

Asbestos lawyers fight spotlight as trial over management of victims fund nears

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Baron & Budd's Steve Baron and Kazan McClain's Steven Kazan serves on the trust advisory committee

By John O'Brien

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ERIE, Pa. (Legal Newsline) – Asbestos lawyers have public relations concerns as a trial approaches in Pennsylvania that will determine if they are using an asbestos victims fund like a bottomless ATM.

The [asbestos lawyer-led advisory committee](#) to the North American Refractories Company trust on April 22 filed a motion to exclude law firm identifying information as the trust fights claims it is not questioning boilerplate forms from firms representing asbestos victims.

Honeywell, the company funding the trust, says lawyers are taking millions of dollars while avoiding any questioning of their claims. It says the request to keep secret the names of law firms making money off of the trust is “at odds” with laws governing sealed information in bankruptcy proceedings.

“The principal argument in Intervenor’s motion appears to be that Honeywell intends to paint these firms in a bad light,” attorneys for the company wrote. “That is simply not true.

“Honeywell will present the facts about the practices of law firms submitting claims, and those facts will either demonstrate a violation of the Trust Distribution Procedures or not.”

The fight comes as [a status hearing is held](#) this week in Erie, Pa., bankruptcy court. A trial starting May 23 will determine whether the NARCO trustees have gone back on an agreement to require more information from asbestos lawyers before paying up.

The NARCO trust is one of dozens filed by companies brought to their knees by the costs of litigating asbestos cases in civil court. Establishing trusts allowed claimants and companies alike to avoid expensive discovery and trials, while also eliminating the possibility of jackpot verdicts.

But Honeywell says the NARCO trust is too free with the money set aside for asbestos victims. It says, despite an agreement not to do so years ago, it has only required simple form affidavits from asbestos lawyers.

This is in violation of the Trust Distribution Procedures, the company said in its pre-trial brief.

“Boilerplate ‘form’ affidavits are not competent or credible evidence of exposure sufficient to meet the criteria set forth in the TDP.”

A subpoena targeted Maryland asbestos lawyer Peter Nicholl, who has earned more than \$85 million for his clients from the NARCO trust, Honeywell says. The company wanted documents regarding more than 1,600 of Nicholl’s clients.

Nicholl’s clients are remarkable for their pristine memory of NARCO products at their worksites decades earlier, the company claims. It thinks he fills in the blanks for them, then files requests for compensation with the NARCO trust that are rubber-stamped.

Since the trust began accepting forms again, Nicholl has made \$46 million in two years, Honeywell says. The company’s litigation filed in September seeks to end the acceptance of those forms.

Honeywell says the trust has adopted a “refractory inference,” which allows it to infer exposure to NARCO products if the claimant shows exposure to generic refractory products.

The motion to preclude the filing of the names of law firms was filed by the Trust Advisory Committee and the Future Claimants’ Representative. It claims Honeywell’s refusal to agree suggests “a

strategy designed to impugn the integrity of non-parties in this trial for purposes other than informing the court's decision on the merits.”

The motion says the names of the law firms are not relevant to the issues to be decided in the trial.

“Honeywell’s allegations here assail the character of claimant law firms and the proceedings will divulge confidential information about the firms. But the law firms are not parties to this matter,” the motion says.

Honeywell says the motion doesn’t point to any specific confidential information about the firms that would be released or identify any harm that would result from disclosure.

Insurers allowed to intervene in the case noted that the advisory committee is comprised of members of six asbestos firms – Baron & Budd; Cooney & Conway; Kazan, McClain, Satterley & Greenwood; Goldberg, Persky & White; Motley Rice; and Weitz & Luxenberg.

They pointed to a ruling for transparency that resulted from *Legal Newsline*’s court fight in the Garlock Sealing Technologies’ bankruptcy. *Legal Newsline* was first not allowed in the courtroom before mounting a legal challenge that allowed public access to Garlock’s evidence of double-dipping by asbestos firms.

“A lack of transparency in the tort system and in the post-confirmation trusts established to pay asbestos claims has allowed certain counsel to file claims in multiple venues making inconsistent representations regarding the products to which claimants were exposed,” the insurers wrote.

“As the Garlock court concluded, this practice is ‘widespread and significant.’”