Yee On factory workers, workshop facilities for preventing the build up of airborne dust were extremely deficient. The cutters and polishers normally worked as many as 60 hours a week, and only in 2000 did the company install any ventilation and dust-extraction equipment and begin providing the workers with facemasks and ear plugs. According to the workers, however, these measures were largely ineffective.

At the Taiyang Songyuan factory, the workers were responsible for cutting and polishing semi-precious amber, malachite, coral, conch-shell and other such products – tasks that exposed them to a variety of toxic substances. Over time, the skin began flaking from their hands, their fingers became pitted with small holes and their fingernails started falling out. According to the workers, the worst problem was the huge amount of dust produced in the cutting and polishing workshops. The working area was very small, the doors and windows of the workshop had all been sealed up, and there was only one ventilation and dust-extraction unit for every 30 or 40 cutting and polishing machines. The ventilation system was never cleaned for long periods of time and thus was almost totally ineffective. Only those few workers who were located right next to the exhaust vent could “feel any breeze”.

According to the workers, the facemasks provided by the factory to prevent dust inhalation were also of very poor quality. Their thickness made it difficult to breathe properly and they had a glue-like smell that made the workers feel dizzy. After a couple of days’ use, the inner layer of sponge cloth would fall off and the retaining

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<sup>25</sup> Most of these workers were employed, at various times by both Yee On Yantian Gems (YOYG) and Taiyang Songyuan Gems (TSG). The workers’ employment history is as follows: *Lou Yizhong*: started at YOYG in November 1994; moved to TSG in October 2002. *Gao Fei*: started at YOYG in February 2002; moved to TSG in August 2003. *Chen Jianliang*: started at YOYG in May 2000; moved to TSG in October the same year. *Li Jiaquan*: started at YOYG in August 2002; moved to TSG in October the same year. *Su Mingguo*: started at TSG in October 2002. *Tan Xin*: started at TSG in November 2002.

band would lose its elasticity. Despite their cheapness and poor quality, the factory only issued two facemasks a month to each worker, and if they asked for more, the cost (5 yuan per mask) was deducted from their wages.

At their own expense, newly arrived workers would sometimes buy a small sheet of glass to use as a visor to block the dust from getting into their lungs, but the workshop supervisors used to smash these glass sheets if they caught workers using them, and would sometimes even impose fines to deter others from following suit. Moreover, the workers were unable to escape from the hazardous dust even when going to the washroom, since the outlet from the dust extraction system was actually located there.

After experiencing tightness in the chest, severe back pains, persistent coughing and weakness in their limbs, Su Mingguo and the other five workers consulted doctors at local hospitals at their own expense and were diagnosed as having various lung ailments. To certify that the symptoms were caused by an occupational illness, however, the workers also had to be examined by the local occupational diseases clinic, and for this purpose they needed copies of their employment records from the Yee On and Taiyang Songyuan factories. But when they asked for these documents, they were informed that their illnesses had “nothing to do with the company” and that it was “all their own responsibility.” Caught in an insoluble dilemma, the workers then sought the assistance of various government bodies, but to no avail. Unable to get official certification of their occupational illnesses, the workers had little option but to continue working at the same jobs that had made them ill in the first place.

When the sick workers continued to press the two companies to arrange medical examinations for them, managers used various means to force several of them out of their jobs. Finally, in April 2005, the companies arranged for the remaining workers to be medically examined; but none of them was found to be suffering from silicosis. The workers then began to suspect that the companies and the hospital were colluding to provide false diagnoses.

At the time of writing, Chen Jianliang and Tan Xin had received some compensation (amounts unknown) and quit their jobs; Lou Yizhong’s situation and whereabouts were unknown; and Gao Fei was still trying to get the company to provide him with the documents he needed to obtain an official certification of silicosis. On 5 April 2005, Su Mingguo was confirmed by the West China Occupational Diseases Hospital as having second-degree silicosis, but the company contested this diagnosis. Su then had to seek a second examination at the Guangdong Provincial Hospital for the Treatment and Prevention of Occupational Diseases, which diagnosed him as having advanced first-degree silicosis. As of early November, Su was still negotiating with the company over compensation terms. And in October this year, Li Jiaquan was diagnosed at the West China Occupational Diseases Hospital as suffering from advanced second-degree silicosis; his compensation claim also currently remains unresolved.

- **Case 6: Eryou Jewellery Materials Company**

Eryou Jewellery Materials Company Ltd (*Eryou Shoushi Cailiao Youxian Gongsi*) is a private enterprise located in the Sanshui District of Foshan City, Guangdong. It was founded in 1999. According to workers there, in order to cut costs and expenditure,

the factory provided them with no safety gear or equipment to protect them from exposure to toxic substances, airborne dust or excessive noise. As a result, all of these workplace hazards exceeded legally permitted levels. Moreover, in order to prevent outsiders from seeing the factory's working conditions, the company had covered and sealed up all the windows. So the workers had to operate continuously in a closed and heavily dust-filled environment. And because of the lack of ventilation, in summer the temperature in the workshops sometimes rose to over 40 degrees centigrade.

Around 2003, many of the workers began to experience symptoms such as chest pains, chronic coughing, shortness of breath and weakness in the limbs. Some of them sought medical examinations at their own expense and were diagnosed as having various lung ailments. Not until late 2003, however, when Eryou Jewellery learned that some of its workers had contracted silicosis, did the company first start issuing anti-dust facemasks to the workers, and even then only to some of them. According to the workers, these facemasks were of such poor quality as to be almost useless.

On 18 February 2004, the Sanshui District Health Inspection Department instructed the company to transfer two workers whose health situation was especially serious to jobs where they would no longer come into contact with workplace dust. In April that year, the Sanshui District Disease Prevention Clinic examined some 200 workers from the factory's stonecutting workshops (a sample group selected from among 700 or more stonecutters in seven different workshops), and listed 26 of them as being suspected silicosis cases. The

Yu Chaojun, a worker at the Eryou Jewellery Factory, told us, "I can hardly climb the stairs, and by the time I get to the third floor I'm gasping for breath. Since I've had this illness I keep catching colds and fevers, usually about five or six times a month. When I'm down with a fever, the airways in my chest get all sore and raw, as if my lungs have been burnt by something. It feels like I've swallowed poison or chilli water – as painful as that. Sometimes I start feeling giddy even when I'm sitting down."

– "Gems Plant 'Creates' 36 Silicosis Victims," *Guangzhou Daily*, 24 August 2005

The government then instructed the company either to transfer the 26 affected workers to other posts or to place them on sick leave, but the company reportedly ignored this instruction and the men were obliged to continue working at their original jobs. Those who did take sick leave had their entire wages docked by the company. After further tests at the Foshan Municipal Clinic for the Treatment and Prevention of Occupational Diseases, ten of these workers were found to be seriously ill.

After the 26 suspected silicosis cases were reported, many more workers at the factory who feared they also were suffering from the same disease demanded that the factory provide them with copies of their employment records and arrange for them to be given credible medical examinations. Only in November 2004, however, did the ten seriously ill Eryou Jewellery workers manage to obtain copies of their employment records from the company, thereby allowing them to apply for occupational disease certification. Eight of them were then confirmed as having silicosis.

Once this finding became known, however, the company refused to provide any more of the workforce with the personal employment records they needed to seek official certification of their medical situation. According to the workers, this was an attempt by management to circumvent a local government "internal regulation" stipulating that any factory where ten or more workers were found to have occupational diseases

would be required to shut down operations until the workplace health and safety situation had been rectified.

The silicosis problem at the Eryou Jewellery factory became public knowledge in September 2004, when the *Southern Daily* newspaper carried an article reporting on the 26 suspected cases and interviewing several of the victims. A report in the *Southern Metropolis News* in June 2005 stated that a further 100 suspected cases had been identified at the factory.<sup>26</sup> And two months later, the *Guangzhou Daily* reported that 36 stonecutters at Eryou Jewellery had now been confirmed as having silicosis, with another 13 workers listed as suspected cases.<sup>27</sup> The 36 confirmed cases were aged between 23 and 42; the longest serving among them had worked at the factory for up to five years, but several of them had only been working there for a few months before falling ill.

In late April 2005, the factory suddenly halted all production, and the workers were convinced that the company planned to shut it down entirely in an attempt to evade its legal responsibilities toward them. On 10 May, between 200 and 300 of the workers blocked the Sanshui Bridge – located on a major thoroughfare – in the hope of pressuring the local government into intervening and taking action on their behalf. The government responded by sending in police and anti-riot squads to break up the protest action. Many workers were beaten, and the police temporarily detained five of them.

As a result of the workers' protest action, however, the local government eventually instructed the company to begin negotiations with the workers over their various demands. In due course, Eryou Jewellery made the following pledges: first, that all workers who had been confirmed as suffering from silicosis would receive a lump-sum compensation equivalent to one year's average wages; and second, that those workers still awaiting positive diagnoses would be given a monthly living allowance of 500 yuan, and once their medical conditions had been confirmed as occupational diseases they would also receive one year's average wages as compensation. Given that the medical bills alone for a silicosis victim can quickly reach as much as 100,000 yuan, this offer – amounting to total compensation of around 12,000 yuan per worker – was clearly quite inadequate.

A report in the *Guangzhou Daily* explained what happened next. After the factory's closure in April, and apparently fearing lawsuits that it would have little prospect of winning, Eryou Jewellery began pressuring the workers who had confirmed diagnoses of silicosis into accepting lump-sum compensation payments in exchange for agreeing to sign "private agreements" terminating their employment with the company. By August 2005, seven of the eight workers confirmed in November 2004 as having silicosis had signed such agreements: three of them received compensation of 80,000 yuan each, another three received 90,000 yuan, and one received 130,000 yuan. As one of the sick workers later said to the *Guangzhou Daily*, however, "How long will this money be able to last us? It's not even going to cover our medical bills, hospital fees, long-term treatment costs, and periodic check-ups." Meanwhile, according to the

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<sup>26</sup> "Pay Attention to Occupational Illnesses among Rural Migrant Workers: 27 Cases of Silicosis Found among 600 Migrant Workers," *Nanfang Dushi Bao* (Southern Metropolis News), June 21, 2005.

