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## **COURT URGED TO END PUNITIVE DAMAGES IN ASBESTOS BANKRUPTCY CASES**

*(Owens Corning v. Credit Suisse First Boston)*

The Washington Legal Foundation (WLF) yesterday urged the judge overseeing the Owens Corning bankruptcy proceedings not to permit plaintiffs' lawyers to make off with the lion's share of the corporation's assets by inflating the asbestos-related liability claims of their clients. WLF charged that most of those clients are uninjured and deserve no payments. In particular, 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.

In a brief filed in federal court in Delaware in *Owens Corning v. Credit Suisse First Boston*, a proceeding designed to estimate the value of all pending and future asbestos claims against Owens Corning, WLF argued that plaintiffs' lawyers have grossly inflated the value of their claims. WLF argued that if the court determines that the value of claims being asserted by asbestos claimants should include a punitive damages component, all other Owens Corning creditors -- including trade creditors, bondholders, and institutional lenders -- will 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 WLF Chief Counsel Richard Samp after filing WLF's brief. "These 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 in the past decade 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) are asking the court to assign an \$11.1 *billion* estimated value to those claims; if that value is accepted, the great majority of Owens Corning's assets will be turned over to plaintiffs' lawyers and their as-yet-unidentified clients. A group of institutional creditors has objected, arguing that the asbestos claims are worth no more than \$2.05 billion.

In its brief filed in support of the objecting creditors, WLF argued that the asbestos claimants' estimation is way too high, particularly because a significant portion of the estimation is based on an assumption that claimants are entitled to recover punitive damages. WLF argued that no one has a legal entitlement or property right to be awarded punitive damages; rather, they are awarded solely to punish culpable defendants and to deter future misconduct. WLF argued that because Owens Corning has already paid out billions of dollars to asbestos claimants, the Constitution's Due Process Clause does not permit further punishment in the form of punitive damages awards. WLF also argued that punitive damages make no sense in this context because the only people who would be "punished" by further punitive damages awards would be Owens Corning's other creditors, not the long-dead corporate officials who continued to market asbestos products in the 1950's and 1960's despite knowledge of the potential health hazards.

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. For example, WLF recently appeared in an asbestos-liability case before the Mississippi Supreme Court, in which that court overturned a \$150 million judgment entered on behalf of six uninjured asbestos claimants. In the Owens Corning case, 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](http://www.wlf.org).