

October 16, 2002

COURT URGED TO UPHOLD LAW LIMITING ASBESTOS LIABILITY *(Crown Cork & Seal Co. v. Ieropoli)*

The Washington Legal Foundation (WLF) filed a brief with the Pennsylvania Supreme Court urging it to uphold the constitutionality of a Pennsylvania statute that limits the liability of certain manufacturers that have been unfairly drawn into the asbestos tort litigation morass.

The Pennsylvania statute, 15 Pa.C.S.A. 1929.1 (the "Statute"), limits the tort liability of Pennsylvania corporations that are being sued for damages based on their having acquired other corporations that previously manufactured products that contained asbestos. Such companies are being sucked into asbestos litigation with increasing frequency, as more and more of the companies that actually manufactured asbestos products are being driven into bankruptcy, and thus, are no longer available as a source of jury awards and attorneys' fees.

One company protected by the Statute is Crown Cork & Seal Co. ("Crown"). In November 1963, Crown acquired Mundet Cork Corp. ("Mundet"). Prior to the acquisition, Mundet's insulation division had manufactured products containing asbestos, but it ceased doing so some time *before* the acquisition. Crown acquired Mundet in order to take over Mundet's metal bottle cap production division. It had no interest in operating Mundet's insulation division; indeed, it sold off that division within 90 days of the acquisition.

On the basis of that acquisition, Crown has become the target of thousands of tort claims filed by individuals who claim to have been injured by exposure to Mundet insulation products containing asbestos. Those suits have driven Crown itself to the verge of bankruptcy. However, the Statute may provide Crown with considerable relief from those suits.

In this case, the trial court dismissed the plaintiffs' tort claims on the ground that the

Statute limited Crown's liability for claims arising from Mundet's pre-acquisition manufacturing activity. The plaintiffs appealed that ruling to Pennsylvania's intermediate appellate court, asserting that the Statute is invalid under both the federal and state Constitutions.

Crown filed an "application for extraordinary relief," asking the Pennsylvania Supreme Court to decide the constitutionality of the Statute immediately rather than have the resolution of the issue delayed by intermediate appellate review. WLF filed an earlier brief in support of Crown's application, which was recently granted by the Court.

In that earlier brief, WLF argued that immediate review was warranted in light of the large number of asbestos claims at issue. WLF noted that more than 2,300 asbestos claims are pending against Crown in Pennsylvania courts; the viability of each of those claims turns on whether the Statute is a valid exercise of legislative authority. Because the issue will in any event reach the Pennsylvania Supreme Court within the next few years, WLF argued that it makes sense to decide the issue as soon as possible in order to save unnecessary litigation expense.

WLF argued in its recent brief on the merits that the Statute should be upheld. WLF argued that the Statute is a reasonable compromise between the interests of Pennsylvania corporations and tort claimants; it protects successor corporations from ruinous judgments while at the same time preserving the ability of injured asbestos claimants to receive compensation.

WLF argued that the Statute was designed to relieve the severe hardship on untold numbers of shareholders, employees, creditors, and other stakeholders, that would be caused by lawsuits filed for the primary benefit of a small number of plaintiffs' lawyers. The Statute is a modest but important step in the direction of bringing unwarranted asbestos litigation under control.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states, including many in Pennsylvania. It regularly litigates in support of tort reform and against the creation of new and unfounded theories of tort liability.

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