<sup>27</sup> "Investigative Report: 'We've Contracted Occupational Diseases'," *Nanfang Ribao* (Southern Daily), September 24, 2004.

newspaper report, Eryou Jewellery had quietly begun transferring the factory's equipment to a new production facility in Zhaoqing City, also in Guangdong Province. When a reporter from the newspaper tried to interview the manager about the silicosis problem, he hung up the phone.<sup>28</sup>

On 12 October 2005, the Guangdong Provincial Hospital for the Treatment and Prevention of Occupational Diseases informed the several dozen Eryou Jewellery factory workers who were currently hospitalized there that, as of 30 September, the company owed the hospital a total of 530,000 yuan in unpaid bills for their medical treatment and accommodation. As a result, the hospital authorities stated, "We can no longer guarantee the continued treatment and medication of these patients."

- **Case 7: Hao Xin Precious Metals Jewellery Factory**

Foshan (Hong Kong) Hao Xin Precious Metals Jewellery Co. Ltd. (*Haixin Wujin Shoushi Youxian Gongsì*) is a private enterprise that operates three jewellery-processing plants in various parts of Guangdong Province. The largest of these is the Hao Xin Precious Metals Jewellery Factory (*Hao Xin Wujin Shoushichang*), located in the Dafu Industrial Zone in Zhangcha Township, Foshan City. The factory employs more than 4,000 workers, of whom around 1,800 work as gemstone cutters and polishers. According to the *Southern Labour Daily*, it is believed to be the largest jewellery-processing factory in Asia. For many years, the factory reportedly failed to provide any vocational training for its workers or to warn them about the hazards of occupational silicosis; nor did it provide any ventilation equipment or safety gear to protect them against workplace dust and other toxic substances. Workers in the stone cutting and polishing sections had to work more than 10 hours a day and received a maximum of one day off work per month, but in fact they would often get no rest days for several months running. Although the factory arranged for the workers to receive a physical examination once a year, they were never informed about the results of the examinations and no cases of lung ailments were ever reported.

In January 2005, Xie Xiaoyong, an employee who had worked for seven years in the stone-polishing section of the Hao Xin Precious Metals Jewellery Factory, began to feel a persistent tightness in his chest and lungs. At his own expense, he underwent medical tests at the Guangdong Provincial Hospital for the Treatment and Prevention of Occupational Diseases. An X-ray showed "changes in areas of the lungs consistent with silicosis," and the hospital recommended, "The patient should apply for a diagnosis of occupational illness." Subsequently, between February and March 2005, the company arranged for more than 800 workers at the same factory to undergo medical examinations. The X-ray results for 31 of them also showed "shadows in the area of the lungs," and again it was recommended that the patients "should apply for a diagnosis of occupational illness."

The following month, the *Southern Labour Daily* reported that 62 workers from the Hao Xin Precious Metals Jewellery Factory had been hospitalized and were undergoing treatment as suspected silicosis cases at the Guangdong Provincial Hospital for the Treatment and Prevention of Occupational Diseases. As of 1 April, 26 of the workers had been confirmed as having silicosis; 23 were first-degree cases, and

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<sup>28</sup> "Gems Plant 'Creates' 36 Silicosis Victims," *Guangzhou Ribao* (Guangzhou Daily), 24 August 2005.

three were second-degree cases. In addition, another 250 workers from the same factory had been examined and diagnosed as requiring repeat examinations in either three or six months' time.<sup>29</sup> In other words, around one in six of the Haoxin factory's 1,800 gemstone grinders and polishers was either confirmed as or suspected of having silicosis.

On 15–16 March 2005, the Hao Xin jewellery workers staged a company-wide strike to protest against the company's abusive health and safety practices, and at 9.00 am on 16 March, around 4,000 workers from three of the company's factories blocked the main highway between Foshan and Kaiping. The protest action lasted only 30 minutes, but most of the workers did not return to work afterwards. Over the following three days, the local government

Xie Xiaoyong, a worker from the Hao Xin Precious Metals Jewellery Factory said that workers at the factory had never heard of the illnesses "pneumoconiosis" and "silicosis," and they were totally ignorant of the health threat posed by workplace dust and powder. Many of them often used to feel chest pains, dizziness and weakness, but they would just shrug it off and take a couple of bottles of drinking water to work with them.

– "26 Workers Confirmed as Having Silicosis," *Southern Labour Daily*, 21 April 2005

arranged for the workers to undergo medical examinations in three successive groups. In addition, on the instructions of the local government, the company finally began to install dust-extraction and ventilation equipment in its factory workshops and to issue protective facemasks to the minority of workers who had resumed their shifts. In subsequent negotiations with factory managers, the workers' representatives demanded that working hours be reduced to eight hours a day and that the workers be guaranteed at least two rest days per month; and they pledged there would be no return to work until installation of the dust-extraction and ventilation equipment in the cutting and polishing workshops had been fully completed.

As of November 2005, more than 70 Hao Xin workers had received confirmed diagnoses of silicosis. Around half of the affected workers accepted a management compensation offer whereby they would receive 200,000 yuan immediately and a further 100,000 yuan in two years' time. Meanwhile, the remaining silicosis-afflicted workers were being advised by CLB's lawyer and were considering filing compensation lawsuits against the company.

### III. ANALYSIS OF THE MAIN OBSTACLES TO COMPENSATION

#### **Jewellery Factory Owners: Showing Contempt for Workers' Rights**

The above case studies describe the efforts by numerous workers from seven different jewellery-processing factories in Guangdong Province to obtain compensation from their former employers after contracting workplace-related silicosis. Most of the workers concerned were healthy men in the prime of life, between the ages of 25 and 52 years, who had worked in the factories' stone cutting and polishing workshops. In most of the factories, basic health and safety provision for the workers was minimal or non-existent. In the case of Yee On Yantian Gems and Hao Xin Precious Metals, the

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<sup>29</sup> "26 Workers Confirmed as Having Silicosis," *Nanfang Gong Bao* (Southern Labour Daily), 21 April 2005.

companies operated for many years without installing any ventilation and dust extraction systems in their factories, while in the case of Taiyang Songyuan Gemstones, Art's King Gems and Perfect Gems, the ventilation systems were entirely inadequate and appear to have served only a token or display purpose. In three of the factories (Eryou Jewellery, Taiyang Songyuan and Perfect Gems), most or all of the windows in the stone cutting workshops had actually been sealed shut. And in virtually all of the factories, either no safety training or protective gear was given to the workers or what was provided was inadequate and ineffective.

However, the managers of these various companies were generally well prepared to deal with inspection visits to the factories by local government officials or clients. According to workers from Lucky Jewellery, for example, officials from the local health department or the environmental protection agency used to notify the factory in advance of any such visits, and each cutting and polishing workshop would then be cleaned and tidied up well beforehand. On the actual day of the inspection, some of the gemstone workers would be given the day off, in order to reduce the overall level of airborne dust in the workshops. In addition, the managers would require all those reporting to work on the day of the visit to memorize "correct" answers to some 40-odd questions that inspectors and clients often asked.

When workers felt unwell or showed signs of illness, however, they usually had to pay for any medical examinations and hospital fees out of their own pockets. And once diagnosed with silicosis, when they sought the factory owner's permission to obtain an expert medical appraisal – an obligatory step in pursuing occupational illness compensation claims – such requests were usually denied, along with any requests for reimbursement of medical expenses or other financial assistance.

In the case of Lou Yizhong, a worker who contracted silicosis during his time at the Yee On Yantian and Taiyang Songyuan factories, company managers turned down all his requests for help and eventually informed him that he was "suffering from tuberculosis." They refused to arrange for Lou to receive any medical treatment and he was forced to continue coming to work every day. Subsequently, the company gave him a mere 2,000 yuan in compensation and tried to fire him on five separate occasions. Moreover, when another silicosis sufferer from the Taiyang Songyuan factory, Tan Xin, asked the company to arrange a health check-up for him, the general manager responded by punching him in the face so hard that his mouth bled.

Once workers had been confirmed as suffering from silicosis, the employing companies either turned down their requests for financial compensation and reimbursement of medical fees, or else the workers would be tricked into signing a so-called lump sum compensation agreement whereby they were given a small sum of money and then pushed out of their jobs. In most cases, these "private agreements" were far from being in the workers' best interests.

First, such agreements effectively disbarred the workers concerned from any future resort to the law to press for compensation. In the various cases monitored by CLB, both the LDACs and the courts ruled that these agreements, which fall within a grey area of the law, were legally valid and binding; and they cited them as the principal grounds for rejecting workers' compensation claims. Second, silicosis-afflicted workers, who usually have lost all or most of their ability to work, require continuous

and long-term medical treatment for the rest of their lives; this can be enormously expensive, and any compensation package should include provision to pay for it. And third, the basic subsistence needs of these workers and their families also have to be provided for on a long-term basis. A lump-sum compensation payment of several thousand yuan or even a hundred thousand yuan may seem attractive at the time, but it is generally quite insufficient to cover the affected worker's overall medical costs and family livelihood needs over the long term. As the patients' physical condition steadily deteriorates, such compensation payments are sometimes not even enough to cover the cost of the medical treatment and medication needed to keep them alive.

According to the Guangdong Provincial Hospital for the Treatment and Prevention of Occupational Diseases, silicosis sufferers need to be hospitalized for treatment, on average, for between 10 and 30 days each year.<sup>30</sup> The daily cost of hospitalization at the Guangdong centre – including medical treatment, medication, accommodation and food – is 230.9 yuan for those with first-degree silicosis, 251.85 yuan for second-degree cases, and 304.16 yuan for third-degree cases. Based on an average hospital stay of 20 days per year, first-degree silicosis patients therefore need to pay out 4,618 yuan a year, second-degree patients 5,037 yuan; and third-degree patients 6,083 yuan. On top of this, the sick workers also have to spend large sums of money on regular out-patient medical treatment, essential medication, and transportation costs to and from the hospital during the remaining 11 months of each year. It should also be remembered that most occupational silicosis sufferers are between 30 and 50 years old, and those who survive the illness will require continuous medical treatment and medication for the rest of their lives.

