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COURT DISQUALIFIES JUDGE FOR HIRING PRO-PLAINTIFF ADVISORS (*In re Kensington International*)

The U.S. Court of Appeals for the Third Circuit in Philadelphia this week disqualified a federal judge from overseeing three contentious bankruptcies (filed by Owens Corning, W.R. Grace & Co., and USG Corp. in the face of large numbers of asbestos-liability claims) because he hired advisors with impermissible conflicts of interest. The highly-compensated advisors are attorneys who represent asbestos claimants in other bankruptcies; the court concluded that the close relationship between the judge and his advisors created an appearance of partiality that required the judge's disqualification.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief with the appeals court, urging that Judge Alfred Wolin be disqualified from the cases. WLF, a public interest law firm, was the only entity without any financial interest in the case to file a brief on the disqualification issue. "We recognize that the decision to disqualify Judge Wolin will delay resolution of these bankruptcies," said WLF Chief Counsel Richard Samp after reviewing the court decision. "But given the high visibility of asbestos litigation and the huge sums of money at stake, it is far more important that these cases be decided fairly -- and be perceived by the public as having been decided fairly -- than that they be decided quickly," Samp said.

The three-judge Third Circuit panel voted 2-1 to disqualify Judge Wolin. Judges Garth and Smith were in the majority; Judge Fuentes dissented. The panel asked Chief Judge Anthony Scirica to reassign the three bankruptcies to another judge.

In its decision in *In re Kensington International Limited*, the appeals court agreed with WLF that the Judge Wolin'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 brief with the assistance of Roderick R. McKelvie, a Washington, D.C. lawyer who recently retired as a federal judge in Delaware.

Judge Wolin, a federal district judge from New Jersey, was appointed three years ago to oversee 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. Following his appointment, Wolin hired two lawyers, David R. Gross and C. Judson Hamlin, to advise him in his rulings in the bankruptcies.

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 the companies before Judge Wolin. Many of the same legal issues have arisen in all the bankruptcies. Accordingly, the appeals court held, Gross and Hamlin had a strong interest in advising Judge Wolin to issue decisions favorable to the asbestos claimants in the bankruptcy cases before him; the attorneys could then use such decisions to assist their clients in the G-I bankruptcy. Judge Wolin admitted that he "discussed" disputed asbestos liability issues with Messrs. Gross and Hamlin but insisted that they never "advised" him regarding how those issues should be decided. The court agreed with WLF that disqualification was required regardless whether the two advisors' conversations with Judge Wolin could properly be categorized as the provision of "advice."

The appeals court held that disqualification was required without regard to whether Judge Wolin has displayed any partiality in his rulings to date. It held that disqualification of Judge Wolin was required because his relationship with his advisors created an appearance of partiality in the mind of "an objective, reasonable layperson."

The initial petition to disqualify Judge Wolin was filed by several large commercial creditors of Owens Corning. The creditors have an antagonistic relationship with the asbestos claimants and with the attorneys representing Owens Corning; if large awards are handed out to the claimants, a proportionately smaller percentage of assets will be available to pay the creditors' claims. Moreover, Owens Corning seeks to disallow many of the creditors' claims. WLF has not taken a position on any of the substantive disputes between those groups. Rather, WLF filed its brief due solely to its interest in ensuring that federal courts maintain both impartiality and the appearance of impartiality.

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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