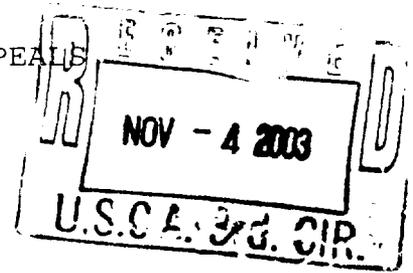


Case No. 03-4212
IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT



In re: KENSINGTON :
INTERNATIONAL LIMITED :
and SPRINGFIELD :
ASSOCIATES, LLC, : (Bankruptcy Case No. 00-03837)
 : (Owens Corning, et al.)
Petitioners, :
_____ :

On a Petition for a Writ of Mandamus to the Honorable Alfred M.
Wolin, United States District Judge

**RESPONSE BY THE DISTRICT COURT JUDGE TO THE PETITION FOR A WRIT
OF MANDAMUS, PURSUANT TO THE INVITATION OF THE COURT OF APPEALS**

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

This Court accepts the thoughtful invitation of the Court of Appeals issued by it pursuant to Federal Rule of Appellate Procedure 21(b)(4), and responds to the petition for a writ of mandamus to the extent this Court is able without addressing the substantive merits of the Motion to Recuse¹ now pending before it. The Court of Appeals will have noted that the petition at bar raises issues regarding whether this Court should be recused from presiding over the chapter 11 case titled In re Owens

¹ This capitalized term refers to the motion filed in In re Owens Corning, 00-3837 et seq., titled "Motion to Recuse the Honorable Alfred M. Wolin, United States District Judge, from Further Participation in these Jointly Administered Cases."

Corning and issues regarding this Court's handling of the Motion to Recuse. In order to preclude any unwarranted conclusion that this Court has already decided the substantive merits of the motion to recuse in advance of all parties' opportunity to be heard, this response will address only the procedural points raised in the petition before the Court of Appeals.

Upon notification that the Motion to Recuse had been filed, this Court partially withdrew the reference to the Bankruptcy Court with respect to The Motion. The Court's purposes in doing so were several. First, it is generally recognized that a motion to recuse should generally be heard in the first instance by the judicial officer concerned. Silo v. City of Philadelphia, 593 F. Supp. 870, 872 (E.D. Pa. 1984) (Pollak, J.); see also United States v. Wilensky, 757 F.2d 594, 599-600 (3d Cir. 1985) ("decision of whether to recuse from hearing a matter lies within the sound discretion of the trial judge"). Second, this Court deemed it inappropriate and unfair to burden the Bankruptcy Court, over which this Court sits as the initial appellate tribunal, with the merits of the Motion to Recuse.

It happened that the Motion to Recuse was filed immediately before the Court's departure on a trip out of New Jersey for ten days. The undersigned judicial officer was scheduled to speak at a Commercial Law League conference in San Diego, California. The Court issued its Letter Opinion and Order dated October 23, 2003,

staying the matter, including discovery that had already been propounded, until it returned to the jurisdiction. The Court returned to its duty station on October 27, 2003. On October 28, the Court issued its Case Management Order and Order to Show Cause, as expressly anticipated in the October 23 Letter Opinion and Order.

As the Court of Appeals is aware, the subject of the Motion to Recuse is, in substantial part, concerned with certain persons who have been acting as Court Appointed Advisors pursuant to an Order of this Court entered December 28, 2001. The October 28, 2003, Case Management Order directed these persons to set forth by sworn affidavit the substance of all communications with the Court and/or all of their activities assisting the Court with respect to the In re Owens Corning chapter 11 case, and a matter known as In re G-I Holding, Inc., pending in a different court. In the Order, the Court waived any privilege or rule of confidentiality that might apply with respect to any advice rendered by the Court Appointed Advisors. The parties were also invited to submit briefs by way of an Order to Show Cause to determine whether further proceedings should be had, including discovery, or, in the alternative, whether the Motion to Recuse should be dismissed as legally insufficient.

This Court believes that the Court of Appeals should be aware of certain historical events in the Owens Corning matter.

On December 20, 2001, this Court held a joint case management conference in all five of the asbestos-related bankruptcy cases before it, attended by approximately 200 attorneys and interested parties. At that conference, the Court announced publicly that the extraordinary size and complexity of these proceedings would require special measures. Among these, the Court further announced was the appointment of a committee of expert counsel with broad experience in mass-tort and asbestos litigation to assist the Court. As previously noted, these persons were appointed shortly thereafter, on December 28, 2001. A copy of the Order is attached. Since then, the Court has made task-specific assignments of the Court Appointed Advisors.