“On 13 August 2001, I was diagnosed at the Huizhou Municipal Disease Prevention Clinic as having first-degree silicosis... Not knowing any better, I was tricked by the factory into signing an agreement giving me just over 20,000 yuan in compensation. Manager Pan told me that there was no big problem with this illness that we [workers] were getting, and that even if we went to the government we wouldn't get any more money than that. I'm someone who knows absolutely nothing about the law, and I had no idea this disease would develop as rapidly as it has. In just over two years, my silicosis has gone from first-degree to third-degree, and the next stage is death.

“The company tricked and swindled me; my family has been broken up, my youth and health have been sacrificed and my wife has divorced me. From 2001 to 2004 I've been taking medicine and getting treatment, and just lying at home resting. I have no source of income at all. The 20,000-odd yuan in compensation I got from the company has all been used up, and now that my silicosis has progressed to the third-degree stage I've had to borrow another 20,000 yuan just to cover my medical bills.”

– Xia Delai, a worker from the Lucky Jewellery Factory; CLB case file, 30 November 2004

### **Inadequate Legal Safeguards for Occupational Illness Victims**

In the above cases, after their employers had refused to pay them compensation and the local work-related disability insurance office had failed to pay them any insurance benefits, many of the silicosis-afflicted workers sought relief through administrative or judicial channels. A review of the available documentation in these cases reveals numerous inadequacies in China's laws and regulations on the prevention and

<sup>30</sup> See “Notification Regarding the Costs of Long-term Examinations and Medical Treatment for Pneumoconiosis Sufferers”, issued by the Guangdong Provincial Hospital for the Treatment and Prevention of Occupational Illnesses, 23 August 2004.

compensation of occupational illness and for the provision of work-related injury and disability insurance. Taken together, these legal and regulatory shortcomings conspire to leave the victims more or less bereft of proper protection. The following provides a brief overview of the main problem areas.

First, under Article 52 of the *Regulations on Work-Related Injury and Disability Insurance*, which came into force in January 2004, disputes over work-related injury and disability insurance benefits are officially classified as labour disputes. Similarly, Article 12 of the Supreme People's Court's *Explanation of Several Issues Concerning Applicable Law in the Adjudication of Personal Injuries Compensation Cases* (effective 1 May 2004) states that all such matters are to be handled in accordance with the rules and regulations governing labour disputes.

According to the two documents, the authority for handling such disputes rests with the LDACs; in other words, labour arbitration is an obligatory first stage in the process of seeking compensation. In the cases described above, however, the labour arbitration stage proved to be largely pointless or superfluous: the workers' applications were either rejected by the LDACs on the grounds of "failure to prove that an employment relationship existed" between the worker and the employer; or, when they were accepted, the compensation sums awarded fell far below what the workers were prepared to accept. As a result, most of the silicosis-afflicted workers still had to take their cases to court in search of a just outcome. As an obligatory first stage in the process, therefore, labour dispute arbitration proved to be an obstacle rather than a remedy to these occupational illness victims in their pursuit of compensation.

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Second, even when LDACs do agree to hear occupational illness cases, the only types of compensation they can award are those specifically listed in the *Regulations on Work-related Injury and Disability Insurance* (for example, "lump-sum work-related injury/disability allowance", "lump-sum medical treatment subsidy for work-related injury/disability," and – for those with relatively minor problems – "employment subsidy for work-related injury/disability.") The LDACs' main handicap in such cases is that they are not empowered to make rulings on personal injuries' compensation (*sunhai peichang*), since such matters fall within the civil law and can therefore only be dealt with by the courts. Indeed, the main reason why most occupational illness victims refuse to accept the LDACs compensation rulings and instead proceed to litigation is that, if they win the case, the court almost invariably awards them higher amounts of compensation. For example, Gong Junsheng, a worker who contracted silicosis while working for Lucky Jewellery, was awarded 30,789.50 yuan in compensation by his local LDAC. (This included a lump-sum work-related disability allowance and a one-time unemployment subsidy for occupational disablement.) When Gong then took his case to court, he was awarded an additional 34,007.54 yuan in personal injuries' compensation, bringing the total award on all three counts to 64,797.04 yuan.

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Third, although the courts are authorized, on the basis of the Civil Law, to award greater amounts of compensation than can the LDACs, the cases described above show that in practice they are unwilling to consider or approve a range of other specific claims raised by occupational illness and injury victims. These include, notably: expenses for long-term continuing medical care and for regular medical check-ups; disabled person's living allowances; family dependents' living allowances; compensation for emotional or psychological injury; and the costs of nursing care. In most of the above cases, the courts rejected such claims on a variety of questionable grounds. One judge, for example, ruled: "The plaintiff should file a separate lawsuit on this count, in accordance with Article 184 of the Supreme People's Court's *Opinion on Various Questions Concerning the Application of the Civil Procedure Law*." Another ruled: "The claimant has not produced a plan from an appropriate medical facility specifying treatment recommendations and long-term medical care needs, so the People's Court is unable to calculate the cost of such treatment and needs." While another used the catch-all excuse, "This claim does not accord with the stipulations of the relevant legislation."

From the medical point of view, occupational illnesses are often quite different from occupational injuries, which may leave the victim disabled but without any subsequent major health problems. Many such illnesses, including silicosis, are progressive ones where the victim's health steadily deteriorates over time. The question of long-term continuing medical care is therefore vital to the basic health and well being of many occupational illness victims. In the cases under review, however, most judges ruled that the sick workers should compile the receipts for their long-term or continuing medical treatment after it had been given, and then file a separate lawsuit later to claim reimbursement for the expenses.

"The [Huizhou Municipal Intermediate] Court only awarded me and my family dependents a personal living allowance; they didn't award me anything to pay for long-term medical treatment (*houxu yiliao*) or give me any compensation for the serious physical and mental injury I've suffered. The court's excuse was that it had no way of calculating how much money I would need for the long-term medical treatment, and the judge told me I'd have to file a separate lawsuit later on to claim reimbursement for these expenses, after I'd actually had the treatment. That means I'll have to file a new lawsuit every year until I die, and even then I can't be sure of getting the money for my long-term medical care.

– Yuan Tianhui, a stonecutter from the Lucky Jewellery Factory; CLB case file, 28 May 2004

As the lawyer for one claimant argued, under the principle that special law takes precedence over general law, China's *Law on the Prevention of Occupational Diseases* and the *Regulations on Work-related Injury and Disability Insurance* should provide the main legal basis for the courts' handling of such cases. However, he added, where these and other labour-specific laws and regulations give no precise guidance on a particular issue, then clearly the courts should be able to rely on the more general provisions of the civil law.<sup>31</sup> Under the current system, many judges in

<sup>31</sup> According to Article 106 of the *General Principles of Civil Law of the PRC*, "Citizens and legal persons who breach a contract or fail to fulfil other obligations shall bear civil liability." And Article 119 states: "Anyone who infringes upon a citizen's person and causes him injury shall pay his medical expenses and his loss of income due to missed working time, and shall pay him a living subsidy if he is disabled; if the victim dies, [the party responsible] shall also pay the funeral expenses, any necessary living expenses of the deceased's dependents, and other such costs." See also: Supreme People's Court,

China evidently disagree with this argument. For workers unfortunate enough to encounter this type of judge, any civil rights entitlements not specifically provided for under the applicable labour laws and regulations are in effect forfeited.

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Fourth, for reasons beyond their control, occupational injury or illness victims are often unable to obtain the necessary supporting evidence for their compensation claims. Until January 2004, workers actually had to get their employer's permission before seeking a medical diagnosis of occupational illness. Regulations issued that month, the *Methods for Authentication of Work-related Injury or Disability*, relaxed this unreasonable rule by stipulating (in Article 14): "The administrative department responsible for labour protection may, in accordance with law, authenticate the work-related injury or disability on the basis of evidence presented by the injured worker." However, prior to applying for such authentication of occupational injury or illness, the sick worker still has to obtain an expert medical diagnosis or appraisal confirming that he or she is suffering from an occupational illness or injury, as opposed to a non-work-related condition.<sup>32</sup> And this cannot be done unless the claimant first provides the occupational diseases hospital or clinic concerned with copies of his or her workplace employment record, workplace medical file and various other documents.

In the cases discussed above, the workers concerned had great difficulty in obtaining the required documents. In most cases, this was either because the companies had failed to maintain any kind of employee records at all, or else, where such records did exist, because the managers were unwilling to hand them over. In practice, therefore, the employers held effective veto power over whether workers could even begin the process of applying for diagnosis and certification of their illnesses, not to mention undertaking the lengthy process of claiming compensation. For some of the workers involved, the need to produce these documents proved to be an insurmountable hurdle.

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Fifth, the *Regulations on Work-related Injury and Disability Insurance* are limited in application to victims of occupational illness or injury who currently still have an employment relationship with the factories concerned. If they satisfy this precondition, and depending upon their degree of injury or disablement, the affected workers are entitled to receive a lump-sum work-related disability award from the government's insurance fund, a monthly disability allowance from their employer, and other such benefits; and upon reaching retirement age, they become eligible to receive an elderly person's pension. Moreover, the same regulations stipulate that any employing units that have not yet joined the work-related injury and disability insurance programme will be held responsible for paying all the relevant compensation out of company funds.

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*Explanation of Several Issues Concerning Applicable Law in the Adjudication of Personal Injuries Compensation Cases* (op cit.)

<sup>32</sup> See the May 2002 *Administration Methods for the Diagnosis and Authentication of Occupational Diseases*. Expert medical appraisals (*yiliao jianding*) are required in administrative LDAC hearings and in court cases where occupational illness compensation is being sought; they must be obtained from a government-accredited hospital or clinic specializing in occupational diseases.

All this may seem fair and reasonable, but to the workers involved in the above cases it was quite a different matter. Most of them had either been sacked or pushed out of the workplace by their employers, so they no longer had any employment relationship with the company. As a result, they were no longer eligible to receive a regular work-related injury/disability allowance; they could not get reimbursement for medical treatment from their former employers; and nor were they entitled to medical insurance benefits to cover the treatment of their worsening medical conditions. And since most of them were already too ill to find new jobs, there would be no further payments into their retirement fund and so they would have no pension when they reached retirement age.

