

COURT ORDERS JUDGE TO RULE QUICKLY ON MOTION TO DISQUALIFY FOR BIAS

(In re Kensington International)

The U.S. Court of Appeals for the Third Circuit in Philadelphia recently ordered a federal district judge to decide by January 23, 2004 whether to disqualify himself from a contentious bankruptcy proceeding (filed by Owens Corning in the face of massive numbers of asbestos-liability claims) and to allow parties to conduct discovery on disqualification-related issues. The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *In re Kensington International*, urging a quick resolution of the disqualification issue. WLF previously filed a brief with the district judge, arguing that the judge is required to disqualify himself.

WLF argued that the judge must be disqualified because he has hired advisors with an impermissible conflict of interest. The highly-compensated advisors are attorneys who represent asbestos claimants in other bankruptcy proceedings; WLF charged that the close relationship between the judge and his advisors creates an appearance of partiality that requires the judge's disqualification.

In briefs filed both in the Third Circuit and before the district judge, WLF argued that the judge's impartiality might reasonably be questioned because his paid advisors have a vested interest in advising the judge to issue rulings that are favorable to the advisors' asbestos claimants in a related bankruptcy proceeding. WLF filed its briefs with the assistance of Roderick R. McKelvie, a Washington, D.C. lawyer who recently retired as a federal judge in Delaware.

The judge whose conduct is in question is Alfred R. Wolin, a federal district judge from New Jersey. Wolin was appointed two years ago to oversee Delaware bankruptcy proceedings filed by five large industrial corporations that manufactured asbestos building products. All five were driven into bankruptcy by thousands of claims filed by individuals

allegedly exposed to the manufacturers' asbestos products. The five corporations are Owens Corning, Armstrong World Industries, W.R. Grace & Co., Federal-Mogul Global, and USG Corporation. Following his appointment, Wolin hired two lawyers, David R. Gross and C. Judson Hamlin, to advise him in his rulings.

It recently came to light that Gross and Hamlin, who are well-known plaintiffs' attorneys, represent a large class of asbestos claimants in another asbestos-related bankruptcy, one involving G-I Holdings, Inc. (formerly known as GAF Corp.). Because claimants routinely assert asbestos claims against multiple manufacturers, many claimants in the G-I proceedings have also asserted claims against Owens Corning. Many of the same legal issues have arisen in both bankruptcies. Accordingly, WLF argued, Gross and Hamlin have a strong interest in advising Judge Wolin to issue decisions favorable to the asbestos claimants in Owens Corning; the attorneys could then use such decisions to assist their clients in the G-I bankruptcy.

WLF's briefs came in response to a petition to disqualify Judge Wolin filed by several large creditors of Owens Corning. The creditors have an antagonistic relationship with the asbestos claimants; if large awards are handed out to the claimants, a proportionately smaller percentage of assets will be available to pay the creditors' claims. WLF has not taken a position on any of the substantive disputes between the two groups. Rather, WLF filed its motion due solely to its interest in ensuring that federal courts bend over backward to maintain both impartiality and the appearance of impartiality.

The creditors initially filed their disqualification motion directly with Judge Wolin. After he made clear that any ruling on the motion would be delayed indefinitely, the creditors filed a petition (for a writ of mandamus) with the Third Circuit, asking that Judge Wolin be ordered to rule immediately on the motion to disqualify.

In its recent ruling, the Third Circuit vacated Judge Wolin's freeze on disqualification-related discovery and ordered that the parties be permitted to conduct depositions to ascertain the precise role played by Messrs. Gross and Hamlin in Judge Wolin's bankruptcy proceedings. Stressing the importance of a quick decision on the disqualification issue, the Third Circuit ordered Judge Wolin to issue his ruling no later than January 23, 2004. The Third Circuit also retained jurisdiction over the matter, indicating that the appeals court intends to have the final word on whether Judge Wolin will be required to remove himself from the asbestos bankruptcies.

WLF is a public interest law and policy center with supporters in all 50 states. WLF regularly participates in federal court proceedings addressing the circumstances under which a federal judge should be recused from participating in a case.

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For further information contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is available on its website, www.wlf.org.