The five appointees are John E. Keefe, Sr., Esq., William Drier, Esq., C. Judson Hamlin, Esq., Professor Francis E. McGovern and David R. Gross, Esq. Messers Keefe, Drier and Hamlin are all former judges of the Appellate Division of the New Jersey Superior Court. For approximately ten years, Mr. Keefe was the designated judge responsible for administering asbestos personal injury litigation in the state system. Mr. Drier has authored a well-known treatise on products liability law. Mr. Hamlin has been involved with asbestos-related bankruptcies as far back as the Johns-Manville bankruptcy, the progenitor of all very large, asbestos-related bankruptcies and the model upon which the current statute 11 U.S.C. § 524(g) is based. Mr. Gross

was counsel for Johns-Manville even before its bankruptcy and is a nationally-prominent mass-tort and products liability lawyer. Professor McGovern is one of the most respected academics and neutrals in this field, and has assisted the federal judiciary for decades in complex litigation matters.

Thus, the involvement of all of the Court Appointed Advisors has been a matter of record for nearly two years. Because a Futures Representative and his counsel cannot be appointed in a bankruptcy without court approval, the involvement of Gross and Hamlin in In re G-I Holdings, Inc. must likewise have been public by virtue of their appointment in that case. That appointment, which presumably was not under seal, preceded their appointment by this Court. No party has objected to the involvement of any of the Court Appointed Advisors in any of the chapter 11 proceedings before this Court in the almost two years they have served. Nor has any objection been filed regarding their several fee applications to this Court.

It was represented to this Court in December of 2002 that a key issue in the Owens Corning bankruptcy was the resolution of a claim by the debtor and other potential plan proponents that the various subsidiaries of Owens Corning should be substantively consolidated for the purposes of the reorganization. It was represented at that time, and repeated since in papers filed with the Court, that substantive consolidation put certain bank

creditors of Owens Corning at risk for their recovery of well in excess of \$1 billion in debt guaranteed by these subsidiaries. Absent the consolidation, the Court understands that the banks recovery may approach 100 cents on the dollar.

By Order dated December 23, 2002, this Court withdrew the reference to the Bankruptcy Court of the substantive consolidation issue and appointed the Honorable Judith K. Fitzgerald, U.S.B.J., as settlement judge and Professor McGovern as mediator to explore the possibility of settlement. The Order also contemplated that the debtors and other parties intended to file a proposed plan of reorganization and that the motion for substantive consolidation was a part of that plan. It is, of course, "not at all unusual for a plan proponent . . . to seek a determination prior to the confirmation hearing as to the legitimacy of a particular provision of a proposed plan." In re Stone & Webster, Inc., 286 B.R. 532, 542 (Bankr. D. Del. 2002).

Settlement efforts failed and this Court held a bench trial lasting four weeks on the merits of the substantive consolidation motion. Meanwhile, the proposed plan had been filed. The plan proponents are the debtors-in-possession, the Official Committee of Asbestos Claimants, and the Representative of Future Claimants. The plan proponents and certain members of the unsecured creditors committee representing pre-petition bondholders of Owen Corning, the self-styled "Designated Members

of the Official Committee of Unsecured Creditors," prosecuted the substantive consolidation motion during the trial before this Court.

Aware that settlement efforts were ongoing through the summer and fall, this Court has nonetheless been reviewing the extremely extensive record and the many technical financial issues and is preparing an opinion resolving the substantive consolidation motion. That opinion had not issued, however, when the Motion to Recuse was filed. This Court believes that it is safe to presume that resolution of the substantive consolidation issue will be the single most momentous event in the life of this important bankruptcy, the successful conclusion of which will effect the fortunes of so many individual persons as well as corporate entities.

Meanwhile, as it enters its third year since the petition was filed, the Owens Corning bankruptcy has arrived at a critical point. The plan proponents have filed a disclosure statement and Judge Fitzgerald held a hearing on their motion to approve the disclosure statement on October 27, 2003. Of course, the plan that is the subject of the proposed disclosure statement assumes that the Court will rule in favor of the plan proponents' motion for substantive consolidation. Judge Fitzgerald has not yet ruled on the disclosure statement and presumably will not rule until this Court's opinion on substantive consolidation is

issued. She has stated on the record that, if this Court denies substantive consolidation, then the plan proponents will have to start again on a clean slate.

As this crisis in the Owens Corning reorganization effort approached, the commercial creditors have not been idle. The Motion to Recuse was filed by the bank creditors on October 10, 2003. Seven days later, on October 17, 2003, the unsecured creditors as a whole filed motion for the appointment of a chapter 11 trustee. On October 24, 2003, the commercial creditors moved to "re-structure" the representation of the Committee of Asbestos Claimants and the Futures Representative, which re-structuring would include disqualification of their present counsel and forfeiture of all of their fees. Brief in Support of Motion for Structural Relief Required to Eradicate the Legal and Ethical Conflicts of Asbestos Law Firms at 2 n.3. The Court learned that very extensive document and deposition subpoenas had been served in connection with the Motion to Recuse from the representations of counsel who wished to object and to move to quash, but were seeking the procedural guidance of the Court on how their objections should be presented.