Occupational illness victims who no longer work for the companies where they contracted their illnesses urgently require, therefore, two things: to be awarded a wider range of work-related disability benefits than at present; and to be given higher compensation on each count. At present, the relatively few occupational illness victims who are able to get any form of work-related injury/disability benefit at all, whether from the government's insurance fund or from the courts, are restricted in the kinds of compensation they can get to those items stipulated in the *Regulations on Work-related Injury and Disability Insurance*. Moreover, the actual compensation they are able to secure in this way is often insufficient to cover even their present medical treatment costs and living expenses, let alone their future needs in these areas. In short, the existing regulations mostly harm rather than help the interests of this category of occupational victims.

### **Main Defects of the Administrative and Judicial Compensation Process**

First, given the overall urgency of their need, the administrative and judicial procedures that victims of occupational diseases like silicosis have to go through in order to get compensation are intolerably lengthy. All the claimants in the above cases were rural migrant workers from poor parts of the country, lacking in even the most basic knowledge of how to avoid occupational illnesses. Once diagnosed, they were unable to get effective medical treatment because their financial situation was so precarious, and some of them realized that they needed to seek compensation only after their health situation had become life threatening.

The sick worker's long road to compensation begins with the initial diagnosis of the illness. After that, the illness has to be officially confirmed as being a work-related or occupational one. And finally, an expert appraisal of the degree of labour incapacity has to be obtained. Only then can the affected worker apply to receive work-related injury/disability insurance benefits. If all goes smoothly, it is possible to complete this process within three to six months. In the above cases, however, very few of the workers were able to get their compensation awards smoothly and in accordance with the standards laid down in the *Regulations on Work-related Injury and Disability Insurance*. Instead, both the local social security office and their former employers found all kinds of reasons to avoid paying them any compensation. In such situations, workers with occupational illnesses are faced with a series of additional hurdles: they can seek an administrative review; pursue labour dispute arbitration; or take the case to court. Any one of these steps can be extremely time consuming, and workers often have to take all three in succession. In the seven cases presented above, the time needed to conclude a court case ranged from three to nine months, and where appeals

were required, it took between one and two years. Some cases have dragged on for more than three years, and the victims still have received no compensation. For silicosis sufferers who are dependent on constant treatment and medication to survive, both the nature of the procedure and the length of time needed to obtain a compensation award are of critical importance. These factors determine the patients' ability or otherwise to get prompt access to the medical treatment needed to bring their illnesses under control, and they are also crucial to the livelihood and welfare of their families.

Since each stage of the compensation process is so time-consuming, occupational illness victims often have to interrupt their medical treatment while pursuing their claims, often far away from home in the areas where their factories are located, and so their health condition deteriorates even more rapidly. Also, their daily living expenses at such times are much higher than what they would normally be spending in their hometowns. Most of them have no source of income, so they have to rely on the charity of friends or fellow workers from their hometowns for a place to live while pursuing their compensation claims, and many end up deeply in debt. Many silicosis-afflicted workers report that they can't even afford to buy proper medication to control their asthma-like gasping and chronic coughing. Instead, they have to make do with cheap and ineffective herbal remedies of various kinds.

For example, Chen Xingfu, a 52-year old worker from Kaijiang County in Sichuan, applied for compensation after contracting second-degree silicosis while working at

the Lucky Jewellery factory in Huizhou City, Guangdong. During the two-year period from April 2002 when he first applied for labour dispute arbitration, to April 2004 when the appeal court ruling finally came through, Chen's overall expenses – including lawyers' fees and other litigation costs, together with his living expenses in Huizhou and transportation to and from his hometown in Sichuan – amounted to some 40,000 yuan. The appeal court eventually awarded Chen the modest sum of 172,293 yuan in compensation; but although he had won the case, the court took no account of the unavoidable expenditure that he had incurred over the two-year period, and the company was not ordered to reimburse him for these costs.

“The Huizhou Municipal Intermediate Court handed down its verdict [on my compensation claim] on 13 April 2004, and I got a copy on 19 April. That was a whole year and five months after the trial. From the time of my hearing at the Huicheng District LDAC in Huizhou to when the Intermediate Court issued its verdict, almost three years had passed.

My total expenses – finding a lawyer by myself and paying for my food and accommodation during that time – came to around 40,000 yuan. I had to borrow money everywhere and I ran up huge debts. Now my illness is getting steadily worse, and I'm just waiting to die.”

– *Chen Xingfu, a worker from the Lucky Jewellery Factory; CLB case file, 8 May 2004*

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Second, the initial stages of labour arbitration or court litigation are often entirely taken up with procedural and jurisdictional issues that have no direct bearing on the sick workers' compensation claims. In the Guangdong jewellery-processing industry, factory owners are well aware of the health dangers posed by workplace dust, and they often resort to such tactics as changing the factory's place of registration, altering the company's name, or even relocating the factory to another town in order to evade

their responsibility to pay compensation to sick workers. These measures are highly effective. In the above cases, for example, when silicosis-afflicted workers who were forced to resign and go back to their hometowns finally realised, some years later, that they needed to seek compensation, they often had great difficulty in finding the company or individual against whom their claim had to be made. And when they did eventually manage to find them, the LDACs and the courts usually took the path of least resistance by rejecting the workers' compensation claims on the grounds that there had been "no employment relationship between the two parties."

The great majority of people involved in silicosis-related labour dispute cases of this kind are rural migrant workers who possess no legal knowledge about such complex matters as applying for occupational illness compensation. The companies involved, therefore, usually have little difficulty in running rings around them, both in the LDACs and in the courts. Moreover, given the complexity of the system, it is all too easy for the claimants themselves to end up making mistakes of various kinds. When this happens, it clearly should be the responsibility of the administrative and judicial bodies concerned to point out any procedural or jurisdictional errors made by the claimants, and to assist them by pointing them in the right direction. In the cases discussed above, this rarely if ever happened. In the case of Tang Sheng,<sup>33</sup> for example, no one from either the LDAC or the various courts dealing with his case ever thought, or took the trouble, to inform him that he was claiming against the wrong company. The net result was that the entire 27-month period from June 2001, when he first applied for labour arbitration, to September 2003, when the appeal court ruled against him, was wasted. As of November 2005 – almost four and a half years after his initial application – Tang, a second-degree silicosis victim, still had received no compensation from his former employer. Several other silicosis-afflicted workers from the above cases encountered similar problems.

On a related matter, prior to May 2004, when the Supreme People's Court first issued instructions on the matter,<sup>34</sup> the courts had no clear definition available to them as to whether occupational illness compensation cases should be handled as labour disputes or as civil compensation cases. The usual position taken was that if an employment relationship still existed between the affected worker and the employer, then labour arbitration first had to be sought before the worker could take his or her case to court. However, in cases where the labour relationship between the two parties had already been terminated, the courts at various levels often took conflicting views of the matter, and the jurisdictional disputes that then followed further prolonged the victims' quest for compensation.

In the Gaoyi Gems case, Wu Guojun, a worker in the factory's stone-cutting section, was instructed by company representatives in March 2001 to "return home to be treated for hepatitis," and his labour contract was thereupon terminated. In December 2002, after being diagnosed with second-degree silicosis, Wu filed a compensation lawsuit against Gaoyi Gems in the Haifeng County Court and the case was accepted for trial. The company then submitted a "memorandum of no jurisdiction," however, requesting the court to rule that the case should be dealt with through the labour dispute arbitration process, and not as a civil compensation case. The local courts of

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<sup>33</sup> For case details, see above: "Case 3: Art's King Gem Handicrafts."

<sup>34</sup> See: *Explanation of Several Issues Concerning Applicable Law in the Adjudication of Personal Injuries Compensation Cases*, Supreme People's Court, 1 May 2004.

first and second instance then issued conflicting opinions on this question. At the initial trial, the Haifeng County Court ruled that, even though no employment relationship currently existed between the two parties, the court should still hear the case. However, at the appeal hearing, the Shanwei Municipal Intermediate Court insisted that since the case was a labour dispute, it should be heard and dealt with by the LDAC.

For occupational illness victims, jurisdictional debates of this kind are entirely unhelpful. First, they greatly prolong the time needed to secure any kind of judicial remedy or relief. In Wu Guojun's case, between 30 December 2002, when he first lodged his compensation lawsuit against the company, and 10 July 2003, when the appeal court issued its ruling to "send the case back" to the LDAC, the courts offered no substantive ruling on his actual claim. Rather than providing Wu with practical judicial assistance, the courts were instead concerned only with "strictly adhering to due legal process." Second, the final ruling of the Shanwei Intermediate Court – that Wu's case was a labour dispute and not a civil compensation case, and that it would therefore have to go back to the local LDAC for resolution – was clearly an act of judicial bad faith. As the Shanwei Court well knew, Wu had long ago exceeded the 60-day time limit (starting from when his diagnosis of silicosis was confirmed) for submitting an application for labour dispute arbitration, so any future claim made by him on this basis would therefore have been rejected outright. This was no doubt the outcome that Gaoyi Gems had all along hoped to achieve by submitting its "memorandum of no jurisdiction."

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Third, the Civil Procedure Law of the PRC allows the courts to issue pre-judgment compensation awards (officially known as "prior execution" rulings) on behalf of plaintiffs who are in urgent need of various kinds. In practice, though, the courts generally fail to make use of this authority. According to Article 97 of the law,

In the following cases, the people's court may make a ruling for prior execution in accordance with the litigant's request: 1) claiming alimony, costs of support or upbringing, and pensions for the disabled and medical expenses; 2) claiming labour remuneration; and 3) other urgent circumstances that require prior execution.<sup>35</sup>

Several of the occupational illness victims in the cases cited above certainly qualified as falling within this category. However, even in cases of the most desperate medical and financial need, the courts failed to grant any pre-judgment compensation awards. The plight of Deng Wenping, the former Perfect Gem worker who currently has third-degree silicosis, is a clear case in point. In December 2000, after being admitted to the Guangdong Provincial Hospital for the Treatment and Prevention of Occupational Diseases, he was diagnosed by the Guangdong Provincial Occupational Diseases Appraisal Committee as having second-degree silicosis. On 19 April 2001, Deng signed an agreement with Perfect Gem awarding him a lump-sum payment of 100,000 yuan in disability compensation, disabled person's early retirement pension and hardship living allowance. (In reality, he received only 90,000 yuan of this sum:

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<sup>35</sup> Translation taken from China Civil and Commercial Law website: [www.civillaw.com.cn/](http://www.civillaw.com.cn/).

