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FTC NEEDS EVIDENCE OF IMPROPER RECRUITMENT IN ASBESTOS CASES

By

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The Federal Trade Commission recently responded to a petition from the Washington Legal Foundation (WLF) regarding asbestos screening programs sponsored by plaintiffs' attorneys. WLF submitted the petition on July 7, 2004, asking the agency to investigate mass screening programs that improperly generate large numbers of claims for asbestos injury on behalf of claimants who have not been injured. The petition contended that attorney-sponsored medical screenings of workers for asbestos-related illnesses commonly perpetrate frauds on companies and are a key component of the asbestos litigation crisis facing U.S. industry.

The Commission's response, in a December 15, 2004 letter from Elaine D. Kolish, Associate Director for Enforcement of the Bureau of Consumer Protection, indicated that the Commission will not conduct an investigation of the programs. The response appeared to leave open, however, the possibility of further consideration of the issue with the development of additional evidence regarding the nationwide sweep of the problem and the fraudulent nature of the promotional practices involved.

Ms. Kolish's letter implicitly treated the screening programs as a local matter, and pointed to other bodies with authority over one aspect or another of the screenings: state bar associations; courts; state and local consumer protection agencies; and the National Institute for Occupational Safety and Health (NIOSH), which regulates the physicians who interpret the screening results. While WLF's petition presented information on the massive scale of questionable asbestos claims and their effect on the targeted companies, further evidence about the national scope of the crisis might prove useful in educating the FTC. Corporate counsel and others involved in asbestos litigation should consider providing the FTC with information concerning the nationwide effect of baseless asbestos litigation on their business. (If enacted, pending legislation for an asbestos trust fund would address fraudulent medical evidence with independent review of that evidence.)

Ms. Kolish's letter also indicated that the advertisements for the screening programs are not deceptive. It stated, "We note that the asbestos screening ads of which we are aware generally do not appear to misrepresent that X-rays are free health or medical screenings — that is, screenings designed to lead to medical treatment if needed." While the deceptiveness of the ads themselves is a distinct issue from the problem of fraudulent claims, counsel with relevant information on deceptive ads are urged to provide that evidence to the Commission as well.

David Price is Senior Vice President for Legal Affairs of the Washington Legal Foundation.

About WLF and the COUNSEL'S ADVISORY

The Washington Legal Foundation (WLF) is the nation's largest non-profit, public interest law and policy center devoted to protecting and defending free enterprise principles. WLF litigates *and* publishes in order to advocate legal policies that promote economic growth, job creation, and the civil liberties of business. As a 501(c)(3) tax exempt organization, WLF relies upon the charitable support of individuals, businesses, associations, and foundations to fund its programs.

This COUNSEL'S ADVISORY is one of WLF's seven publication formats. Its purpose is to inform the free enterprise community about a development in the legal policy world that can be favorably influenced by the immediate involvement of legal experts and business and community leaders.

For more information on the Washington Legal Foundation, please contact Daniel J. Popeo, Chairman, at (202) 588-0302.