

January 11, 2002

## **COURT ALLOWS DAMAGE SUIT TO PROCEED AGAINST ABUSIVE PLAINTIFFS' ATTORNEYS** *(G-1 Holdings, Inc. v. Baron & Budd)*

The U.S. District Court for the Southern District of New York has ruled that a suit for damages should be permitted to go forward against plaintiffs' attorneys who are alleged to have abused the legal process in connection with their handling of asbestos liability cases.

The decision is a partial victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *G-1 Holdings, Inc. v. Baron & Budd*. WLF's brief 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 district court agreed in part with WLF's argument. The court dismissed several of the counts included in the plaintiff's lawsuit. But the court permitted the plaintiff to go forward on two theories: that the lawyers breached an agreement to settle many of their asbestos lawsuits, and that they tortiously interfered with the plaintiff's ability to enter into contractual relations with others.

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

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most prominent of those firms (Baron & Budd; Ness, Motley, Loadholt, Richardson & Poole; and Weitz and Luxenberg) are named as defendants in G-1 Holdings'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 filed a motion to dismiss the complaint, alleging that the complaint failed to state a claim upon which relief can be granted, even if all the allegations of the complaint were 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.

By refusing to dismiss two of the counts in the lawsuit, the district court has permitted G-1 Holdings to go forward with the discovery process, in order to gather the evidence necessary to prove its allegations.

"The American judicial system could not long endure had the district court accepted the asbestos lawyers' position regarding what is acceptable conduct," said WLF Chief Counsel Richard Samp after reviewing the court's decision. "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.

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