

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT



NMB

No. 03-4212

In re KENSINGTON INTERNATIONAL LIMITED
AND SPRINGFIELD ASSOCIATES, LLC,

Petitioners.

On Petition for a Writ of Mandamus to Judge Alfred M. Wolin,
United States District Judge for the District of New Jersey, sitting by
designation in the United States District Court for the District of Delaware

RESPONSE OF ARMSTRONG WORLD INDUSTRIES, INC. TO THE
STATEMENT BY PROPOSED INTERVENOR, OFFICIAL
COMMITTEE OF UNSECURED CREDITORS OF ARMSTRONG
WORLD INDUSTRIES, INC., ET AL., IN CONNECTION
WITH THE MANDAMUS FILED BY KENSINGTON
INTERNATIONAL LIMITED AND SPRINGFIELD ASSOCIATES, LLC.

Mark D. Collins (No. 2981)
John H. Knight (No. 3848)
Rebecca L. Booth (No. 4031)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
(302) 651-7700

Stephen Karotkin
Debra A. Dandeneau
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153-0119
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Dated: December 5, 2003

The undersigned represent Armstrong World Industries, Inc. (“Armstrong”), one of the debtors and debtors-in-possession in the chapter 11 cases styled In re Armstrong World Industries, Inc., et al., Case Nos. 00-4471, 00-4469, 00-4470 (the “Armstrong Cases”), pending in the District of Delaware. On October 24, 2003, Kensington International Limited and Springfield Associates, LLC, creditors in the asbestos-related chapter 11 cases styled In re Owens Corning, et al. (Case Nos. 00-3387 through 00-3854) (the “Owens Corning Cases”) filed an Emergency Petition for a Writ of Mandamus with this Court (the “Petition”). The Petition and the underlying recusal motion seek to recuse the Honorable Alfred M. Wolin of the United States District Court for the District of New Jersey from further participation in the Owens Corning Cases on the grounds that Judge Wolin’s court appointed special masters and/or case management consultants (the “Consultants”) do not qualify as “disinterested” because certain of the Consultants allegedly actively represent the interests of future asbestos claimants in the asbestos-related chapter 11 case of G-I Holdings, Inc., f/k/a GAF Corporation, and its affiliates, which is also pending in this Circuit.

On November 21, 2003, the Official Committee of Unsecured Creditors appointed in the Armstrong Cases (the “Armstrong Creditors’ Committee”) filed its Statement with this Court as a potential intervenor (the “Statement”), requesting that this Court grant the relief requested in the Petition and extend any relief granted in the Owens Corning Cases to the Armstrong Cases, which have also been assigned to District Court Judge Wolin, and to which Judge Wolin’s order appointing the Consultants is also applicable.

Armstrong submits this Response to the Statement of the Armstrong Creditors' Committee pursuant to this Court's order dated November 25, 2003 setting the deadline for responses to same.

RESPONSE

Armstrong files this Response to correct the misimpression that may have been created by the Statement of the Armstrong Creditors' Committee as to the nature and extent of the involvement of Judge Wolin and the Consultants in the Armstrong Cases.

At the time of Judge Wolin's appointment, Armstrong's chapter 11 case was in a different posture from the other four asbestos-related cases over which Judge Wolin was appointed to preside because the representatives of all the major constituencies in the Armstrong Cases, including the Armstrong Creditors' Committee, were committed to attempting to reach a consensus on the issues relating to Armstrong's liability for asbestos-related personal injury and wrongful death claims and the treatment of other claims under a plan of reorganization. Although Judge Wolin presided over status conferences attended by the representatives of *all* these key constituencies, the agreement that the parties ultimately reached on the terms of a plan was endorsed by all parties¹ and resulted from extensive, arm's length negotiations among the parties.