Thus, on its return from California, the Court acted swiftly to take control of proceedings. The Court has a responsibility to ensure that the reorganization over which it presides is not disrupted by the actions of any particular constituency free of

judicial supervision. The Court is likewise responsible to see that persons who have served the Court ably and without objection by any party are not unfairly burdened. For this reason, the Court has solicited the affidavits of its Court Appointed Advisors and briefs setting forth the positions of all the parties.

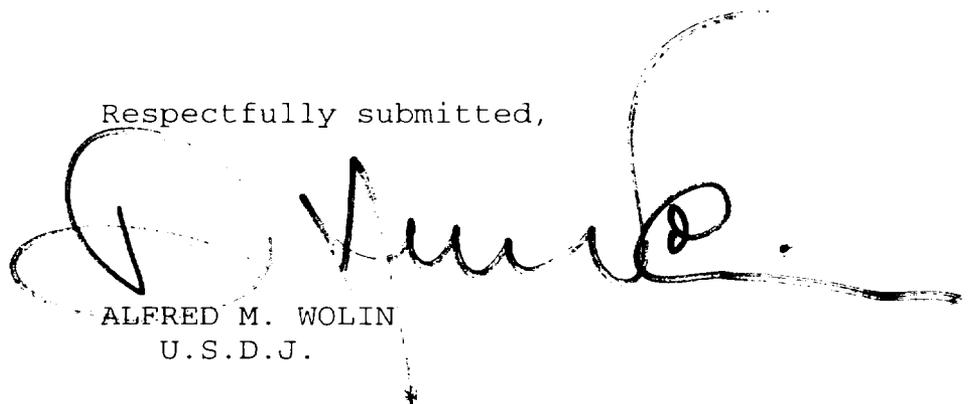
The Court is also responsible to ensure that any motion before it is presented for a proper purpose and not for purposes of delay or other, self-serving ends. The Court acknowledges this responsibility without derogation of its concurrent responsibility independently to inquire into the continued propriety of its presiding over the matters before it and regardless of the source or perceived motive behind a motion seeking recusal. Moreover, and contrary to the position taken by the petitioners before the Court of Appeals, this Court believes that it has acted with all deliberate speed in building a record and soliciting the positions of the parties, consonant with the responsibilities set forth above.

It is, therefore, erroneous to contend that the Court's decision to preliminarily test the merits of the Motion to Recuse discloses an intention to pre-judge the motion. It is also incorrect to maintain that the Court has stated its view of the legal standard to be applied, particularly whether the party seeking recusal must show actual bias or that merely a reasonable

perception of bias exists. This Court has stated and states again here that it will judge the Motion to Recuse on the law and facts presented after all parties have been heard in full. Moreover, the Court recognizes the need to resolve the motion as quickly as possible, regardless of jurisdictional issues, to minimize the inevitable harm that will impact the progress of the several asbestos-related bankruptcies under its supervision.

Lastly, as a factual matter, this Court states to the Court of Appeals that it has had no communications and possesses no knowledge regarding any aspect of the In re G-I Holdings, Inc. chapter 11 proceeding, except that it is pending before the Honorable Rosemary Gambardella, U.S.B.J., and the Honorable William G. Bassler, U.S.D.J. I have never discussed the substance of this case with any of the Court Appointed Advisors.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alfred M. Wolin', is written over a circular stamp. The signature is fluid and cursive, extending to the right with a long horizontal stroke.

ALFRED M. WOLIN
U.S.D.J.

November 3, 2003

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: ARMSTRONG WORLD INDUSTRIES, INC., et al.,	:	Chapter 11	
	:	Case Nos. 00-4471, 00-4469,	1733
	:	00-4470	
Debtors.	:		

IN RE: W.R. GRACE & CO., et al.,	:	Chapter 11	
	:	Case Nos. 01-1139 through	1427
	:	0-1200	
Debtors.	:		

IN RE: FEDERAL-MOGUL GLOBAL, INC., T&N LIMITED, et al.,	:	Chapter 11	
	:	Case Nos. 01-10578, et al. ¹	812
Debtors.	:		

IN RE: USG CORPORATION, a Delaware Corporation, et al.,	:	Chapter 11	
	:	Case Nos. 01-2094 through	1095
	:	01-2104	
Debtors.	:		

IN RE: OWENS CORNING, et al.,	:	Chapter 11	
	:	Case Nos. 00-3837 through	3893
	:	00-3854	
Debtors.	:		

