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## **Asbestos Ruling, \$13 Million Fine Buffet Law Firm**

By **NATHAN KOPPEL**

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In recent years, Gilbert Heintz & Randolph LLP has specialized in representing companies forced into bankruptcy because of asbestos liability. Now, the Washington law firm has its own financial problems to worry about after a federal judge penalized it \$13 million for conflicts of interest in one of those cases.

Judge Kathryn Ferguson slapped Gilbert Heintz with the fine after she found that conflicts "permeated every aspect of GH&R's decision making" when the firm represented **Congoleum Corp.** in its bankruptcy filing while at the same time representing about 10,000 people with asbestos claims against the New Jersey flooring manufacturer. Gilbert Heintz was ordered to withdraw from the bankruptcy case, but, in March, the judge still ordered it to give back \$9.6 million in fees and expenses it had received and to forfeit an additional \$3.3 million not yet paid. Last week, Judge Ferguson entered an order authorizing a committee of Congoleum's bondholders to pursue a malpractice suit against Gilbert Heintz.

The fine alone -- one of the largest ever for a bankruptcy conflict, according to lawyers -- could prove fatal to Gilbert Heintz. The 50-lawyer firm specializes in recovering money from asbestos insurers, and it has served as bankruptcy counsel for many asbestos defendants, including Armstrong World Industries Inc. and **Federal-Mogul Corp.** In a motion filed in late March, the law firm claimed it could be "irreparably harmed" if Judge Ferguson did not delay her penalty while the firm pursues an appeal because Gilbert Heintz's "present net worth is substantially less than the amounts ... ordered disgorged." A hearing on the motion is scheduled for today.

Founder Scott Gilbert stresses that his firm represents clients suing Congoleum only in lawsuits against other asbestos defendants. It is common for asbestos plaintiffs to sue many targets, because the plaintiffs allege they were exposed to asbestos on various job sites and from multiple products. "In Congoleum, we acted in good faith," says Mr. Gilbert, adding that Congoleum expressly waived any conflict the law firm might have.

Many companies have sought refuge from asbestos claims by filing for bankruptcy, leaving insurance companies to settle with plaintiffs while protecting the defendants' assets. Judge Ferguson's ruling "will send a signal to asbestos bankruptcy judges to pay close scrutiny to conflicts," says Lester Brickman, a professor at the Benjamin N. Cardozo School of Law of New York's Yeshiva University.

The Senate is considering legislation that provides for asbestos claims to be paid out of a trust fund underwritten by asbestos defendants and their insurers. But the legislation is in a holding pattern, meaning bankruptcy courts will remain a prime battleground for resolving asbestos claims, says Glenn Lammi, a lawyer with the pro-business **Washington Legal Foundation**. In bankruptcies like Congoleum, he adds, "where a company's lawyers were supposedly on both sides of the fence, courts need to worry whether asbestos claims negotiations are at arm's length."

Insurance companies raised conflict objections in the Congoleum case, only because Gilbert Heintz has been so successful "recovering money from asbestos insurers," says plaintiffs lawyer Steven Kazan, who has asbestos claims against Congoleum. "It's a Tonya Harding situation: If you can't beat her on the ice, then kneecap her." But Prof. Brickman, who has followed the Congoleum bankruptcy, says Gilbert Heintz's conflicts were a prime reason Congoleum agreed in the bankruptcy not to contest "bogus asbestos claims."

Congoleum declined to comment. The company still faces thousands of claims, even though it has not manufactured floor products containing asbestos since the early 1980s.

Under its reorganization plan, Congoleum offered to pay more than \$465 million to settle asbestos claims, according to court filings. In 2005, Congoleum's insurers objected to the proposed settlement, claiming Gilbert Heintz's conflicts resulted in a "collusive" agreement potentially allowing recovery to people who merely claim, without proof, that they were exposed to a Congoleum product. "Claimants who do nothing more than assert that they ... once walked on or in the vicinity of at least one Congoleum tile" can seek recovery, according to a brief filed by Congoleum's insurers, including Travelers Casualty & Surety Co. and Continental Casualty Co.

"The negotiation process was at arm's length, and the settlement reached was reasonable," Mr. Gilbert counters. Congoleum has yet to finalize a settlement or file a reorganization plan.

Mr. Gilbert is now focused on his own firm's debts. In the buttoned-up legal world, Gilbert Heintz cuts a rakish figure. The firm has a Ducati and antique Harley-Davidson motorcycles in its lobby, as well as rock 'n' roll artifacts on its walls, including a guitar signed by the Grateful Dead's Bob Weir. But in a recent filing, a U.S. bankruptcy trustee in New Jersey focused on another possession -- Gilbert Heintz's \$2.5 million plane -- to argue that the firm is able to pay its conflict fine immediately.

Judge Ferguson hasn't been a wellspring of sympathy, either. In an earlier court proceeding, she responded tartly to Gilbert Heintz's argument that it's unfair to force it to give up all of its fees in the case. Gilbert Heintz, the judge said, reminded her of the "story of the boy who murdered both his parents and then asked the court to take pity on a poor orphan."

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