PLAINTIFF'S
EXHIBIT
DUP-2183

Assembly Bill No. 948

CHAPTER 1041

An act to amend Sections 4900 and 5406 of, to add Section 5406.5 to, and to add Chapter 11 (commencing with Section 4 00) to Part 1 of Division 4 of, the Labor Code, relating to workers' compensation, and making an appropriation therefor.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 28, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

AB 948, Agnos. Workers' compensation: asbestos workers.

Existing law provides that liability for workers' compensation shall exist against an employer for any injury or death sustained by his employees arising out of and in the course of the employment.

This bill would provide that where an asbestos worker, as defined, is injured as a result of asbestosis, as defined, and makes a claim for workers' compensation, if the responsible employer cannot be located or fails to provide workers' compensation within 30 days, the worker may seek the payment of workers' compensation temporary disability and medical benefits from the Asbestos Workers' Account.

Existing law provides that no proceedings for the collection of workers' compensation death benefits may be commenced more than one year after the date of death, or more than 240 weeks from the date of injury.

This bill would provide that in cases where the death of an asbestos worker is from asbestosis, no proceedings for such benefits may be commenced more than one year from the date of death.

This bill would create the Asbestos Workers' Account in the Uninsured Employers Fund in the State Treasury, to be continuously appropriated for the purposes of this bill and which would be administered by the Director of Industrial Relations.

This bill would add related provisions relating to reimbursement of the Asbestos Workers' Account by employers determined to be liable for asbestosis injury, and would allow the Asbestos Workers' Account a first lien against workers' compensation benefits for all benefits provided, and recoverable costs.

This bill would require the Administrative Director of the Division of Industrial Accidents to appoint workers' compensation referees and support staff who would give priority to processing the claims of asbestos workers, and to appoint at least two information and assistance officers who would give priority to assisting asbestos workers seeking benefits.

This bill would provide that the provisions relating to the payment of benefits from the Asbestos Workers' Account shall be inoperative as of December 31, 1995, unless a later enacted statute deletes or

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extends such date. The authority of the Asbestos Workers' Account to recover benefits and costs paid to asbestos workers prior to such date would continue until such benefits and costs are recovered.

This bill would incorporate additional changes in Section 5406 of the Labor Code proposed by SB 375, to be operative on the operative date of this bill only if SB 375 and this bill are both chaptered and become effective on or before January 1, 1981, and this bill is chaptered last.

Under existing law, Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement. The statutory provisions requiring reimbursement will be supplemented by a constitutional requirement of reimbursement effective for statutes enacted on or after July 1, 1980.

This bill provides that no appropriation is made by this act pursuant to the constitutional mandate or Section 2231 or 2234, but recognizes that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

This bill would appropriate $2,625,000 from the contingency reserve for economic uncertainties in the General Fund to the Asbestos Workers' Account in the Uninsured Employers Fund for the purposes of this bill.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 11 (commencing with Section 4401) is added to Part 1 of Division 4 of the Labor Code, to read:

CHAPTER 11. ASBESTOS WORKERS' ACCOUNT

Article 1. General Provisions

4401. It is the declared policy of the state that qualified injured workers with asbestosis which arises out of and occurs in the course of employment shall receive workers' compensation temporary disability and medical benefits promptly and not be subjected to delays of litigation to determine the responsible employer.

4402. (a) "Asbestosis" means any pathology, whether or not combined with preexisting pathology, which results in disability or need for medical treatment from inhalation of asbestos fibers.

(b) "Asbestos worker" means any person whose occupation subjected him or her to an exposure to asbestos fibers.

4403. The Asbestos Workers' Account is hereby created in the Uninsured Employers Fund in the State Treasury, and shall be

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administered by the Director of Industrial Relations. The money in the Asbestos Workers' Account is hereby continuously appropriated for the purposes of this chapter, and to pay the expenses of the director in administering these provisions.

