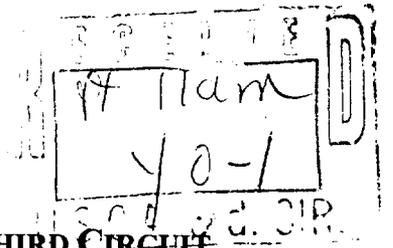


No. 03-4212



IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

IN RE KENSINGTON INTERNATIONAL LIMITED AND
SPRINGFIELD ASSOCIATES, LLC, PETITIONERS
(RELATED TO U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE)
(No. 00-3837)

ON PETITION FOR 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

**ANSWER OF THE BARON & BUDD CLAIMANTS TO
EMERGENCY PETITION FOR A WRIT OF MANDAMUS**

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT:

Certain asbestos personal injury claimants holding claims in
bankruptcy against Owens Corning and Fibreboard, and represented by
Baron & Budd (the "Baron & Budd Claimants") respectfully submit the
following answer, pursuant to the order of this Honorable Court issued
October 30, 2003, to the Emergency Petition for a Writ of Mandamus (the
"Petition") filed by petitioners Kensington International Limited and

Springfield Associates, LLC (collectively, the “Petitioners”). The Baron & Budd Claimants oppose the Petition and assert as follows:

I) FACTUAL AND PROCEDURAL BACKGROUND

1. October 10, 2003 saw the latest in a series of dilatory tactics employed by a group of creditors irredeemably opposed to the Plan of Reorganization filed in the above captioned case and to other aspects of these proceedings. Rather than appeal any issues through normal channels, the Movants filed the Motion to Recuse the Honorable Alfred M. Wolin, U.S.D.J. (the “District Court”) (the “Motion to Recuse”) and, on October 28, 2003 filed this Petition seeking the issuance of a writ of mandamus to compel recusal. The Baron & Budd Claimants file this Answer urging this Court to dismiss the Petition as an untimely, groundless and transparent attempt to further delay and even derail the progress made in this case towards a confirmed Plan of Reorganization.

II) ARGUMENT

1) The Petitioners do not meet the standard required for recusal of a judge, and resort to the use of innuendo, conjecture and spurious analogies as cover for their inability to demonstrate partiality.

2. The Petitioners do not meet the standard required for a party to insist upon recusal. The settled law of the Third Circuit provides that

whether recusal is warranted hinges upon the question of “whether a reasonable person, knowing all the acknowledged circumstances, might question the district judge’s continued impartiality.” *In re Sch. Asbestos Litig.*, 977 F.2d 764, 781 (3d Cir. 1992). In this case no reasonable person could view the District Court’s use of advisors as cause to question the District Court’s impartiality.

3. The District Court, looking to develop and implement creative ways of resolving the myriad issues that arise in extremely complex asbestos related bankruptcies, sought and has received the benefit of the wise counsel and advice of five acknowledged authorities in their field. Each advisor has absolutely no role or stake in the five bankruptcy cases in respect of which he provides his advice to the District Court, advice which the District Court, in its discretion and exercising the faculty of judicial discernment, has been and remains free to accept or reject. The Petitioners do not show how or why the appointment of these advisors calls the District Courts’ impartiality into question.

4. The aspersions cast by the Petitioners are without foundation. The examples cited by the Petitioners are utterly inapposite. They have nothing to do with the District Court’s empanelling a group of advisors to assist in

overseeing complex asbestos related bankruptcy cases. The Petitioners knowingly distort the true nature of the District Court's appointed advisors.

5. An experienced and highly respected jurist has been assigned five complex asbestos-related cases. To assist him in his task, he has assembled a team of experienced advisors possessing vast cumulative knowledge drawn from varying roles in the world of asbestos litigation. As his advisors, they have no stake in the cases for which their advice is sought.

6. In contrast to this straightforward and open approach to case management, the Petitioners urge spurious analogies contending, for example, that the District Court's use of advisors is analogous to a judge's employing law clerks who simultaneously practice law as partisan advocates for one side of an issue a judge is called upon to decide. Motion to Recuse at 22-23. Such specious reasoning does not compensate for the absence of any genuine grounds for recusal.

7. Tellingly, the Petitioners have failed to state a single valid instance where a reasonable observer might have perceived a taint to the District Court's impartiality in any of the five cases. The Petitioners simply attacked the District Courts' management approach to these five cases. Attempts to seek recusal of a judge must be grounded in reasonable perceptions of partiality rather than transparent and self-serving mischaracterizations of a

laudable approach to complex bankruptcy cases. This is a tactic born of desperation, disconnected from reality, and falling woefully short of the standard required to mandate recusal.

2) The Motion to Recuse is untimely. Such motions must be brought when a purported violation is discovered, not saved for the moment of greatest tactical advantage.

8. The Motion to Recuse was not filed in a timely manner. Parties must seek recusal promptly once the grounds for recusal are known or are reasonably knowable. *Martin v. Monumental Life Ins. Co.*, 240 F.3d 223, 236-37 (3d. Cir. 2001). Parties may not wait for the point at which a motion to recuse may have the greatest tactical advantage, and then use it to their advantage, or knowingly conceal ethical issues for strategic purposes. *United States v. York*, 888 F.2d 1050, 1055 (5th Cir. 1989). The Motion to Recuse and this Petition are based on information that has long been a matter of public record (the participation of two of the advisors in an unrelated asbestos bankruptcy case).

9. If the Motion to Recuse and this Petition were genuine attempts to remedy a breach of judicial ethics, the Petitioners would have raised that alleged breach as soon as the ethical issue arose. That the Motion to Recuse was filed at a time when the Petitioners would benefit greatly from delay or

derailment of the bankruptcy process speaks to the lack of a genuine concern for judicial ethics, and to the depths which the Petitioners are prepared to plumb to secure a tactical advantage.

III) CONCLUSION AND PRAYER FOR RELIEF.

10. For the recusal of a judge presiding over a case, the law and the canons of ethics require more than innuendo, supposition, conclusory accusations or groundless slurs. Such insubstantial diversions are, however, all that the Petitioners have offered. The meritless Motion to Recuse and this Petition are transparent attempts to use any available weapons to delay and potentially derail a bankruptcy case otherwise moving resolutely towards a plan of reorganization that is just and fair to all parties. The Petitioners have not shown, and are unable to show, that a reasonable person with knowledge of all pertinent facts would question the District Court's impartiality. Accordingly, the Petition should be dismissed without further delay, so that the bankruptcy case may continue toward confirmation of a plan of reorganization consistent with the requirements of the Bankruptcy Code.

For the foregoing reasons, the Baron & Budd Claimants respectfully request that the Court dismiss the Petition and grant such other and further relief as may expedite the progress of the case.

Respectfully submitted,

*Daniel K. Hogan
by David J. Parsons
with permission.*

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**COUNSEL FOR THE BARON &
BUDD CLAIMANTS**

CERTIFICATION IN ACCORDANCE WITH LOCAL APPELLATE RULE 46.1

I hereby certify, in accordance with Local Appellate Rule 46.1, that at least one of the attorneys whose names appear on the Answer is a member of the bar of this court or has filed an application for admission pursuant to this rule.

Daniel K. Hogan
by David J. Parsons
with permission

Daniel K. Hogan (De. Bar No. 2814)

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2003 the
“ANSWER OF BARON & BUDD CLAIMANTS TO EMERGENCY
PETITION FOR A WRIT OF MANDAMUS” was filed via overnight mail
and served via overnight mail upon the parties appearing on the following
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*Alfred M. Wolin,
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