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COURT LIMITS TORT LIABILITY IN ASBESTOS BANKRUPTCY CASE

(Owens Corning v. Credit Suisse First Boston)

The federal district judge overseeing the Owens Corning bankruptcy proceedings ruled this week that all pending and future asbestos claims against the company should be assigned an estimated value of $7 billion, considerably less than the $11 billion requested by plaintiffs' lawyers representing asbestos claimants. The decision was a modest victory for WLF, which filed a brief urging that plaintiffs' lawyers not be permitted to make off with the lion's share of the corporation's assets by inflating the asbestos-related liability claims of their clients.

The district court agreed with WLF that pre-bankruptcy asbestos awards issued by state courts are not an accurate gauge of the value of pending and future claims, because past awards were inflated by such questionable practices as: (1) venue shopping, with many plaintiffs filing suit in "friendly" jurisdictions far from their homes; (2) plaintiffs identified through x-ray screenings of large numbers of individuals exhibiting no symptoms of disease; (3) erroneous x-ray readings; (4) over-payment of "unimpaired" claimants; (5) grouping large numbers of plaintiffs in a single suit; (6) "global" settlements of large numbers of cases; and (7) multiple punitive damages awards based on the same alleged misconduct. The court cited those practices as its basis for reducing asbestos clams by nearly 40%.

"We are only mildly pleased with the court's decision, because we believe that it should have reduced asbestos claims even further," said WLF Chief Counsel Richard Samp after reviewing the court's decision. "Nonetheless, we are pleased that Judge Fullam recognized that something is rotten in the world of asbestos litigation," Samp said.

WLF is particularly pleased that the district court categorically eliminated all punitive damages claims from its estimation. WLF's brief focused largely on the punitive damages issue. WLF argued that the judge should not permit any asbestos claimants to recover punitive damages, because there is no rational basis for continuing to inflict punishment on a company that has already been driven into bankruptcy due to its asbestos-related liabilities. WLF argued that if the value of claims being asserted by asbestos claimants were to include a punitive damages component, all other Owens Corning creditors -- including trade creditors, bondholders, and institutional lenders -- would be unfairly disadvantaged.

"Owens Corning is but one of the dozens of major companies that have been driven into bankruptcy by the often-unfounded lawsuits of those who claim they were injured due to asbestos exposure," said Samp. "The Owens Corning bankruptcy and similar asbestos-related bankruptcy proceedings finally provide an opportunity for the courts to restore some sanity to the asbestos litigation fiasco," Samp said.

Owens Corning filed a Chapter 11 bankruptcy petition several years ago, after being rendered insolvent by huge asbestos-related liabilities. Many decades ago, Owens Corning manufactured a widely-used product, Kaylo, that contained asbestos. In the 1950s and 1960s, public health officials began to realize that exposure to asbestos can lead to often-fatal lung diseases; as a result, further sale of asbestos products was banned. Although many Americans contracted serious asbestos-related lung diseases over the next several decades, the asbestos litigation crisis has come about largely because thousands of individuals who have suffered no discernable medical impairment have nonetheless filed asbestos claims. Even though the incidence of newly-diagnosed asbestos-related diseases has decreased in recent years, the number of new lawsuits has continued to skyrocket. The result is that virtually every major company that once manufactured asbestos products has been forced into bankruptcy by the sheer volume of litigation.

Before it can emerge from bankruptcy, Owens Corning must receive court approval of a reorganization plan. Its stockholders will receive nothing as part of that plan; the only issue is how its substantial assets will be divided up among its various classes of creditors. In asbestos-related bankruptcies, the usual procedure has been for the bankruptcy court to estimate the value of all current and future asbestos claims, and then to fund a trust from which claimants can seek compensation. In this case, plaintiffs lawyers (with the support of company management) asked the court to assign an $11.1 *billion* estimated value to those claims; if that value had been accepted, the great majority of Owens Corning's assets would have been turned over to plaintiffs' lawyers and their as-yet-unidentified clients. A group of institutional creditors objected, arguing that the asbestos claims were worth no more than $2.05 billion. The district court's decision essentially split the difference between those competing positions.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a significant portion of its resources to tort reform issues, and has actively participated in lawsuits raising asbestos-liability issues. Joel Friedlander and Joanne Pinckney (of the Wilmington, Delaware firm of Bouchard, Margules, and Friedlander) served as pro bono local counsel for WLF.

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