4404. Insofar as not inconsistent with the provisions of this chapter, all of the provisions of this division shall pertain to asbestos workers and their dependents for purposes of furnishing worker's compensation temporary disability and medical benefits thereto.

4405. Where the conditions of compensation exist under this division the right to recover workers' compensation temporary disability and medical benefits pursuant to the provisions of this chapter is a temporary remedy for injury to an asbestos worker against the Asbestos Workers' Account, and such asbestos worker or his or her dependents shall make all reasonable effort to establish the identity of the employer responsible for securing the payment of compensation.

4406. (a) Payments as advances on workers' compensation temporary disability and medical benefits shall be furnished an asbestos worker for injury resulting in asbestosis, subject to the provisions of this division, if all of the following conditions occur:

(1) The asbestos worker demonstrates to the account that at the time of exposure, the asbestos worker was performing services and was acting within the scope of his or her duties in an occupation that subjected the asbestos worker to the exposure to asbestos.

(2) The asbestos worker demonstrates to the account that he or she is suffering from asbestosis.

(3) The asbestos worker demonstrates to the account that he or she developed asbestosis from the employment.

(4) The asbestos worker is entitled to compensation for asbestosis as otherwise provided for in this division.

(b) The findings of the account with regard to the conditions in subdivision (a) shall not be evidence in any other proceeding.

(c) The account shall require the asbestos worker to submit to an independent medical examination.

Article 2. Benefits

4407. When the account determines that the conditions in Section 4406 have occurred, payments as advances on workers' compensation temporary disability and medical benefits shall be provided in accordance with this chapter, notwithstanding the right of the asbestos worker to secure compensation as otherwise provided for in this division.

4408. Prior to seeking compensation benefits under this chapter, the asbestos worker shall first make claim on the employer or its workers' compensation insurance carrier for payment of compensation under this division. If the asbestos worker is unable to locate the responsible employer or insurance carrier, or if the

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employer or insurance carrier fails to pay or denies liability for the compensation required by this division to the person entitled thereto, within a period of 30 days after the assertion of such a claim, the asbestos worker may seek payment of workers' compensation temporary disability and medical benefits required by this division from the Asbestos Workers' Account.

4409. The Director of Industrial Relations, or his representative, shall assign investigative and claims adjustment services respecting matters concerning 'Asbestos Workers' Account cases. Such assignments may be made within the department, including the Division of Industrial Accidents, and excluding the State Compensation Insurance Fund.

4409.5. The administrative director shall appoint referees and support staff who shall give priority to the processing of the claims of asbestos workers.

4410. The administrative director shall appoint at least two information and assistance officers who shall give priority to assisting asbestos workers pursuant to the provisions of this chapter. The information and assistance officer shall assist to the fullest extent possible any asbestos worker seeking benefits under this chapter. In assisting the asbestos worker, the information and assistance officer shall conduct necessary investigation and procure those records, reports, and information which are necessary to the early identification of responsible employers and insurance carriers, and to facilitate in the expediting of payments of benefits that may be due under this division.

4411. (a) When a claim is made against the Asbestos Workers' Account, the account shall secure appropriate information, adjust the claim, and pay benefits provided by this chapter in accordance with the provisions of this division.

(b) The asbestos worker shall, prior to the first payment of benefits by the Asbestos Workers' Account, file an application before the Workers' Compensation Appeals Board to determine the responsible employer for payment of compensation under this division.

(c) In every case before the Workers' Compensation Appeals Board in which a claim of injury from exposure to asbestos is alleged, the appeals board shall join the Asbestos Workers' Account as a party to the proceeding and serve the fund with copies of all decisions and orders, including findings and awards, and order approving compromise and release.

(d) Once a decision establishing the responsible employer or insurance carrier is agreed upon between the parties, or is issued by the Workers' Compensation Appeals Board, and becomes final, the Asbestos Workers' Account shall terminate payment of compensation benefits, notify all interested parties accordingly, and seek collection as provided for under this chapter. Responsibility for payment of all future compensation benefits shall be in accordance

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with such agreement, order, or decision.