Indeed, Armstrong, as one of the debtors in the five asbestos-related cases transferred to Judge Wolin, was billed its one-fifth share of the

¹ Notwithstanding its endorsement and statements encouraging creditors to vote to accept Armstrong's plan, the Armstrong Creditors' Committee, shortly before the scheduled hearing on confirmation of Armstrong's plan of reorganization, reversed its position and has now set out to derail such plan. This reversal is solely attributable to the hope that the U.S. Congress will pass asbestos tort reform legislation.

fees paid to the Consultants. Armstrong, however, is not aware of any role that the Consultants have played in the Armstrong Cases other than involvement of John E. Keefe, Esq., who sat as a magistrate in connection with certain discovery issues relating to Armstrong's litigation with the Center for Claims Resolution (the "CCR"). Certain litigation with the CCR, in fact, was the only significant litigated issue² over which Judge Wolin presided in connection with the Armstrong Cases. All disputes between Armstrong and the CCR have since been resolved pursuant to the terms of a settlement to which the Armstrong Creditors' Committee (among others) was a party. Such settlement has been approved by the Bankruptcy Court and has become fully effective; therefore the CCR matters are no longer at issue in the Armstrong Cases.

Furthermore, Armstrong notes the complaints set forth in the Statement by the Armstrong Creditors' Committee with respect to the procedures implemented in connection with the confirmation of Armstrong's plan of reorganization. These complaints are completely irrelevant to the recusal issue before this Circuit and are just another attempt by the Armstrong Creditors' Committee to throw a monkey wrench into the plan process that they themselves, until only recently, actively supported. Any concerns of the Armstrong Creditors' Committee with respect to the Bankruptcy Court's decision to proceed with the hearing on confirmation of Armstrong's plan should be addressed by the District Court Judge that ultimately will review the Proposed Findings of Fact and Conclusions of

² In addition to certain CCR litigation, in his capacity as the District Court to which appeals from the Bankruptcy Court's orders are made, Judge Wolin has rendered decisions on matters completely unrelated to issues pertaining to Armstrong's liability for asbestos-related personal injury and wrongful death claims.

Law and the Proposed Confirmation Order issued by the Bankruptcy Court.

Dated: December 5, 2003

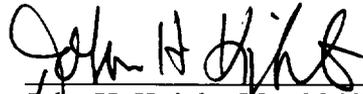


Stephen Karotkin
Debra A. Dandeneau
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION,
ARMSTRONG WORLD
INDUSTRIES, INC., ET AL.

CERTIFICATE OF SERVICE

I, John H. Knight, hereby certify that on the 5th day of December, 2003, I caused copies of the foregoing **Response of Armstrong World Industries, Inc. to the Statement by Proposed Intervenor, Official Committee of Unsecured Creditors of Armstrong World Industries, Inc. et al., in Connection with the Mandamus filed by Kensington International Limited and Springfield Associates, LLC** to be served upon the Core Group (local) via hand delivery, Core Group (non-local) via federal express, All Notices List (local) via hand delivery, All Notices List (non-local) via federal express, and Special Service as indicated on the attached list:



John H. Knight (No. 3848)

Special Service

(via federal express)

Roderick R. McKelvie
Fish & Neave
1899 Pennsylvania Avenue, NW
Washington, DC 20006

(via federal express)

Daniel J. Popeo
Richard A. Samp
Washington Legal Foundation
2009 Massachusetts Avenue, NW
Washington, DC 20036

(via federal express)

Stephen J. Shimshak
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064

(via hand delivery)

Jeffrey A. Waxman
Cozen O'Connor
Chase Manhattan Centre
1201 N. Market Street
Wilmington, DE 19801-1147

VIA FED EX

The Honorable Alfred P. Wolin
Martin Luther King, Jr. Federal Building
50 Walnut Street
Newark, New Jersey 07101

The Honorable Julio M. Fuentes
Martin Luther King, Jr. Federal Building
50 Walnut Street, Room 5032
Newark, New Jersey 07101

The Honorable Leonard I. Garth
Martin Luther King, Jr. Federal Building
50 Walnut Street, Room 5040
Newark, New Jersey 07101

The Honorable D. Brooks Smith
Allegheny Professional Center, Suite 203
1798 Old Route 220 North
Duncansville, PA 16635