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BASF and Corporate Law Firm Claim They Can't Be Sued for Lying to Victims and Courts about Asbestos in Talc

Public Justice files amicus brief challenging claim of immunity

An international chemical company and its corporate lawyers should not be allowed to get away with lying about potentially deadly asbestos in the company's talc, says a Public Justice brief filed in New Jersey federal court today.

Public Justice's *amicus* brief was filed in *Williams, et al. v. BASF Catalyst, LLC, et al.*, a class action lawsuit against New Jersey-based BASF Catalyst; the company's corporate law firm, Cahill Gordon & Reindel of New York; and several individuals.

The lawsuit, which was filed on behalf of victims of asbestos-related diseases and their families, claims that BASF and its lawyers conspired over the course of 25 years to hide the fact that BASF's talc contained deadly asbestos. As a result of the cover-up, members of the class who had been exposed to BASF's hazardous talc either did not pursue injury claims against the company or had their claims dismissed by the courts.

BASF and Cahill Gordon are now asking the court to dismiss the *Williams* lawsuit, which seeks to hold these defendants civilly liable for their fraudulent conduct, based on a "litigation privilege" recognized by New Jersey law that protects against civil liability for communications made "to achieve the objects of litigation."

The two defendants argue that their lies and destruction and withholding of evidence is protected by the privilege because it was intended "to obtain in the asbestos cases favorable results, which is the ultimate goal in any litigation." However, in 2006, the New Jersey Supreme Court admonished in *Loigman v. Township Committee of Township of Middletown* that "[s]eeking truthful, accurate, and non-tainted testimony . . . is the objective of every litigated case."

Public Justice's *amicus* brief explains that the litigation privilege does not apply to communications related to a conspiracy to hide a public health hazard.

"As the New Jersey Supreme Court has recognized, the goal of litigation is not to win at all costs, as BASF and Cahill Gordon argue. Rather, the goal of litigation is to search for—and ultimately arrive at—the truth," explained Public Justice Executive Director Arthur Bryant, who assisted with Public Justice's *amicus* brief. "Our brief explains that the

conduct at issue here—which was aimed at subverting the search for truth and justice—has no claim to protection under New Jersey’s litigation privilege.”

According to the complaint in *Williams*, a BASF executive acknowledged during the course of a personal injury suit nearly 30 years ago that the company’s talc contained asbestos. BASF agreed to settle the case on the condition that the plaintiff and his lawyer keep all the evidence in the case confidential.

In the wake of that settlement, the lawsuit alleges, BASF collected and destroyed all of the evidence that its talc contained deadly asbestos. The chemical giant and Cahill Gordon consistently maintained for more than two decades that the talc was asbestos-free, and denied that there was any evidence to the contrary.

The cover-up was finally exposed in 2009 during the deposition of a former chemist for BASF’s predecessor in another lawsuit, who testified that BASF’s talc did, in fact, contain asbestos, and that the company had engaged in an elaborate cover-up to keep this fact hidden from victims and the courts.

“New Jersey’s litigation privilege was not intended to permit parties to lie to victims and the courts, as BASF and Cahill Gordon have argued,” explained Michael Quirk of Williams Cuker Berezofsky in New Jersey, principal author of Public Justice’s brief. “These lies are damaging and need to be exposed.”

In addition to Bryant and Quirk, Public Justice’s legal team consists of Public Justice Foundation Board Member Esther Berezofsky of Williams Cuker Berezofsky in New Jersey, and Public Justice Goldberg Attorney Amy Radon.

To read Public Justice’s *amicus* brief, the plaintiffs’ complaint, and the BASF and Cahill Gordon briefs in support of their motions to dismiss, [click here](#).

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