(e) The account shall terminate the payment of benefits to any employee who fails to cooperate fully in determining the responsible employer or insurance carrier.

(f) The Asbestos Workers' Account may, at any time, commence or join in proceedings before the Workers' Compensation Appeals Board by filing an application on its own behalf. In any case in which the Asbestos Workers' Account has been joined as a party or has filed an application on its own behalf, the Asbestos Workers' Account shall have all of the rights and privileges of a party applicant.

Article 3. Collections

4412. The Asbestos Workers' Account shall take all reasonable and appropriate action to insure that recovery is made by the account for all moneys paid as compensation benefits and as costs. In the event that the responsible employer is uninsured, the account shall not be entitled to reimbursement from the Uninsured Employers Fund.

4413. No limitation of time provided by this division shall run against the Asbestos Workers' Account to initiate proceedings before the Workers' Compensation Appeals Board when the account has made any payment of moneys, incurred any costs for services, or encumbered any liability of the account.

4414. Immediately following the receipt of knowledge of initiation of proceedings before the Workers' Compensation Appeals Board, or any other jurisdiction providing benefits for the same injury, the Asbestos Workers' Account shall file a lien and may invoke such other remedies as are available to recover moneys expended for compensation benefits.

4415. In any hearing or proceeding, the Director of Industrial Relations may use attorneys from within the department, or the Attorney General, to represent the director and the state.

4416. Once an agreement as to the responsible employer is reached, or a decision is issued by the Workers' Compensation Appeals Board and becomes final, the Asbestos Workers' Account shall notify the responsible employer or insurance carrier of the amount of payment necessary to satisfy the lien in full. Full payment of the lien shall be made by the responsible employer or insurance carrier within 30 days of the issue of such notification. The account may grant a reasonable extension of time for payment of the lien beyond 30 days. This payment shall be for all moneys expended for compensation benefits, and for all recoverable costs including the cost of independent medical examinations and all costs reasonably incidental thereto, including, but not limited to, costs of transportation, hospitalization, consultative evaluation, X-rays, laboratory tests, and other diagnostic procedures. The payment shall bear interest, as provided in Section 5800, from the date of the

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agreement or decision through the date of payment.

The lien of the Asbestos Workers' Account shall be allowed as a first lien against compensation, and shall have priority over all other liens. The lien of the Asbestos Workers' Account may not be reduced by the Workers' Compensation Appeals Board or by the parties unless express written consent to the proposed reduction of the lien is given by the Asbestos Workers' Account and is filed in the record of proceedings before the Workers' Compensation Appeals Board.

4117. Nothing in this chapter shall be construed to preclude the filing by an asbestos worker of a claim or suit for damages or indemnity against any person other than his or her employer. The Asbestos Workers' Account shall be entitled to recover from, and shall have a first lien against, any amount which is recoverable by the injured employee pursuant to civil judgment or settlement in relation to a claim for damages or indemnity for the effect of exposure to asbestos, for all compensation benefits paid to the injured employee by the Asbestos Workers' Account which have not previously been recovered from the responsible employer or employers by the Asbestos Workers' Account. Recovery by the Asbestos Workers' Account pursuant to the provisions of this section shall not have the effect of extinguishing or diminishing the liability of the responsible employer or employers to the injured employee for compensation payable under the provisions of this division.

4118. The provisions of this chapter providing for the payment of workers' compensation temporary disability and medical benefits from the Asbestos Workers' Account shall be operative only until December 31, 1985, and as of such date all payments from the fund shall be terminated, unless a later enacted statute which is chaptered before December 31, 1985, deletes or extends such date. However, if no such statute is enacted prior to December 31, 1985, the authority of the Asbestos Workers' Account under this chapter to recover the benefits and costs paid to asbestos workers prior to such date shall continue until such benefits and costs have been recovered.

SEC. 2. Section 4903 of the Labor Code is amended to read:

4903. The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (h) of this section. If more than one such lien be allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens which may be allowed hereunder are as follows:

(a) A reasonable attorney's fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and the reasonable disbursements in connection therewith.

