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COURT REFUSES TO CONSOLIDATE ASBESTOS CASES *(In re: Federal-Mogul Global, Inc.)*

The United States Court of Appeals for the Third Circuit declined to reverse a lower court decision that had refused to consolidate all related asbestos cases pending throughout the country in the bankruptcy court where manufacturers of asbestos have been forced to file for protection under Chapter 11 of the Bankruptcy Code. The parties have filed an emergency motion with the U.S. Supreme Court to stay that decision, pending the filing of a petition for writ of certiorari in the High Court.

In the case of *In re: Federal-Mogul Global, Inc.*, plaintiffs' attorneys have filed thousands of asbestos lawsuits not only against the manufacturers of asbestos, but also against those companies that used asbestos in their products, or that sold items to consumers containing asbestos. In this case, automobile manufacturers, DaimlerChrysler Corporation, Ford Motor Company, and General Motors, argued that under tort law, these companies are entitled to assert contribution or indemnification claims against the manufacturers. Under the bankruptcy laws, cases that are "related to" the bankruptcy proceedings should be consolidated for a coordinated resolution of all claims.

In its supporting brief, the Washington Legal Foundation (WLF) argued that the benefits of consolidation were overwhelming. Consolidation of the asbestos lawsuits would alleviate the federal and state judicial system from the weight of the multiple asbestos cases crowding their dockets. Consolidation also preserves the resources of defendant manufacturers by reducing the costs of litigating the same issues over and over again in thousands of cases throughout the United States. Indeed, it was those very costs that drove the asbestos companies to seek protection under Chapter 11 of the Bankruptcy Code in the first place.

In the end, for those plaintiffs who are the true victims of asbestos-related injuries, consolidation, and the consequent reduction of litigation costs to defendants, will lead to greater

recovery on their claims. WLF also argued that by bringing to one forum all related claims of both the claimants and codefendants, all matters relating to the bankruptcy can be resolved in a single plan of reorganization.

In its opinion, written by Circuit Judge Sloviter, the court ruled that it did not have jurisdiction to review the ruling of the district court's decision, regardless of whether that ruling was view as an order denying the request for a transfer of the cases to the bankruptcy court, or as one remanding the cases to the various state courts for trial. In doing so, the Third Circuit rejected the reasoning of the Sixth Circuit in a similar case that the automobile manufacturers had relied on.

Treating the ruling as a denial of the request to transfer, the Third Circuit applied standards for mandamus review. The court held that a "writ of mandamus may issue only if the district court committed a clear error of law at least approaching the magnitude of an unauthorized exercise of judicial power, or a failure to use that power when there is a duty to do so." The court concluded that these high standards were not met in this case.

Alternatively, treating the ruling as a remand order, the Third Circuit cited authority for the proposition that certain remand orders related to bankruptcy proceedings are not reviewable on appeal or otherwise. The court finally concluded its opinion by stating that it is up to Congress to provide for consolidated review of these thousands of asbestos cases.

WLF's brief was drafted with the *pro bono* assistance of Bruce R. Zirinsky, John H. Bae, and Edward A. Smith of Cadwalader, Wickersham & Taft of New York.

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