Perfect Gem’s factory manager kept the remaining 10,000 yuan as “commission.”) The same agreement formally terminated Deng’s employment with the company.

After Deng returned to his hometown in Sichuan, his medical condition steadily worsened. In October 2002, he was diagnosed as having advanced second-degree silicosis, and by April 2004 his illness had reached the third and final stage. During three separate periods of urgent hospitalization at the Guangdong Provincial Hospital for the Treatment and Prevention of Occupational Diseases (in June 2003, March 2004 and March 2005), his expenses for medical treatment alone averaged some 700 yuan per day. His total expenditure on medical bills eventually came to as much as 170,000 yuan and, despite selling his family home to pay these bills, he fell heavily into debt. In April 2005, by which time Deng was critically ill in hospital, he became destitute and was unable to pay his medical bills. Creditors started coming to his bedside to demand repayment of their loans. Thereupon, the hospital announced a sudden “improvement in the patient’s medical condition” and pressured him into quickly vacating his hospital bed and returning home.

“On 3 January 2001, several other workers and I were diagnosed as having silicosis, and on 5 January the factory forcibly sacked us all; even my wife, who was working at the same factory as me at that time, got booted out. Not having any idea how serious this illness was, and being unfamiliar with the law, in April 2001 I signed a ‘private agreement’ with the factory whereby I got 100,000 yuan in compensation. But the vile factory director, Li Guobin, took 10,000 yuan of that for himself as “commission.”

How was I supposed to know what a terrible illness this is? I’ve totally lost my ability to work, and within two or three years all my compensation money had been spent paying for medical bills and my family’s living costs. Now I’m getting ever deeper into debt. This year my illness has been getting worse; I’m in the last stage of silicosis and I need to take oxygen from a cylinder just to survive. I’ve been hospitalized three times over the past two months and the doctors have brought me out of critical danger each time. But the bills for the medical treatment and drugs are astronomical, and I don’t dare go back to the hospital any more.”

– Deng Wenping, a worker from the Perfect Gem and Pearl Factory; CLB case file, 17 March 2005

Deng Wenping had been seeking compensation through all the administrative and judicial channels available to him since December 2002, and his situation was clearly desperate. At no time did the courts see fit to grant him a “pre-judgment compensation” award to relieve his plight. Indeed, none of the silicosis-afflicted workers whose cases are known to CLB has ever received such an award.

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Fourth, in several of the cases under review, after the workers had received confirmed diagnoses of silicosis, they were coerced by their employers into signing agreements whereby they received anything from several thousand yuan to 100,000 yuan in compensation, and their employment with the company was then terminated. Subsequently, as their medical conditions steadily worsened, the workers realized that the compensation sums they had accepted were quite insufficient to cover either their continuing medical expenses or their families’ long-term livelihood needs. Moreover, these “private agreements” turned out to be a major obstacle to obtaining any further compensation from their former employers. In most cases, both the LDACs and the courts rejected the workers’ subsequent claims for compensation on the grounds: “A prior agreement remains in force” (or equivalent rulings.)

In addition, when the silicosis-afflicted workers sought compensation through court litigation, they were required to pay substantial sums in court processing fees – irrespective of whether they won or lost their cases. Indeed, those who succeeded had to pay up to 70 percent of the court fees, which substantially reduced the amount of compensation they actually took away. In the various lawsuits undertaken by workers from Lucky Jewellery, for example, the court fees incurred amounted to between 7.9 and 13.6 percent of the final compensation awards.

### **Local Governments: Neglecting the Health Rights of Workers**

In developing the local economy, local government bodies across China are neglecting social justice issues. Policies are heavily slanted toward the interests of investors and entrepreneurs and there is little real protection of workers' basic rights and interests. When workplace accidents occur or occupational illnesses arise, the victims often encounter all kinds of obstruction from the local government when trying to get compensation.

First, according to the *Administration Methods for the Diagnosis and Authentication of Occupational Diseases* (Article 10), those with work-related medical problems can choose to be medically diagnosed either at an accredited occupational diseases clinic or hospital in the area where their employing unit is located, or else at an equivalent hospital or clinic in their place of home residence. In the cases discussed above, this rule – designed for the greater convenience of the workers concerned – was openly disregarded. Indeed, all certifications of occupational illness provided by accredited medical centres in the workers' places of home residence were rejected as being invalid by their counterparts in Guangdong Province, where the employing factories were located, and the workers were all required to obtain fresh medical appraisals. When they did so, however, the Guangdong clinics often diagnosed them as having no occupational diseases, contrary to what the accredited clinics in the workers' own hometowns had found. This occurred most frequently in cases where several workers from the same factory were seeking re-certification of their illnesses.

In early 2001, for example, the Haifeng County Hygiene and Disease Prevention Centre found that in the stone cutting workshops of the Haicheng Universal Gems and Jewellery Company Ltd, "The noise and dust levels exceed national health standards." In April 2003, two stonecutters at the factory, Zhong Yinping and Luo Youzhong, complained of chest pains and coughing and were sent by the factory manager for a medical check-up at the Guangdong Provincial Hospital for the Treatment and Prevention of Occupational Diseases. They were diagnosed as "not suffering from silicosis." Soon afterwards, Zhong and Luo returned to their hometown and were found by their local occupational diseases clinic to be suffering from first-degree and second-degree silicosis respectively. The clinic gave each worker a "Certificate of Diagnosis (Appraisal) of Occupational Illness" as evidence of its findings, and Zhong and Luo then returned to Guangdong and applied to the Haifeng County Labour and Social Security Bureau for certification of work-related disability status. However, the government agency rejected their applications on the grounds, "The diagnostic evidence provided does not fulfil the requisite criteria for applying for certification of work-related disability." Subsequently, the Guangdong Provincial Hospital for the

Treatment and Prevention of Occupational Diseases refused to provide the workers with a second diagnosis – so confirming the Catch-22 nature of the situation.

Such decisions by the occupational disease centres and facilities in Guangdong aroused much resentment among the silicosis-afflicted workers, who soon began to suspect that the Guangdong medical authorities had come to some kind of “private deal” with local factory owners. For their part, the occupational diseases hospitals and clinics in the workers’ hometowns have continued to insist that their original diagnoses of occupational illness were accurate, and some – notably the West China Occupational Diseases Hospital at Sichuan University – have said they were ready and willing to challenge the findings of the Guangdong medical authorities in court.

In short, the complexity of the current procedure for certifying occupational illnesses, together with the “stringent” nature of the rules under which government bodies have to operate in this regard, in effect provide the authorities with a ready-made pretext for shirking their responsibilities towards occupational illness victims. In addition, the current system affords a convenient cover for widespread collusion between government officials and local business interests in this general area. And for the workers involved, the system often places insuperable obstacles in the path of their quest for compensation.

Second, when handling labour dispute cases of this type, most LDACs, which are affiliated with the local government, conspicuously side with the investors and entrepreneurs. As noted above, in cases where silicosis-afflicted workers had already ceased working for the company or factory, sometimes several years earlier, the LDACs frequently rejected their compensation claims on the grounds of “lack of evidence showing that the two parties had an employment relationship.” Rulings of this nature could generally only be rectified through court litigation. In the Lucky Jewellery case, for example, the local LDAC dismissed the compensation claims of several workers with silicosis on these grounds. However, when the workers then filed a lawsuit against the company, the court ruled that the company had “failed to provide evidence showing that it had never had an employment relationship with the workers” – thereby in effect reversing the burden of proof – and Lucky Jewellery was held legally responsible for the workers’ medical condition.

But even in cases where an employment relationship had undeniably existed, the LDACs still found various alternative grounds for rejecting the sick workers’ compensation claims. In some instances, it was because “The [60-day] time limit for filing arbitration cases has been exceeded.” In cases where the factory had relocated to another area, the LDACs argued that the case “falls outside our jurisdiction”. And in one case (opaquely enough), it was because: “A civil compensation claim made pursuant to the *Law on the Prevention of Occupational Diseases* and the *General Principles of the Civil Law* cannot be dealt with as a dispute over labour rights and obligations.” For many silicosis victims seeking compensation, therefore, the labour dispute arbitration process is not just a superfluous prerequisite to taking court action: rather, it directly serves the economic interests of the factory owners and investors.

Third, the jewellery-processing industry is highly labour intensive in nature, and so most of the above cases of silicosis occurred collectively rather than on an isolated basis. As a result, the workers concerned sometimes staged collective protest actions

in pursuit of their compensation claims. The local government response, however, suggested that the authorities' main concern was not so much to ensure that the sick workers had prompt access to medical treatment and fair compensation, but rather to prevent any such incidents from "threatening social stability" and upsetting local investors. Significantly, protest actions by individual workers or small groups of workers generally attracted little or no attention from the government. Only when the number of protestors grew to several dozen or more and the protests spilled out beyond the factory gates – with workers staging demonstrations or blocking public roads – did the local authorities become more actively involved, typically by forcing the demonstrators back to work while at the same time gently pressuring the companies to begin negotiations. Overall, workers' rights issues took a distant second place to the official goal of "maintaining a positive investment environment."

### **The Official Trade Union: Failing to Defend Workers' Interests**

The silicosis victims in the various cases discussed above all reported that there were no trade union branches at the factories where they worked and that local ACFTU offices had failed to carry out their legal responsibility to monitor occupational health and safety conditions in the workplace. When the sick workers tried to uphold their rights and claim compensation, no ACFTU officials took the initiative of offering them any legal or other form of assistance; nor did it occur to the workers themselves to seek such help.