(b) The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 of Chapter 2 of Part 2 of this division.

(c) The reasonable value of the living expenses of an injured

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employee or of his or her dependents, subsequent to the injury.

(d) The reasonable burial expenses of the deceased employee, not to exceed the amount provided for by Section 4701.

(e) The reasonable living expenses of the spouse or minor children of the injured employee, or both, subsequent to the date of the injury, where such employee has deserted or is neglecting his or her family. Such expenses shall be allowed in such proportion as the appeals board deems proper, under application of the spouse or guardian of the minor children.

(f) The amount of unemployment compensation disability benefits which have been paid under or pursuant to the Unemployment Insurance Code in those cases where, pending a determination under Division 4 (commencing with Section 3200) of this code, there was uncertainty whether such benefits were payable under the Unemployment Insurance Code or payable hereunder, provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(g) The amount of unemployment compensation benefits and extended duration benefits paid to the injured employee for the same day or days for which he or she receives, or is entitled to receive, temporary total disability indemnity payments under this division; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(h) The amount of compensation, including expenses of medical treatment, and recoverable costs which have been paid by the Asbestos Workers' Account pursuant to the provisions of Chapter 11 (commencing with Section 4401) of Part 1.

SEC. 3. Section 5406 of the Labor Code is amended to read:

5406. Except as provided in Section 5406.5, the period within which may be commenced proceedings for the collection of the benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from:

(a) The date of death where death occurs within one year from date of injury; or

(b) The date of last furnishing of any benefits under Chapter 2 (commencing with Section 4600) of Part 2, where death occurs more than one year from the date of injury; or

(c) The date of death, where death occurs more than one year after the date of injury and compensation benefits have been furnished.

No such proceedings may be commenced more than one year after the date of death, nor more than 240 weeks from the date of injury.

SEC. 3.5. Section 5406 of the Labor Code is amended to read:

5406. Except as provided in Section 5406.5, the period within which may be commenced proceedings for the collection of the benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from:

(a) The date of death where death occurs within one year from

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date of injury; or

(b) The date of last furnishing of any benefits under Chapter 2 (commencing with Section 4550) of Part 2, where death occurs more than one year from the date of injury; or

(c) The date of death, where death occurs more than one year after the date of injury and compensation benefits have been furnished; or

(d) The service of a notice of rejection of a claim, as provided in Section 5402.

No such proceedings may be commenced more than one year after the date of death, nor more than 240 weeks from the date of injury.

SEC. 4. Section 5406.5 is added to the Labor Code, to read:

5406.5. In the case of the death of an asbestos worker from asbestosis, the period within which may be commenced proceedings for the collection of the benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from the date of death.

SEC. 5. It is the intent of the Legislature, if this bill and Senate Bill 375 are both chaptered and become effective on or before January 1, 1981, both bills amend Section 5406 of the Labor Code, and this bill is chaptered after Senate Bill 375, that Section 5406 of the Labor Code, as amended by Section 33 of Senate Bill 375, be further amended on the effective date of this act in the form set forth in Section 3.5 of this act to incorporate the changes in Section 5406 proposed by this bill. Therefore, if this bill and Senate Bill 375 are both chaptered and become effective on or before January 1, 1981, and Senate Bill 375 is chaptered before this bill and amends Section 5406, Section 3.5 of this act shall become operative on the effective date of this act and Section 3 of this act shall not become operative.

SEC. 5.5. It is the intent of the Legislature that funding for administrative costs associated with implementation of this act shall come from redirection of the state funds appropriated for the base budget of the Department of Industrial Relations in the 1980–81 to 1984–85 fiscal years.

SEC. 6. Notwithstanding Section 2881 or 2894 of the Revenue and Taxation Code and Section 6 of Article XIII B of the California Constitution, no appropriation is made by this act pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 7. The sum of two million six hundred twenty-five thousand dollars ($2,625,000) is hereby appropriated from the contingency reserve for economic uncertainties in the General Fund to the Asbestos Workers' Account in the Uninsured Employers Fund for the purposes of this act.

