WLF Washington Legal Foundation
effective advocate of free enterprise®
2009 Massachusetts Avenue, N.W.
Washington, D.C. 20036
202.588.0302

September 4, 2001

COURT AFFIRMS CONVICTION OF CORPORATE OFFICERS FOR ENVIRONMENTAL VIOLATIONS

(United States v. Hansen)

The United States Court of Appeals for the Eleventh Circuit in Atlanta, Georgia, affirmed last week the convictions and unprecedented prison sentences of two officers and the plant manager of a chemical facility for violating the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA). The Washington Legal Foundation (WLF) had filed a brief in the case in support of the company officials.

In *United States v. Hansen*, federal prosecutors filed felony criminal charges in May 1998 against Christian Hansen, the founder of LCP Chemicals and Plastics in Brunswick, Georgia; his son, Randall Hansen, acting Chief Executive Officer; and plant manager Alfred Taylor, for violating RCRA and CWA due to minor environmental problems experienced by the facility during 1990-1993. The company had retained experienced outside environmental legal counsel and had employed an environmental manager to keep the plant running in an environmentally sound manner during this time. The plant was forced to shut down in 1994 due to technical and economic problems.

The prosecutors charged the officers with "knowing endangerment" under RCRA, alleging that the environmental offenses placed the employees at risk of serious injury; yet there was no evidence at trial that any employee was seriously harmed by the RCRA violations. At one time, inspectors from the Occupational Safety and Health Administration (OSHA) had recommended certain safety precautions, and they were promptly implemented. There were no charges that the public at large was at serious risk of harm from the permit violations. One employee had testified that he slipped in wastewater at the plant, but did not report the accident as required by company policy. He could not even remember what year the accident occurred.

Nevertheless, the three defendants were convicted upon the testimony of the government's so-called "expert" witness who had been discredited by courts in prior cases. The judge instructed the jury that they could convict the three based on a "responsible corporate officer" theory of liability. The court then sentenced Christian Hansen who is 72-years old, to prison for unprecedented terms of 108 months (nine years); his son, Randall, who was in New Jersey for most of the time period involved, was sentenced to 46 months (four years); and Taylor was sentenced to 78 months (six and a half years). This is a first-time offense for all of these defendants.

In its brief, WLF argued that the convictions must be overturned because the trial court allowed "junk science" into the courtroom by not allowing the defendants to conduct a "*Daubert*" hearing to exclude testimony that is scientifically unreliable under the Supreme Court's 1993 decision in *Daubert v. Merrell Dow Pharmaceuticals., Inc.*

WLF also argued that it was reversible error for the court to allow the jury to convict these corporate officials under the so-called "responsible corporate officer" theory which allows officers to be found guilty of environmental "crimes" even though they had no knowledge of or direct involvement in the violations. This theory of liability is particularly inapplicable to charges of "knowing endangerment" since Congress intended that provision to be used only in the rare case where the defendant actually knew of and participated in the offense.

Finally, WLF argued that in any event, the draconian prison sentences for these first offenders must be overturned because the court failed to depart from the Sentencing Guidelines. In particular, WLF argued that the Environmental Guidelines were improperly and illegally drafted by the Sentencing Commission because the Commission ignored the mandate of Congress to set the guidelines for particular crimes on the basis of average sentences imposed before the guidelines came into effect. WLF's research demonstrated that defendants convicted of violations of this kind normally received suspended sentences, modest fines, and community service. WLF also argued that the sentences imposed in this case were two or three times *greater* than what the guidelines call for more serious crimes, such as managing a crack house. Indeed, even if this were an OSHA violation and an employee had actually been killed, the OSHA law carries a maximum of six months in prison. In short, federal prosecutors took a routine OSHA violation and used RCRA to impose these unduly severe sentences on honest businessmen.

The court of appeals rejected all of these arguments, ruling that the responsible corporate officer doctrine applies in this case, and that the evidence of *mens rea* was sufficient to support a knowing violation of RCRA. The court did not address WLF's sentencing guideline argument because it was not raised in the district court by the parties.

Because these convictions and sentences were all affirmed, all corporate officers and managers of companies subject to environmental regulation face severe criminal sanctions and prison terms if a prosecutor decides to criminalize routine environmental violations which would otherwise be addressed in administrative or civil proceedings.

For further information, contact Paul D. Kamenar, WLF's Senior Executive Counsel, at 202-588-0302.