According to Article 88 of the PRC Labour Law, "Trade unions at all levels shall safeguard the legitimate rights and interests of the workers and shall exercise supervision over the employers' observance and implementation of labour laws and regulations." In addition, both the Trade Union Law (2001) and the Law on Work Safety (2002) authorize the ACFTU to monitor occupational health and safety conditions in the country's enterprises. But in practice, the ACFTU seems simply to have relinquished most of its rights and duties in this area. It has been powerless to halt the rising incidence of collective occupational illness cases among China's workforce, and this failure has undoubtedly contributed to a continuing decline in the union's standing and prestige among Chinese workers in recent years.

Several of the collective silicosis cases discussed above were widely publicized in the local news media in Guangdong, so the ACFTU at both provincial and local levels cannot have been unaware of the serious health and safety situation in the jewellery factories concerned. Nor could the official union plead a lack of knowledge of the dreadful working conditions found in thousands of other jewellery-processing factories in Guangdong Province today. But instead of intervening to halt these workers rights' abuses, hold the factory owners accountable and help the silicosis sufferers obtain decent compensation, the ACFTU instead sat complacently on the fence – secure in its officially appointed role as the "representative and protector of workers' rights."

In January 2003, the ACFTU published its inaugural *Blue Paper on the Work of China's Trade Unions in Upholding the Lawful Rights and Interests of Employees*. According to this report, the organization's staff included (either full or part-time) a total of 59,400 labour protection officials around the country in union bodies above the grassroots level, and an additional 652,100 such officials nationwide at the

grassroots level. At central and provincial levels, the ACFTU had appointed 2,933 labour-protection supervisors and inspectors; at grassroots union level, it had set up 643,000 labour-protection supervisory and inspection committees; and in factories and enterprises, it had installed no fewer than 2.33 million labour-protection monitors at the trade union workshop-team level. Between 1997 and July 2002, moreover, the total number of grassroots trade unions across China reportedly rose from 510,000 to as many as 1.71 million, while the total national membership of the ACFTU is said to have increased, over the same period, from 91.3 million to as many as 130 million.

While these figures are certainly impressive, the reality – as seen from the jewellery industry-related silicosis cases discussed in this report and also the evidence from numerous other branches of Chinese industry today – is that a large proportion of these trade union branches, labour protection officials and occupational health and safety inspectors seem either to have a merely nominal existence or else are functionally inactive. In attempting to salvage its image and prestige among the Chinese workforce, the ACFTU in recent years has devoted a huge amount of time and energy on trying to “boost numbers” on these various counts. But it has continued to show little real concern over the one area of workers’ rights – occupational health and safety – where its intervention as a trade union is nowadays most urgently needed.

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The above case studies detailing the struggle for compensation by silicosis-afflicted workers in Guangdong Province also provide, on a more positive note, a clear reminder that Chinese workers today are becoming increasingly rights conscious and self-reliant. In the course of their protracted quest for compensation, the workers in these cases gradually shed their illusions about expecting any help, favours or sympathy from outside agencies – be it their employers, the local government or the official trade union. In the process, they also gained an awareness of the benefits of getting organized and of using collective forms of action to defend their right to a safe and healthy working environment. Moreover, the response of local authorities and employers to their efforts showed, in at least some of the cases, that these methods and tactics could be genuinely effective.

As of November 2005, several of the Guangdong silicosis victims were preparing to set up a non-governmental organization devoted to helping other workers struck down by occupational illness or injury. As one of its first objectives, the group was planning to campaign for a safer and healthier working environment within the Guangdong jewellery-processing industry and to offer practical and legal assistance to fellow silicosis victims seeking compensation from unscrupulous employers. This new group will need all the help and support it can get.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

The health and lives of workers in China’s private-sector enterprises today are under serious threat. When workers become ill or suffer injuries through company or managerial neglect, they have great difficulty in getting either proper medical treatment or fair and just compensation. In the cases presented in this report, the workers involved had to struggle against considerable odds on a range of fronts:

- the procedure for obtaining official certification of occupational illnesses was excessively long and complex;
- the employers' stance towards the claimants was harsh and unyielding;
- in hearing labour dispute cases, the LDACs and courts were mostly biased in favour of the employers;
- navigating the requisite procedures for claiming compensation proved to be a long and arduous obstacle course for the workers;
- in cases where work-related disability insurance benefit was obtained, the amounts awarded were usually quite inadequate;
- attempts by workers to seek help and assistance from the local government were for the most part futile;
- and throughout the process, the workers and their families were placed under heavy financial and emotional pressure.

In view of all these difficulties, it was not surprising that most of the silicosis victims ended up reaching informal agreements with their employers, accepting whatever compensation money was offered and effectively signing away their right to any future legal recourse or remedy. Such agreements were at best a short-term solution, and in the long run highly inadvisable. As the workers' health continued to deteriorate and their families' financial situation became increasingly desperate, these unlawful documents provided employers with a pretext for refusing to pay compensation and at the same time gave the LDACs and the courts a convenient excuse for dismissing the workers' claims.

Over the past 10 years, the jewellery-processing sector has become one of the pillar industries of economic development in Guangdong Province. According to an official report, the base area for this industry – Haifeng County (and in particular, Ketang Township) in Shanwei Municipality, Guangdong – produces more than 50,000 tonnes of processed gemstone goods annually, representing around 70 percent of the total global output of such goods.<sup>36</sup> There are currently more than 2,000 jewellery-processing factories in and around Ketang Township alone, and in 2004 the local Communist Party Committee and the county government raised some 30 million yuan to cover the initial phase of construction of a 30,000 square-metre gemstone trading centre, to serve as a window for further penetration of the international market.

An epidemiological study of common occupational illnesses in Guangdong Province, completed in 2004, identified the following hallmarks of the silicosis epidemic in the province's jewellery-processing sector: the illness's incubation period was becoming shorter; the workers were falling sick at an earlier age; the course of illness was progressing more rapidly; and the resultant levels of work-related disability were getting higher.<sup>37</sup> The average period of incubation for silicosis is normally around eight years, and the Guangdong jewellery-processing industry has now been in existence for about 10 years. Clearly, unless the government moves swiftly and

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<sup>36</sup> Pan Xiaoping and Xie Liqun, "Output of Processed Gemstone Goods in Guangdong's Haifeng Accounts for 70 Percent of World Total – Ever-Increasing Concentration of Jewellery-processing Industry in Haifeng's Ketang Township," *Huanan Xinwen* (Southern China News), 23 November 2004.

<sup>37</sup> Tian Yanhong, "Dust from Stone-cutting Engenders Stubborn Illness – Guangdong's Jewellery-processing Industry under the Dark Shadow of Silicosis," *Zhongguo Jingying Bao* (China Business News), 29 August 2004.

effectively to combat the spread of this life-threatening occupational illness, and unless the ACFTU abandons its present stance of complacency and inaction and begins acting like a real trade union on occupational health and safety issues, a new and more severe phase of the Guangdong silicosis epidemic can be expected to arrive in the very near future.

### **General Recommendations**

- The government should carry out a compulsory survey and investigation of the extent of silicosis among workers in the Guangdong jewellery-processing industry, and individual medical files should be established for every worker. The owners and operators of the factories concerned should meet the costs of this initiative.
- The government should reinforce its monitoring and supervision of the working environment in jewellery-processing factories, and should assign sufficient numbers of inspectors to carry out the task of measuring airborne dust levels in all such production units. Factories found to have airborne dust levels exceeding the maximum permitted level should be ordered to halt production until the problem has been remedied.
- In the case of silicosis-afflicted workers whose employment relationship with the factories concerned has already been terminated and who therefore cannot obtain workplace-related disability insurance benefits, the local governments in the place where the original employing unit is located and in the affected worker's place of home residence should collaborate to ensure that he or she receives the minimum living allowance applicable in the place of home residence. The respective local governments should also ensure that the affected worker has access to all necessary medical treatment, and the cost of providing such treatment should be shared between them.
- Government bodies at all levels within Guangdong have a duty to provide silicosis-afflicted workers with all necessary aid and assistance in seeking compensation from their employers or former employers, and they should actively assume this responsibility.

### **Reform of the Compensation Claims System**

- Abolish the requirement that labour dispute arbitration must first be undertaken before workers can take their compensation claims to court. If any disputes arise between the affected workers and either their employer (current or former) or the work-related disability insurance office, they should be able to proceed directly to court litigation in pursuit of their claims.
- In the case of workers suffering from second-degree silicosis or worse, a simplified court hearing and adjudication process should be followed, in order to avoid unreasonable delays in awarding compensation that could further endanger the affected workers' health.

- Government bodies responsible for authenticating and certifying work-related injuries disabilities should strictly adhere to Article 10 of the *Administration Methods for the Diagnosis and Authentication of Occupational Diseases*, which specifies that medical diagnoses provided by occupational disease clinics and hospitals in the affected worker's place of home residence are valid and acceptable for purposes of authenticating an occupational illness or injury.
- In cases where the basic facts have already been established, courts adjudicating compensation claims by silicosis-afflicted workers should exercise, in accordance with the current degree of severity of the claimant's medical condition and other practical needs, their authority to make a pre-judgment compensation award under Article 97 of the Civil Procedure Law, in order to provide the claimant with urgently needed financial relief.

### **Recommendations to the ACFTU**

- The ACFTU should assign a sufficient number of its labour protection inspectors to the task of monitoring and enforcing nationally applicable occupational health and safety standards within the country's jewellery-processing industry.
- Local trade union offices should actively encourage and support rural migrant workers in the jewellery-processing industry to organize and set up enterprise-level trade union branches. Once established through factory-wide elections by the workers, in accordance with the relevant provisions of the Trade Union Law of the PRC, these union branches should be officially recognised by the ACFTU.
- Local trade union offices should assist workers in the jewellery-processing industry to form either factory-level Workers' Occupational Health and Safety Monitoring Committees, or, in small-scale enterprises, Workers' Occupational Health and Safety Monitoring Groups. Moreover, these should then be linked together into district-wide Workers' Occupational Health and Safety Monitoring Networks. The various groups and committees should be composed of representatives chosen and elected by the workers themselves.
- Local trade union offices should provide legal assistance to workers suffering from silicosis or other occupational diseases who are seeking compensation from their employers. Where needed, the official union should also provide temporary accommodation and living allowances to the workers concerned.
- Occupational illness victims, and also workers who participate in the above-listed bodies, should be protected from arbitrary dismissal or other forms of retaliation by their employers. Local trade union offices should actively come to the defence of any workers who encounter such treatment.