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ASBESTOS MEDICAL PROGRAM

DEPARTMENT	NUMBER EVALUATED		NUMBER WITH POSSIBLE ASBESTOS RELATED X-RAY ABNORMALITIES		NUMBER REFERRED FOR PULMONARY EVALUATION		NUMBER OF CASES: BENIGN ASYMPTOMATIC ABNORMALITIES		NUMBER OF CASES: BENIGN SYMPTOMATIC		NUMBER OF CASES: MALIGNANT ILLNESS		VISITS WITH PHOTO REPS.
	EMPL.	PENS.	EMPL..	PENS.	EMPL.	PENS.	EMPL.	PENS.	EMPL.	PENS.	EMPL.	PENS.	
BIOCHEMICALS	774	33	14	13	32	15	12	10	0	1	0	0	0
CENT.RES.&DEV.	3045	303	51	8	0	1	51	7	0	1	0	0	Several
CHEM.& PIGMENTS	11000	--	416	--	--	--	159	--	43	-	-	-	-
ENGINEERING	2136	--	36	--	13	3	7	2	1	0	0	0	0
FAB.& FINISHES	1089	--	30	--	42	-	6	-	-	-	-	-	3
INT'L(BUENOS AIRES)	2064	--	--	--	--	-	-	-	-	-	-	-	-
PETROCHEM.	6226	--	14	--	14	-	14	-	-	-	-	-	-
PHOTO PROD.	2574	90	39	--	11	-	39	-	-	-	-	-	-
POLYMER PROD.	2450	--	50	--	25	-	10	-	5	-	-	-	-
TEX. FIBERS	4954	165	279	21	223	16	47	5	11	0	0	0	-
REM. ARMS	142	--	19	--	8	-	0	-	0	-	0	-	2
TOTALS	36454	591	948	42	368	35	345	24	60	2	0	0	5

DIAGNOSIS INCOMPLETE	
CHEM.& PIGMENTS	121
ENGINEERING	22
POLYMER PROD.	25
	168

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BWC/mcb
5/15/81

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Barbara D. Beck

Mechanisms of Fibrogenesis

I. Introduction to Fibrosis

A. Classical definition is morphological

1. Increase in connective tissue fibers as seen with light microscope

B. Other considerations include changes in:

1. Amounts

2. Types - collagen, elastin, microfibrils, glycosaminoglycans, etc.

3. Subsets of these types, e.g., different forms of collagen, types I to V

4. Locations

C. Fibrotic response to many different insults

1. Chronic dust exposure, pneumoconioses

a. Silica

b. Asbestos

c. Coal, etc.

2. Acute injuries can at later times develop into fibrosis

a. Drugs - antineoplastics, bleomycin, cyclophosphamide

b. Paraquat

c. Hyperoxia

D. Examples of different forms of fibrosis

1. Asbestosis - diffuse thickening of interstitium, cellular influx within alveoli; presence of asbestos bodies

2. Silicosis - nodules, discrete. Very acellular at center Silicotic nodules by polar microscope - birefringence, bright spots. Crystalline silica in and around lesions.

E. What is nature of connective tissue?

1. Chemical constituents:

a. Collagen - limit expansion of lung. Major component of connective tissue. Regulation of collagen synthesis important in fibrosis.

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b. Microfrils
c. Elastin
} responsible for elasticity, recoil properties

F. What is collagen?

1. Protein - 3 polypeptides

a. Triplet structure

gly - x - y
x: usu. proline
y: mostly hydroxyproline

b. Hydroxyproline - almost entirely within collagen. Good marker for collagen synthesis. Important in stabilizing triple helix

2. Three polypeptides associate intracellularly - triple helix. Triple helix protein associate extracellularly to make fibril.