**ORDER DESIGNATING COURT APPOINTED CONSULTANTS
AND SPECIAL MASTERS**

This matter having been opened by the Court upon its own motion in each of the above-captioned Chapter 11 cases; and the interested parties having been put on notice by the Court at the joint case management conference held on December 20, 2001, that the Court anticipated appointing special masters and/or case

¹See attached list.

management consultants to whom the Court may from time to time delegate certain authority to hear matters and to advise the Court on issues that may arise in these five large Chapter 11 cases; and for good cause shown

It is this 28th day of December, 2001

ORDERED that the following Order applies to the lead cases identified in the caption of this Order and to all cases filed as related cases thereto, and it is further

ORDERED that William A. Drier, Esq., David R. Gross, Esq., C. Judson Hamlin, Esq., John E. Keefe, Esq., and Professor Francis E. McGovern are hereby designated as Court Appointed Consultants to advise the Court and to undertake such responsibilities, including by way of example and not limitation, mediation of disputes, holding case management conferences, and consultation with counsel, as the Court may delegate to them individually, and it is further

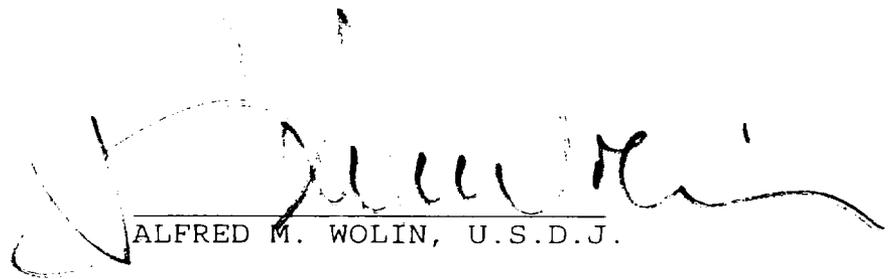
ORDERED that the parties are on notice that the Court may, without further notice, appoint any of the Court-Appointed Consultants to act as a Special Master to hear any disputed matter and to make a report and recommendation to the Court on the disposition of such matter, and it is further

ORDERED that William A. Drier, Esq., is hereby appointed Special Master in the matter of In re W.R. Grace & Co., Bankruptcy No. 01-1139 through 01-1200, to hear all disputed matters in that Chapter 11 case for which the Court's Order of

ATTACHMENT

Reference may be withdrawn from the Honorable Judith K. Fitzgerald, United States Bankruptcy Judge, and it is further

ORDERED that the fees of the Court Appointed Consultants and Special Master(s) shall be borne by the debtors in such manner and apportionment as this Court or the Bankruptcy Courts may hereinafter direct.



ALFRED M. WOLIN, U.S.D.J.

ATTACHMENT

IN RE: FEDERAL-MOGUL GLOBAL, INC.
Case Numbers

01-10578	01-10643	01-10700	01-10750
01-10580	01-10644	01-10701	01-10751
01-10582	01-10646	01-10702	01-10752
01-10585	01-10647	01-10703	01-10753
01-10586	01-10649	01-10704	01-10754
01-10587	01-10650	01-10705	01-10755
01-10589	01-10651	01-10706	01-10756
01-10591	01-10652	01-10707	01-10757
01-10593	01-10653	01-10708	01-10758
01-10594	01-10654	01-10710	01-10759
01-10596	01-10655	01-10711	01-10760
01-10598	01-10656	01-10712	01-10761
01-10599	01-10657	01-10713	01-10762
01-10600	01-10658	01-10714	01-10763
01-10601	01-10659	01-10715	01-10764
01-10603	01-10660	01-10716	01-10765
01-10604	01-10661	01-10717	01-10766
01-10605	01-10662	01-10718	01-10767
01-10606	01-10664	01-10719	01-10768
01-10608	01-10665	01-10721	01-10769
01-10610	01-10666	01-10722	01-10770
01-10611	01-10668	01-10723	01-10771
01-10613	01-10669	01-01724	01-10772
01-10614	01-10672	01-10726	01-10773
01-10615	01-10673	01-10727	01-10774
01-10617	01-10675	01-10728	
01-10618	01-10682	01-10729	
01-10619	01-10683	01-10730	
01-10620	01-10684	01-10731	
01-10621	01-10685	01-10732	
01-10622	01-10686	01-10733	
01-10623	01-10687	01-10734	
01-10625	01-10688	01-10736	
01-10626	01-10689	01-10737	
01-10627	01-10690	01-10739	
01-10629	01-10691	01-10741	
01-10630	01-10692	01-10742	
01-10632	01-10693	01-10743	
01-10633	01-10694	01-10744	
01-10634	01-10695	01-10745	
01-10637	01-10696	01-10746	
01-10638	01-10697	01-10747	
01-10640	01-10698	01-10748	
01-10641	01-10699	01-10749	

ATTACHMENT