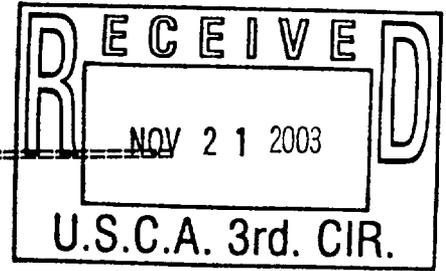


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**E-Transmission  
Signature to follow**

No. 03-4212



**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 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

**ANSWER OF JAMES J. MCMONAGLE,  
LEGAL REPRESENTATIVE FOR FUTURE CLAIMANTS,  
AND THE OFFICIAL COMMITTEE OF ASBESTOS CREDITORS  
TO EMERGENCY PETITION FOR WRIT OF MANDAMUS**

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

Received and Filed

11-21-03

Marcia M. Waldron,  
Clerk

James J. McMonagle, the Legal Representative for Future Claimants (the "Futures Representative"), and the Official Committee of Asbestos Creditors (collectively, the "Respondents"), 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 ("Petition") filed by petitioners Kensington International Limited and Springfield Associates, LLC (collectively, "Petitioners"). The Respondents oppose the Petition, adopt and incorporate the answer (the "Debtors' Answer") filed by Owens Corning and certain of its affiliates (collectively,

the “Debtors”), and assert as follows:

1. The Petition was improperly filed as a thinly-veiled litigation tactic by Petitioners in a effort to derail the Debtors’ chapter 11 proceedings that have been pending for more than three years and thereby create artificial bargaining leverage. Based upon nothing more than rank speculation and baseless innuendo, the Petition is an affront to the judicial process itself. It is also an affront to the integrity of a well respected district court judge and the equally well respected and diverse group of professionals that he selected to aid him in the process of coordinating and sorting through the difficult issues posed by five large and complex asbestos cases, with the aim of providing prompt and fair compensation to deserving claimants.

2. As discussed in the Debtors’ Answer, after sifting through the abuse that has been heaped upon Judge Wolin, his advisors and the various future claimants’ representatives,<sup>1</sup> all that is left is that the Petitioners (i) do not like the economic deal that has been offered to them as part of the plan negotiation process with the Debtors and the asbestos constituencies (collectively, the “Plan Proponents”), (ii) are determined to stop at nothing to short-circuit the plan confirmation process, and (iii) strategically waited until a critical juncture in these chapter 11 cases to complain of facts that have long been a matter of public record.

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<sup>1</sup> As part of their scorched earth approach, Petitioners, in their November 3, 2003 Opposition to the Debtors’ Motion for Clarification of the Court’s October 30, 2003 Order, made a number of baseless and irresponsible allegations, essentially accusing the various future claimants’ representatives -- including Mr. McMonagle (a retired Judge of the Court of Common Pleas of Cuyahoga County, Ohio) -- of conspiring to influence certain of the advisors (and indirectly Judge Wolin) with respect to matters specifically relating to the Owens Corning chapter 11 cases. Since these allegations were made in connection with Petitioners’ failed attempt to oppose the Debtors’ Clarification Motion that has already been determined by this Court, Mr. McMonagle will not dignify them with a response at this time other than by way of categorical denial.

Petitioners' outrageous and reprehensible tactics should not be countenanced, much less rewarded by granting the extraordinary and unprecedented relief that they seek.

3. As discussed in the Debtors' Answer, one of the key issues in these chapter 11 cases is the substantive consolidation of the Debtors' estates. Following the completion of the monumental Inter-Creditor Project<sup>2</sup>, which entailed an exhaustive process by which the parties stipulated to thousands of facts and narrowed the issues for trial, Judge Wolin presided over a month-long trial between the Bank Group, on one hand, and the Debtors, representatives of the present and future asbestos creditors and the Designated Members of the Creditors' Committee (representing the bond and trade creditors), on the other. At no point during the process did counsel for the Bank Group even suggest that Judge Wolin was anything other than fair and impartial. Certainly nothing in the record suggests any partiality on his part.

4. At the conclusion of the Plan Proponents' case, the Bank Group moved for judgment under Rule 52 of the Federal Rules of Civil Procedure. The motion was denied by Judge Wolin, and the trial was thereafter completed. Judge Wolin reserved decision, and it was the understanding of the parties that a decision would be forthcoming in the near future.