G. Different types of collagen:

1. Four to five types

a. Vary in location, structural qualities, synthetic cell, extractability

b. Also differ in histochemical staining properties - affect quantitation

c. Alterations in collagen ratios in certain diseases.

H. How is collagen made?

1. Pro α-chain made on ribosomes

2. Hydroxylation of pro + lys → pro- αchain --with N terminal and C terminal extension peptide

3. α chains aligned - triple helix

4. Glycosylation. Sugar residues recess for secretion

5. Cleavage of N and C terminal peptides

6. Cross-linking — hydroxylysine residues cross-linked through desmosine cross links. Stabilizes

II. Introduction to Mechanisms of Fibrogenesis

A. Fibrogenesis is generation of fibrosis

B. How can we influence amount of connective tissue made?

1. Focus on fibroblast - since it is cell responsible for most of connective tissue synthesis; located in interstitium

2. Can ↑ # of fibroblasts

a. Stimulate cell proliferation

b. Attract more cells into area with chemotactic factors

3. Can ↑ synthesis of collagen per fibroblasts

a. Can alter total amount

b. Can change types of collagen made. Will effect stiffness of lungs

4. Relevant mech. - depends on agent
animal model
possible host factors

III. Mechanisms of Fibrogenesis

A. Stimulation of fibroblast proliferation

1. Classic example - stimulation of fibroblast proliferation and collagen synthesis by factors from silica-treated macrophages

a. Macrophage ingest cryst. silica. Taken in phagosome, then phagolysosome

b. Membrane disrupted, lysosomal enzyme release intracellularly, damage to macrophage

c. Dead and dying macrophages. Release factors that stimulate fibrosis

d. Evidence

i. Quartz <u>in vitro</u> v. toxic to macrophage, LDH release, etc.

ii. Quartz exposed animals - macrophages appear necrotic, impaired phagocytic ability

iii. <u>In vitro</u> work (not always consistent). Factors from supernatant of quartz-treated macrophages or from disrupted macrophages - stimulate fibroblast prolif. and/or collagen production.

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iv. Use of diffusion chambers to look for factors in vivo

Macrophages
Macrophages + SiO_2 } in chamber w/semi permeable membrane
SiO_2

-Put into peritoneum

-Look for fibrosis - evidence of fibrosis by microscopic analysis

B. Other Fibrogenesis Factors from Macrophages

1. Wound healing - fibrosis important components of normal wound healing and scar formation

2. Macrophage derived growth factors

3. Interleukin I - Protein produced by macrophages. Same as lymphocyte activating factor or endogenous pyrogen. Stimulates lymphocytes and firboblasts. Produced in response to bacteria, viruses, etc.

--Lymphocytes stimulate interleukin production and can enhance fibrosis.

May be important in hypersensitivity and granulomatous disease.

C. Platelet derived growth factor.

Injury causes platelet to release various factors - clotting factors, chemotactic factors and fibroblast growth factor.

D. Contact-inhibition mechanism

1. Mechanisms proposed for agents that cause great epithelial cell destruction, e.g., bleomycin (anticancer drug), butylated hydroxytoluene (BHT, antioxidant), paraquat (herbicide).

--Fibroblasts are released from contact inhibition of growth.

2. May also involve destruction of basement membrane.

3. Other components of this response

a. Accompanied by inflammation

+ Polymorphonucleaneutrophils (PMN's) + chemotactic factors

b. PMN's - secrete collagenase, could stimulate collagen synthesis. Can cause endothelial, epithelial changes, ↑ in permeability. Could affect interaction between fibroblasts + epithelial cells.

--May be multifactorial. Affected by type of injuring agent.

E. Mechanisms of stimulation of collagen synthesis

1. Macrophages + SiO_2 produce simulating factors

2. Collagenase

3. Changes in type collagen

F. Chemotactic agents

1. Fibronectin.

2. Elastin derived peptides.

3. Collagen derived peptides - (role of collagenase?)

4. Almost all these studies <u>in vitro</u>; need to look for presence of factors <u>in vivo</u>.