## APPENDIX I

### Migrant Worker with Deadly “Dust Lung” Disease, Wife Struggles to Survive

*Chronic occupational illness and injury has become a common phenomenon in the prosperous cities of southern China. Since 2000, many cases have surfaced in several Hong Kong-invested jewellery factories in Guangdong Province. These workers find themselves living out their remaining days in the worst slums, trying to seek compensation and justice.*

*In most cases, the victims, who are in their 20s to 40s, were the family breadwinners before their lungs were contaminated by the deadly dust from cutting precious stones. So the destruction of their health devastates the whole family. China Labour Bulletin recently interviewed the wife of a migrant worker afflicted by silicosis. On top of caring for her dying husband, she worries about her children who remain in her home village, and she tries to fight for compensation. She shared her experience with CLB as follows:*



My name is Tang Manzhen and my husband is Deng Wenping. We are both 34 years old. I came to Huizhou to work in January 1998, a few months after my husband had started work in the Stone-Cutting Section of the Perfect Gem & Pearl Manufacturing Company. Back home we were farmers, working day and night to make ends meet. We thought that factory work in Guangdong sounded promising, so we left our eight-year-old daughter and two-year-old son with their grandparents in a village in Sichuan, to come here.

I started working in the perforation (gem drilling) section of the same factory. My husband earned 1,000 yuan a month and my wages were on a piece-rate basis. I worked from 7.30 am to 9.30 pm or even later, with one day off a month, for 900 yuan a month. Chinese New Year was the time we looked forward to most, when we could go home for a few days and see our children and parents. Our wages meant we could send our daughter to school and have a house built in our hometown, where we hoped to return one day. But in late 2000 everything went wrong.

After the factory’s annual medical test, my husband was notified that he had contracted tuberculosis. We were suspicious because tuberculosis is infectious and if we had it, why hadn’t I caught it? So, together with five other colleagues, my husband went for an examination at another hospital.

It turned out that all of them were suffering from silicosis and my husband’s condition was diagnosed as being at Stage II of the illness. On learning of this, the factory fired them all on 5 January 2001, just three days after they came out of hospital.<sup>38</sup>

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<sup>38</sup> Deng Wenping was initially diagnosed with second-degree silicosis, equivalent to level 4 of work-related disability under the *Regulations on Work-related Injury and Disability Insurance*. According to the Regulations, occupational illness victims classified as being level 1 to level 4 in disability can choose to get either “lump-sum compensation” or “continuous compensation.” Deng said he was forced to leave the factory under threat of physical attack by the factory’s security guards. He made a complaint to the local labour department but was physically assaulted by officials there. In April 2001, short of money for living and medical expenses, he had no option but to accept the company’s one-time compensation offer. In April 2004, he was diagnosed as having third-degree silicosis.

On the morning of 8 January 2001, I received notification from the factory that it was “inappropriate for me to work in this factory anymore” and the security guards forced me to pack and leave immediately. I am sure it had nothing to do with my performance. I had been working there for three years. How could they suddenly find me unsuitable?

I wanted to look for another job so that I could support my children and pay for my husband’s medical treatment, but he was so sick that I could not leave him alone at home. I needed to cook for him, bathe him and take him to the clinic. Now he can’t even dress himself so I have to do everything for him.

My husband received 90,000 yuan compensation from the factory, but our lives have been ruined.<sup>39</sup> We have spent all the compensation money and our own savings and even sold our house to pay for his medical treatment. Four years on, we are now heavily in debt, so we are currently trying to sue the company in court to get higher compensation.

His condition is now at Stage III, the last stage of this incurable illness. He now needs oxygen therapy once every two days to combat his breathing difficulties. We cannot afford to go to better hospitals, so we go to small clinics. But still, it costs 140 yuan each time.

Since he contracted silicosis, I haven’t had a good night’s sleep. I am worried all the time. How long does he have left? How can his suffering be reduced? How are my children? What shall I do when he is gone? What if we lose the court case? How can we repay our debts? These thoughts keep me awake during the endless nights, accompanied by his coughing and murmuring.

Both my husband’s parents passed away in 2001, less than half a year after learning of his illness. My children then moved to my parents’ place. My parents are understanding and want to help me out, but sometimes my brother and sister-in-law, who also live there, complain. Well, they are probably right, they have their own children to look after and it is not their responsibility to take care of mine.

My children are now 14 and 8. The younger one has never been to school and the elder one had to quit because we couldn’t afford her tuition fees. I don’t want to cry in front of my husband because he suffers enough, but when I call my children, I cannot hold back my tears anymore. They always ask when they can return to school. Kids in the village laugh at them, saying that they have parents working in Guangdong but cannot send them to school. It breaks my heart when I hear those stories.

You know, I have not seen my children for more than three years. A return ticket to Sichuan costs 600 yuan and I can’t afford it. “How tall are my children? Have they put on weight? Are they naughty?” I always ask my friends when they return after Chinese New Year.

We are now living on the charity of good-hearted people. A fellow villager, who works in Huizhou, lets us have a spare room and I have borrowed money from friends and relatives to treat my husband.<sup>40</sup> But it is getting more difficult because they know he will not recover, so they probably will not be repaid. I feel extremely bad about this.

My husband is dying, but still I don’t want to give up. All I wish now is that the factory will pay for his medical expenses and give us some compensation, so that he can live longer and my children can return to school. I cannot imagine what will happen to me when he dies. I am too old to find a job in Guangdong but I am worried that I will not be able to earn enough by farming to support my children.

*China Labour Bulletin*  
9 March 2005

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<sup>39</sup> The initial offer of compensation was 100,000 yuan but Deng said he had been required by the factory management to pay them 10 percent “commission” for handling the case. This so-called commission was off the record and no receipt was given.

<sup>40</sup> The place where Mr. & Mrs. Deng live looks like an abandoned house from the outside. On the day of this interview, it was drizzling and her room was dark and damp. She has to gather wood for cooking and has no access to clean water in her home.

## APPENDIX II

### A Brief Chronology of CLB's Case Intervention Work on Behalf of Silicosis Victims in Guangdong<sup>41</sup>

- 15 September 2004 China Labour Bulletin and other Hong Kong-based labour rights groups issue a joint press statement supporting the demands for compensation put forward by silicosis-afflicted workers from the Lucky Gems and Jewellery Factory.
- 9 November 2004 Lucky Jewellery sends a letter to one of the signatory groups, threatening to take legal action against the group's representative on grounds of defamation. CLB provides legal advice to the group.
- 31 January 2005 Li Weizhong, Yang Renping and Feng Xingzhong, silicosis victims from the Lucky Jewellery Factory and the Gaoya Jewellery Factory (now renamed as the Gaoyi Gems Factory Ltd), come to Hong Kong to meet with labour rights groups and to represent fellow silicosis victims from the two factories in publicly demanding compensation. After interviewing them about the severe difficulties they face in obtaining compensation and about their pressing medical and livelihood problems, CLB undertakes to provide Li, Yang, Feng and other affected workers with continuing legal advice and support.
- 2-4 February 2005 The silicosis victims' representatives stage a several-hour protest demonstration outside Lucky Jewellery's headquarters in Hong Kong. Two of the workers are invited inside for discussions, but company managers make no pledges or concessions over the compensation issue. The workers' protest is widely covered in the local news media. Meanwhile, CLB undertakes to find a mainland Chinese lawyer to assist silicosis-afflicted workers from the Lucky Jewellery and Perfect Gems factories in their quest for compensation.
- 21 February 2005 CLB hires two lawyers from a prominent Beijing law firm to represent the workers in seeking compensation, if necessary through court action against the companies concerned. Soon afterwards, the lawyers travel to Huizhou City in Guangdong Province for a pre-arranged meeting with Wong Shing Wah, chairman of Lucky Jewellery Factory, to discuss compensation terms for workers suffering from silicosis. However, Wong fails to turn up for the meeting.
- 22 February 2005 The lawyers issue an open letter criticizing Wong Shing Wah for failing to keep the appointment and upbraiding the Huizhou authorities for thinking only of business investment and ignoring workers' rights. China Labour Bulletin circulates the letter internationally via its website.
- 1 March 2005 A CLB-hired mainland lawyer assists Liu Sanhui, a silicosis-stricken worker from Lucky Jewellery, to apply to the Huicheng District Labour Dispute Arbitration Committee, Huizhou Municipality, for an arbitration hearing on his compensation claim case.
- 1-4 March 2005 Several local trade unions and labour rights groups, including CLB, stage demonstrations on behalf of the silicosis victims at the Hong Kong International Jewellery Show. The groups also send a letter of protest to the Hong Kong Jewellery Manufacturers' Association and to the Hong Kong Trade Development Council, urging them to intervene. These actions attract widespread attention, both from the general public and from jewellery industry associations, over the silicosis epidemic among workers in the jewellery-processing industry.

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<sup>41</sup> Details current as of November 2005.

Subsequently, the chairman of the International Jewellery Federation pledges that henceforth the organization will pay greater attention to the health and safety of workers in the jewellery manufacturing process, and that an appropriate supervisory and inspection body will be set up within the industry. The chairman also admits, however, that the federation's current commercial code of conduct is basically weak, since it is not binding upon the member companies.

