



**FOR IMMEDIATE RELEASE**

**June 9, 2006**

**COURT URGED TO UPHOLD SANCTION  
AGAINST ASBESTOS LAW FIRM**  
*(In re Congoleum Corp.)*

The Washington Legal Foundation (WLF) today requested that the U.S. District Court for the District of New Jersey uphold a \$9 million sanction imposed by a bankruptcy judge on a Washington, D.C. law firm for its unethical behavior while representing a company that filed for bankruptcy in the face of massive asbestos liability litigation.

In a brief filed in *In re Congoleum Corp.*, WLF argued that the law firm of Gilbert Heintz & Randolph (GHR) should be required to disgorge all legal fees it was paid during the course of bankruptcy proceedings. WLF noted that last year the U.S. Court of Appeals for the Third Circuit kicked GHR off of the case based on its unethical conduct.

WLF argued that GHR had done tremendous damage to the bankruptcy system by undermining public confidence in the integrity of that system, particularly with respect to asbestos-related bankruptcies. WLF argued that disgorgement of fees is an appropriate remedy in that it will provide at least partial compensation for the losses caused by GHR.

"GHR's conduct has led to a public perception that asbestos-related bankruptcy settlements are being used to shed future bankruptcy liabilities by means of pay-offs to a small group of powerful plaintiffs' lawyers," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Public confidence cannot be restored unless the courts are willing to crack down hard on those shown to have abused the system," Samp said.

The disgorgement issue arises in connection with a Chapter 11 bankruptcy petition filed in late 2003 by Congoleum Corporation, which in the past manufactured products containing asbestos. In the face of rising asbestos liability litigation, Congoleum hired GHR in early 2003 (at the suggestion of plaintiffs' lawyer Perry Weitz) to attempt to negotiate a "pre-packaged" bankruptcy filing, *i.e.*, a filing to which the great majority of corporate creditors had agreed in advance. In the months prior to the "pre-pack" filing, GHR helped to negotiate settlement of approximately 80,000 asbestos claims for \$466 million under terms (critics charge) that were generally favorable to the claimants. Critics further charge that those favorable terms (which were not offered to other claimants and to potential future claimants) were offered with the understanding that those receiving the favorable terms would vote to support the reorganization plan. When

negotiations for the pre-pack were completed, Weitz and another prominent plaintiffs' lawyer, Joe Rice, were each paid a \$1 million fee. Following the Chapter 11 filing, GHR was hired as a principal attorney for Congoleum as debtor-in-possession.

It later developed that GHR had significant conflicts of interest. At the same time that it was representing Congoleum in supposed arms-length negotiations with Weitz over the terms of the reorganization plan, it was serving as co-counsel with Weitz for 10,000 individuals with asbestos-related claims pending against Congoleum -- yet GHR failed to obtain effective waivers of the conflict from its clients. GHR also owned controlling interest in a firm that provided Congoleum with medical screening of individuals with asbestos-related claims pending against Congoleum, including screening of some of the 10,000 clients for whom GHR is serving as co-counsel. In light of those conflicts, the Third Circuit ruled in 2005 that GHR violated the Rules of Professional Conduct and was not "disinterested" -- and thus should never have been hired to perform legal work for the bankruptcy estate.

On remand, the bankruptcy court ordered GHR to disgorge the entire \$9 million in legal fees it had been paid for working on the bankruptcy. GHR has appealed that order to the district court.

In its brief urging that the order be upheld, WLF argued that the bankruptcy court was acting well within the discretion afforded under the Bankruptcy Code when it ordered disgorgement. WLF further argued that continued public confidence in the bankruptcy system demands that the courts do more than simply throw GHR off the case while letting it retain the millions of dollars it was paid while operating under an actual conflict of interest. WLF argued that disgorgement not only would provide compensation for the losses caused by GHR but also would serve as a powerful deterrent to future misconduct. WLF also argued that the pre-pack negotiated by GHR violated a basic tenet of bankruptcy law by favoring the rights of some creditors (*e.g.*, those represented by friendly plaintiffs' attorneys) over the rights of other creditors.

WLF is a public interest law and policy center with supporters in all 50 states. WLF regularly participates in federal court proceedings in support of efforts to ensure both that the federal court system is administered fairly and that it is perceived by the general public as being administered fairly. WLF filed its brief with the *pro bono* assistance of the New Jersey law firm of Porzio, Bromberg & Newman PC.

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For further information contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is available on its website, [www.wlf.org](http://www.wlf.org).