Committee Opinion
November 18, 1987

LEGAL ETHICS OPINION 1007 CONFLICT OF INTEREST – MULTIPLE CLIENTS.

In 1976, Firm A was retained by a manufacturer of asbestos products ("manufacturer") in local asbestos litigation. The manufacturer was only one of a number of manufacturers, and occasionally distributors, against whom hundreds of plaintiffs in the area had filed suit. Generally, all the defendants were represented by different counsel. During the early years of the asbestos litigation, the only settlements which occurred were those in which all of the defendants who were given lawsuits agreed upon and participated in the settlement. This was because at that time, the long-standing Virginia rule that "release of one joint tort feasor releases all" was in effect, rendering it impossible for the plaintiff to obtain a partial settlement from one manufacturer without releasing all of the other defendants in the case as well.

On July 1, 1979, Virginia Code, § 8.01-35.1 became effective. This statute, in effect, allowed a plaintiff to settle with one joint tort feasor without automatically releasing the others. After the effective date of the statute, plaintiff's counsel began negotiating and agreeing to individual settlements with individual defendants in a given asbestos case. Firm A, as counsel for the manufacturer, negotiated a number of settlements with plaintiff's counsel whereunder the manufacturer was released from further claims by the plaintiff with whom it settled. Typically, a number of other defendants who had not settled remained in the cases and the covenant not to sue executed by the plaintiff recited that plaintiff retained its rights against remaining defendants.

At the same time that Firm A was negotiating settlements on behalf of the manufacturer, other defendants, represented by other counsel, were also negotiating individual settlements. In a number of cases, one or more other defendants settled plaintiff's claim against them individually and took from plaintiffs a covenant not to sue, wherein plaintiffs recited that they reserved their rights against defendants remaining in the case. Because of the large number of asbestos cases which had been filed, many of the cases in which the manufacturer and/or other defendants took covenants not to sue remain on the court's docket, where they continue to pend against the defendants who did not settle.

By an agreement dated June 19, 1985, in order to provide for more efficient disposal of the thousands of asbestos claims which have been brought all over the country, a number of the manufacturers and distributors against whom asbestos claims had been filed, as well as a number of insurers, formed a group ("group") to dispose of claims as a group rather than individually. The manufacturer became a member of the group as did a number of other manufacturers, some of whom had taken covenants not to sue in asbestos cases and others of whom remained in those cases. An immediate result of the group's formation was that where before each defendant had been represented by its own counsel, the defendants as a group now agreed to retain one attorney to represent them all. Firm A was chosen to represent the group in that area. The manufacturer whom A continued to

represent in asbestos claims and other matters did not object to and, in fact, supported A's representation of the group.

Early in 1987, the Supreme Court of Virginia issued its opinion in *Bartholomew v. Bartholomew*, 233 Va. 86 (1987), ruling that Va. Code § 8.01-35.1 could not be applied retroactively to bar release of all joint tort feasors upon the release of one, where the cause of action arose before July 1, 1979.

On the basis of *Bartholomew*, Firm A intends to file motions for summary judgment in several pending asbestos cases where plaintiff's causes of action arose before July 1, 1979, and where the manufacturer and/or other defendants who are now members of the group have been released on the basis of settlements negotiated by Firm A (in the case of the manufacturer) or other firms (in the case of other defendants). As counsel for the group, Firm A represents all of the group defendants and will move for summary judgment on behalf of whatever defendants remain in a given case.

The Committee opines that it is not improper for Firm A to represent the defendants in this matter since the interest of the defendants and the manufacturer are not adverse. Even if the interests of the manufacturer and defendants were adverse, Firm A has made disclosure to and received consent from the manufacturer to represent the defendants. [DR:5-105(C) and (D)]