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COURT URGED TO ALLOW DAMAGE SUITS AGAINST ABUSIVE PLAINTIFFS' ATTORNEYS

(G-1 Holdings, Inc. v. Baron & Budd)

The Washington Legal Foundation (WLF) this week urged the U.S. District Court for the Southern District of New York to allow a damage suit to continue against plaintiffs' attorneys who are alleged to have abused the legal process in connection with their handling of asbestos liability cases.

In a brief filed in *G-1 Holdings, Inc. v. Baron & Budd*, WLF asserted that the complaint filed against the defendants (three law firms that have dominated asbestos litigation, plus six lawyers at those firms) amounts to an allegation that they have engaged in a massive conspiracy to undermine the American judicial system. WLF argued that those allegations are sufficient to allow the case to go forward and to permit the plaintiff an opportunity to prove its case.

The plaintiff is G-1 Holdings, Inc. (formerly known as GAF Corporation), one of the many major American corporations forced into bankruptcy proceedings by the flood of claims filed on behalf of those exposed to asbestos. Asbestos was once widely used in building construction but has not been used since the 1970s following disclosure that exposure to airborne asbestos can lead to serious illness. American courts have had great difficulty handling the massive numbers of asbestos claims filed over the past 25 years; although billions of dollars have been paid to settle damage claims, hundreds of thousands of such suits are still pending, and more than 100,000 new suits are being filed each year.

Much of the asbestos litigation has been filed by a small number of law firms. The three most prominent of those firms (Baron & Budd; Ness, Motley, Loadholt, Richardson & Poole; and Weitz and Luxenberg) are named as defendants in G-1 Holding's lawsuit. G-1 Holdings alleges that the Defendants have engaged in a conspiracy to continue to receive massive fees from asbestos litigation even as the number of uncompensated individuals who are ill due to asbestos exposure decreases rapidly. Defendants' alleged misdeeds include: (1) filing massive numbers of nonmeritorious suits on behalf of individuals who claim to have been exposed to asbestos but who are not ill, with the knowledge that such a large group of claims could never reasonably be adjudicated on an individual basis; (2) inducing their clients to perjure themselves by encouraging them to "remember" the names of the manufacturers of the asbestos-related product to which they were exposed; (3) refusing to settle the claims of clients who are

ill as a means of forcing defendants to settle claims that have no merit; (4) threatening retaliation (in the form of massive numbers of new, nonmeritorious claims) against companies that persisted in seeking congressional assistance in resolving the asbestos litigation crisis; and (5) carrying through on that threat against G-1 Holdings by filing nonmeritorious suits against both G-1 Holdings and its Chairman.

The Defendants have filed a motion to dismiss the complaint, alleging that the complaint fails to state a claim upon which relief can be granted, even if all the allegations of the complaint are assumed to be true. WLF filed its brief in opposition to that motion to dismiss.

WLF's brief argued that the common law has long recognized limits on attorney conduct that tends to undermine the administration of justice. WLF argued that G-1 Holdings has alleged conduct that crosses over that line. Although the Defendants claim simply to have been acting in the best interests of their clients, WLF argued that where, as here, attorneys' alleged conduct tends to undermine the integrity of the judicial process, it need not be tolerated simply because the conduct may be of benefit to the attorneys' clients.

WLF argued that under the facts alleged in the complaint, G-1 Holdings has properly stated a common law claim, referred to as a "prima facie tort" claim. WLF also argued that other legal claims asserted by G-1 Holdings -- including that Defendants have violated federal antitrust law and the Racketeer Influenced and Corrupt Organizations Act ("RICO") -- should also be allowed to go forward.

"The American judicial system could not long endure if the district court were to accept the asbestos lawyers' position regarding what is acceptable conduct," said WLF Chief Counsel Richard Samp after filing WLF's brief. "If, as the complaint alleges, the Defendants are employing tactics designed to ensure that asbestos companies are forced to settle claims without regard to their merits, then those tactics are antithetical to the basic functions of our courts," Samp said.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to promoting civil justice reform. WLF filed its brief with the pro bono assistance of New York City attorney Robert J. Randell.

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