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JUDGE URGED TO DISQUALIFY HIMSELF FOR HIRING PRO-PLAINTIFF ADVISORS

(In re Owens Corning)

The Washington Legal Foundation (WLF) this week requested that a federal judge overseeing a contentious asbestos-related bankruptcy disqualify himself from the case because he has hired advisors with an impermissible conflict of interest. The highly-compensated advisors are attorneys who represent asbestos claimants in other bankruptcy proceedings; WLF charged that the close relationship between the judge and his advisors creates an appearance of partiality that requires the judge's disqualification.

In a brief filed in *In re Owens Corning*, a bankruptcy proceeding pending in federal court in Delaware, WLF argued that the judge's impartiality might reasonably be questioned because his paid advisors have a vested interest in advising the judge to issue rulings that are favorable to the advisors' asbestos claimants in a related bankruptcy proceeding. WLF filed its brief with the assistance of Roderick R. McKelvie, a Washington, D.C. lawyer who recently retired as a federal judge in Delaware.

The judge whose conduct is in question is Alfred R. Wolin, a federal district judge from New Jersey. Wolin was appointed two years ago to oversee bankruptcy proceedings filed by five large industrial corporations that manufactured asbestos building products. All five were driven into bankruptcy by thousands of claims filed by individuals allegedly exposed to the manufacturers' asbestos products. The five corporations are Owens Corning, Armstrong World Industries, W.R. Grace & Co., Federal-Mogul Global, and USG Corporation. Following his appointment, Wolin hired two lawyers, David R. Gross and C. Judson Hamlin, to advise him in his rulings in the bankruptcies.

It recently came to light that Gross and Hamlin, who are well-known plaintiffs' attorneys, represent a large class of asbestos claimants in another asbestos-related

WLF stressed that it has no knowledge regarding the private conversations between Judge Wolin and his advisors, and that it filed its brief without regard to whether Judge Wolin has displayed any partiality in his rulings to date. WLF argued that disqualification of Judge Wolin is nonetheless required because his relationship with conflicted advisors creates an appearance of partiality.

WLF's brief comes in response to a motion to disqualify Judge Wolin filed by several large creditors of Owens Corning. The creditors have an antagonistic relationship with the asbestos claimants; if large awards are handed out to the claimants, a proportionately smaller percentage of assets will be available to pay the creditors' claims. WLF has not taken a position on any of the substantive disputes between the two groups. Rather, WLF filed its motion due solely to its interest in ensuring that federal courts bend over backward to maintain both impartiality and the appearance of impartiality.

Judge Wolin late last week responded to the motion to disqualify by issuing an order that delayed all consideration of the motion and suggested that the creditors had filed their motion in bad faith. The creditors have responded in turn by filing a petition with the U.S. Court of Appeals for the Third Circuit in Philadelphia, asking that Judge Wolin be ordered to rule immediately on the motion to disqualify. Thus, the disqualification issue is proceeding simultaneous in two separate courts.

WLF is a public interest law and policy center with supporters in all 50 states, including many in Delaware. WLF regularly participates in federal court proceedings addressing the circumstances under which a federal judge should be recused from participating in a case.

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For further information or a copy of WLF's brief, contact WLF Chief Counsel Richard Samp (202) 588-0302.