- 11 March 2005 China Labour Bulletin publishes an interview with the wife of Deng Wenping, a former worker from the Perfect Gem & Pearl factory who has third-degree silicosis. In the article, Mrs. Deng describes in detail her husband's rapidly deteriorating medical condition and the severe financial difficulties that her family has consequently been placed under.
- 12 March 2005 Under pressure from various quarters, Wong Shing Wah, chairman of Lucky Jewellery Factory, concludes negotiations with five of the silicosis-stricken workers. Having previously denied that his company had any labour relationship with the men, he agrees to pay Li Weizhong, Yang Renping, and Wang Zuihong 200,000 yuan each in compensation. In addition, another two workers who had already received a small amount in compensation are each given an additional 60,000 yuan.
- 12 March 2005 Several former workers from the Perfect Gem & Pearl Factory in Huizhou, all suffering from various stages of silicosis – Deng Wenping, Yu Dashu, He Chengquan, Zhou Changyong and Xu Yundong – approach CLB for advice and assistance. The workers are currently pursuing either labour arbitration proceedings or court action in connection with their compensation claims, and they ask CLB to provide them with legal advice and support and to publicize their plight in the news media.
- 18 March 2005 China Labour Bulletin publishes on its Chinese language website a heartfelt statement by Deng Wenping, in which he asks Perfect Gem to grant him “just a little more compensation,” so that he “can live just a few days longer with my wife and children.”
- 29 March 2005 After adopting the cases of Deng Wenping and his fellow workers from Perfect Gem as a CLB Case Intervention, CLB sends staff to Huizhou, Guangdong Province, to meet with the five silicosis victims and their families and to compile further details on the current status of their compensation claims. In addition, we begin providing modest financial support to the five families.
- April 2005 More than 200 workers from the Eryou Jewellery Materials Company, Foshan, all of whom suspect they have contracted silicosis, undertake a collective protest action by blocking a bridge over a main road in Foshan. CLB's director, Han Dongfang, interviews some of the protesting workers by telephone and then relays the interviews to mainland China via his weekly labour affairs program on Radio Free Asia.
- 31 March - 7 April 2005 Hong Kong-based labour rights activists stage a joint protest in Basel, Switzerland, along with Swiss trade unions and church groups, outside the venue of the annual World Watch and Jewellery Fair. The group also delivers a petition letter to attending representatives of the Yee On Gems & Jewellery Factory Co Ltd of Hong Kong, criticizing the company's refusal to provide workers in its factories in China with the documents they need to obtain medical diagnoses and for seeking to evade its responsibilities towards the workers. To facilitate the Basel protest actions, CLB provides English and German translations of the press release and an Open Letter from the workers, together with German-language banners and other publicity materials.
- Late March, 2005 Four silicosis victims from the Perfect Gem & Pearl factory, Yu Dashu, He Chengchuan, Zhou Changyong, Xu Yundong, receive unsatisfactory rulings on their compensation claims from the Huicheng District LDAC in Huizhou City, Guangdong. After deciding to challenge the rulings, they ask CLB to hire a lawyer on their behalf to commence court litigation with a view to seeking civil compensation.
- 1 April 2005 CLB obtains the services of a Guangdong-based lawyer to represent the four Perfect

Gem silicosis victims listed above, and he meets with them to discuss their cases and develop an appropriate legal strategy.

- 1 April 2005 China Labour Bulletin publishes an article exposing the current silicosis epidemic in China's jewellery-processing industry. ("Jewellery Workers in China Dying of Incurable Lung Disease Pursue Bitter Fight for Compensation.")
- 2 April 2005 Han Dongfang conducts lengthy interviews by telephone with a silicosis-afflicted worker from the Eryou Jewellery Materials Company. The worker gives a detailed account of the dismal working conditions at the factory and the frequent incidence of occupational diseases among the workers. Han transmits these interviews to mainland China in a series of five Radio Free Asia programs.
- April 2005 Silicosis sufferer Feng Xingzhong from Gaoya Jewellery, represented by a CLB-hired Beijing lawyer, applies for an arbitration ruling on his compensation claim to the Huidong County LDAC in Huizhou City. Meanwhile, CLB's in-house lawyer and other staff review the case of another silicosis-afflicted worker from the same factory, Wu Guojun, with a view to providing him with urgently required legal assistance.
- Early April, 2005 At a CLB Case Intervention meeting, the organization decides to advise the lawyer and all four workers involved in the Perfect Gem and Pearl case that, once the court has announced its acceptance of their civil compensation lawsuits against the company, they should promptly file a second, administrative lawsuit naming the Huizhou City Labour and Social Protection Bureau (LSPB) as the respondent. The aim of such a lawsuit would be, first, to expose to public scrutiny the LSPB's practice of "accepting [labour insurance] premiums, but not paying out [the relevant compensation] benefits"; and second, to reveal the wide range of problems encountered by claimants at every level of China's current system of work-related injury and disability insurance, and thereby to promote reform of both the relevant laws and their implementation.
- 4 April 2005 The four silicosis-afflicted workers from the Perfect Gem and Pearl factory individually file lawsuits against the company in the Huicheng District Court, seeking compensation under the civil law. The court hearings of these various cases begin on June 24, 2005.
- 8 May 2005 The Huizhou Municipal Court notifies Deng Wenping, the third-degree silicosis sufferer in the Perfect Gem & Pearl case, that his appeal against the rejection of his compensation claim by the court of first instance has been denied. He decides to ask the civil court to order a complete retrial of the case. After further consultation with Deng, CLB staff members handling the Perfect Gem case instead advise him and four other Huizhou-based claimants to file an administrative lawsuit against the Huizhou Municipal LSPB, charging that it improperly handled the issuance of work-related disability insurance benefits to the workers in 2001. (The Huizhou LSPB paid the money to Perfect Gem instead of to the claimants themselves, which allowed the company manager to keep an undisclosed proportion of the funds as "commission.")
- 10 May 2005 Following the abrupt closure of the Eryou Jewellery factory by the Hong Kong owners, workers who are left unpaid and with no means of livelihood block the Sanshui Bridge road, in the near vicinity of the plant. CLB issues an Action Express on the protest (in both English and Chinese) the same day.
- 12 May 2005 At a Case Intervention meeting, CLB decides to provide legal assistance to the Eryou Jewellery workers in support of their compensation claims.
- 19 May 2005 CLB Case Intervention staff travel to Shenzhen to interview workers from the Eryou Jewellery factory about their recent strike action and to obtain first-hand information on the silicosis situation among the workforce, with a view to ascertaining CLB's strategy of assistance.
- 20 May 2005 Six days after its hearing on 14 May, Huidong LDAC instructs Gaoya Jewellery to pay

Feng Xingzhong a lump-sum work-related disability award of 19,350 yuan, plus 12,900 yuan in reimbursement for medical fees and a disabled person's monthly allowance of 806.25 yuan for the rest of his life. (Since Gaoya Jewellery had already moved its factory to another jurisdiction, however, there was little chance of this ruling being enforced.)

- 14-20 June 2005 China Labour Bulletin and several other Hong Kong-based labour rights groups assist Perfect Gem's Yu Dashu and the wife and daughter of Deng Wenping, and also Gaoyi Jewellery silicosis victims Feng Xingzhong and Wu Guojun, to come to Hong Kong to stage protest demonstrations in Hunghom outside the companies' headquarters and at the Hong Kong Jewellery Fair. In response to this public pressure, senior management of Perfect Gem agrees to hold negotiations in Huizhou on June 26 with Yu, Deng and three other workers to discuss compensation; and Ko Ngar Gems (the parent company of Gaoya Gems) agrees to hold negotiations with Feng and Wu in Haifeng on 25 June.
- 24 June 2005 Feng brings a civil lawsuit against Gaoya Jewellery in the Huidong County Court; the hearing is scheduled for 27 September, but at the time of writing no judgment has been announced.
- 24 June 2005 Prior to the initial hearing of their civil compensation case, the Perfect Gem workers ask for additional compensation to cover their long-term medical treatment needs and also the living expenses of their children. As a result, the hearing is delayed to 12 July.
- 25 June 2005 Accompanied by a CLB-hired lawyer, Feng Xingzhong and Wu Guojun meet with Gaoyi Gems' factory manager in Haifeng. The factory manager denies that Feng, who worked in the company's previous (Gaoya Gems) factory in Huizhou, has ever been a worker for Gaoyi Gems. And since Wu had signed a document terminating his employment with the company in March 2001, it would not give him any further compensation. In addition, several burly personnel brought along by the manager speak in a threatening tone to the lawyer, asking him why he has "helped an outside group [CLB] to make trouble with our investors".
- 26 June 2005 Accompanied by a CLB-hired lawyer, Yu Dashu, Deng Wenping, He Chengchuan, Zhou Changyong and Xu Yundong hold direct negotiations with Perfect Gem and Pearl management over compensation terms; a representative from the local government also attends the meeting. The two sides are unable to reach a consensus over the amounts of compensation to be paid, but the company pledges to make a final offer within two weeks.
- July 2005 After mediation efforts by the court, Perfect Gem and Pearl agrees to an out-of-court settlement awarding Yu Dashu the sum of 225,000 yuan, and Deng Wenping 230,000 yuan, in additional civil compensation. The other silicosis victims in the Perfect Gem case – Xu Yundong, He Chengchuan and Zhou Changyong – are awarded total out-of-court compensation settlements (including compensation awards previously made to them) of 330,000 yuan each. However, all three claimants decide to reject this offer and to proceed with their compensation lawsuit against the company.
- 21-24 September 2005 Xu Yundong from Perfect Gems and Feng Xingzhong from Gaoya Factory attend a conference in Hong Kong – "Invisible Victims of Occupational Diseases in Asia" – held by the Asian Network for the Rights of Occupational Accident Victims (ANROAV.) They meet with other occupational illness and injury victims from the region and describe their continuing struggle to obtain compensation. The two men then hold a meeting, filmed by Radio Television Hong Kong (RTHK) with CLB's in-house lawyer to discuss their next legal options.

- 14 October 2005      After several months of waiting, He Chengquan from Perfect Gems decides to accept an out-of-court compensation settlement, brokered by CLB's lawyer, of 290,000 yuan from the company (this is on top of the 40,000 yuan compensation he received in 2001.) Zhou Changyong and Xu Yundong reaffirm their determination to bring an administrative lawsuit against the local government for its improper (and possibly corrupt) handling of their work-related disability insurance payments several years earlier.
- November 2005      CLB's in-house lawyer assists workers from the Hao Xin Precious Metals Jewellery Factory to evaluate a compensation package recently offered to them by the company.

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