5. The present situation is analogous to a jury trial in which (i) jurors are selected and neither party uses any peremptory or other challenges, (ii) the trial is fully and fairly conducted and the evidentiary record is closed, (iii) the jurors retire to the jury room to conduct their deliberations, and then (iv) one of the parties, not feeling good about its case, belatedly seeks to have the jury disbanded without any showing of bias. Clearly, no court would permit the

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<sup>2</sup> Capitalized terms not defined herein shall have the respective meanings ascribed to them in the Debtors' Answer.

disgruntled party to do that -- yet that is precisely the same type of extraordinary action that Petitioners are asking this Court to take. Judge Wolin, having completed the lengthy substantive consolidation trial and having undertaken the deliberation process, ought to be permitted to finish the process and see this complex reorganization through to its conclusion.

6. The allegation that the Petitioners had only “recently learned” that Judge Wolin had appointed advisors who were involved in other asbestos cases defies credibility and is belied by the Debtors’ Answer, the advisors’ affidavits and the extensive public record. As set forth in the Debtors’ Answer, counsel to the Bank Group (of which Petitioner Kensington is a member) and counsel to the Unsecured Creditors’ Committee (of which Petitioner Kensington is also a member) clearly knew all along that Messrs. Hamlin and Gross were representing future claimants in the *G-1 Holdings* case. Moreover, Messrs. Hamlin’s and Gross’s roles in the *G-1 Holdings* case were a matter of public record and were widely reported by the press and trade publications.

7. The foregoing demonstrates that the Petition is untimely and is being brought solely to try to alter the playing field on which the chapter 11 process (including the allocation of the distributable value of the Debtors’ estates) is being carried out. The Petition -- which is but one part of the Bank Group’s six-week multi-front assault on all aspects of these chapter 11 cases (summarized in Subsection “E” of the “Factual Background” Section of the Debtors’ Answer) -- therefore is an abuse of process.

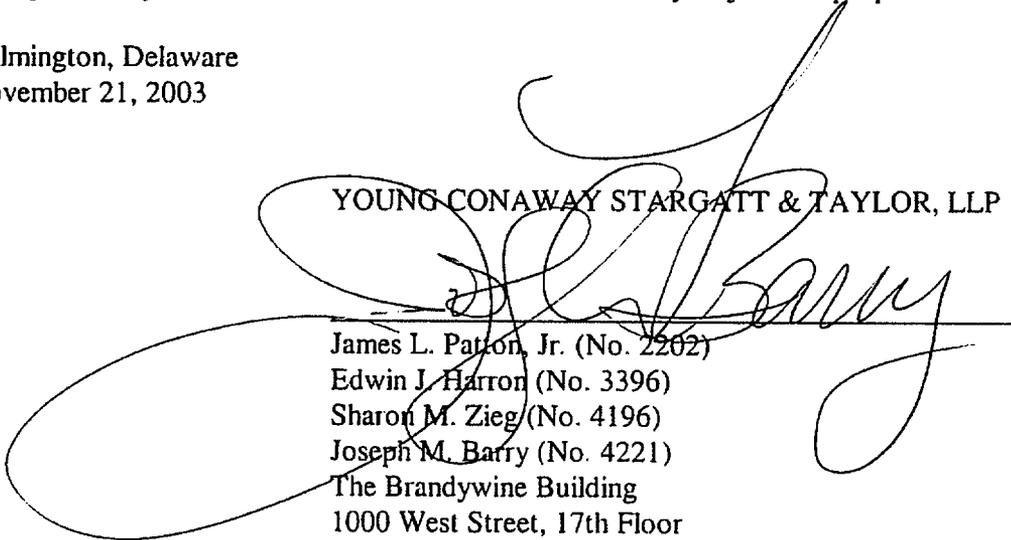
8. There is nothing in the record that would even remotely suggest that Judge Wolin is biased or that he has acted in an improper manner. The fact that he enlisted the assistance of five respected professionals as advisors in order to sort through the complexities of the five asbestos cases before him does not in any way taint his neutrality, particularly where, as

here, the advisors are from diverse professional backgrounds. Indeed, one of the advisors of whom Petitioners complain made his reputation as lead coordinating *defense counsel* for Johns-Manville, hardly the sort of advisor who can be said to show favoritism towards asbestos creditors.

WHEREFORE, the Respondents respectfully request that the Court dismiss the Petition and grant Respondents such other and further relief as may be just and proper.

Dated: Wilmington, Delaware  
November 21, 2003

YOUNG CONAWAY STARGATT & TAYLOR, LLP



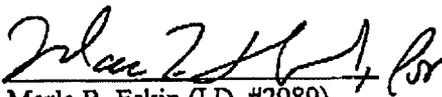
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