

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re: Case No. 8:90-bk-10016-PMG
Chapter 11

THE CELOTEX CORPORATION,

Debtor.

**ORDER ON PDAC'S MOTION FOR ENTRY OF
AN ORDER DIRECTING THE TRUST
TO TRANSFER THE REMAINING PROPERTY
DAMAGE CLAIM FUNDS TO THE PDAC**

THIS CASE came before the Court for hearing to consider the Motion for Entry of an Order Directing the Trust to Transfer the Remaining Property Damage Claim Funds to the PDAC. The Motion was filed by the Property Damage Advisory Committee (PDAC).

The Asbestos Settlement Trust (the Trust) was created in this case to liquidate, resolve, disallow, or allow and pay both Asbestos Personal Injury Claims and Asbestos Property Damage Claims. Subsequent to the creation of the Trust, a dispute arose among the Trust and various Property Damage Claimants as a result of the Trust's failure to pay certain Property Damage Claims that had been allowed by the Property Damage Claims Administrator (PDCA).

In the Motion currently under consideration, the PDAC "seeks an order from this Court directing the Trust to transfer the Remaining Disputed PD Claim funds to the PDAC c/o KTT [as counsel for the PDAC] either for investment by Cambridge Associates, LLC, the Trust's financial managers, or for investment in Treasury bill securities to avoid investment risks." (Doc. 13602, p. 7).

Table of Contents

Background	2
Discussion	5
I. The Court cannot compel the Trust to transfer funds to the PDAC	6
A. Jurisdictional provisions.....	6
B. The Plan Documents & Trust Documents.....	7
C. The transfer is not authorized.....	11

II. The PDAC did not establish that the transfer would accomplish its intended purpose of protecting the funds from the reach of the proposed national asbestos trust fund..... 13

III. The Court need not determine at this time the propriety of the Trust's offer to specific PD Claimants..... 17

Conclusion..... 18

Background

On December 6, 1996, the Court entered an Order Confirming the Modified Joint Plan of Reorganization for The Celotex Corporation and Carey Canada Inc.

The Plan, as confirmed, provides for the creation of a Trust. Section 5.1 of the Plan provides that the purpose of the Trust is to "direct the liquidation and resolution of all Asbestos Claims in accordance with the Plan and the Asbestos Claims Resolution Procedures," and to "preserve, hold, manage and maximize the Trust Assets for use in paying and satisfying Allowed Asbestos Claims." (Modified Joint Plan of Reorganization, §5.1).

The Trust established pursuant to the terms of the confirmed Plan is known as the Asbestos Settlement Trust. Pursuant to the Trust Agreement, the holders of both Allowed Personal Injury Claims and Allowed Property Damage Claims are to be paid from the Trust Assets.

The Plan Documents and Trust Agreement further provide that Property Damage Claims are to be processed by the PDCA. "The Allowance of PD Claims shall be administered by the PDCA exclusively in accordance with the APDCRP [Asbestos Property Damage Claims Resolution Procedures]." (Trust Agreement, §3.3(c)). "The Property Damage Claims Administrator ("PDCA") is responsible for implementing these APDCRP, and shall use his best efforts to complete the processing of all Claims within two years of the Effective Date." (APDCRP, Article I).

During the claims administration process, the PDCA allowed PD Claims asserted by New York City and other Property Damage Claimants, but the Trust declined to pay certain of the Claims allowed by the

PDCA. (See, for example, Doc. 13218, Order on New York City's claims, p. 6). A dispute therefore arose between the Trust and the PD Claimants as to whether the Plan documents authorized the Trust to review final determinations made by the PDCA and to decline payment of Allowed Claims.

The dispute has resulted in the conduct of significant litigation among the Trust and the PD Claimants in this Court. The litigation included the designation of six "Illustrative Claims" that were the subject of evidentiary proceedings intended to resolve the dispute.

At a hearing on April 22, 2002, the Court specifically addressed the issue of how to protect the PD Claimants while the parties litigated the issue of the Trust's authority to decline payment of allowed Claims. (Doc. 12953, Transcript of April 22, 2002 hearing, pp. 242-48).

Even though the issue was addressed at the hearing, no written Order requires the Trust either to "earmark" funds for the holders of allowed Claims, or to segregate such funds in a separate account. (Doc. 13602, p. 6, n.2; Transcript, p. 14).

Despite the absence of a written Order, the PDAC acknowledges that the Trust's financial statements "reflect that the funds for the remaining disputed PD claims have been earmarked and listed as a separate line item in an accounting reserve." (Doc. 13602, p. 3).

The Motion presently under consideration relates to the funds that the Trust has earmarked in the accounting reserve. Specifically, the PDAC requests the entry of an order "directing the Trust to transfer the Remaining Disputed PD Claim funds to the PDAC c/o KTT [the PDAC's counsel] either for investment by Cambridge Associates, LLC, the Trust's financial managers, or for investment in Treasury bill securities to avoid investment risks." (Doc. 13602, p. 7).

The PDAC asserts that it is no longer satisfied that the funds are sufficiently protected while they remain in a single account maintained by the Trust. To support this position, the PDAC contends that circumstances have recently changed in at least four material respects, and that the recent changes justify the transfer of the funds to the PDAC. (Doc. 13602, p. 3).

First, the PDAC asserts that all PD Claims have now been finally determined by the PDCA, a situation

that did not exist when the Court first considered "earmarking" the funds in April of 2002. Consequently, according to the PDAC, the nonpayment of Allowed Claims is caused solely by the Trust's refusal to pay, and not by the continued processing of the Claims. (Doc. 13602, pp. 7-8).

Second, the PDAC asserts that the Trust has entered into separate escrow arrangements with three PD Claimants (the City of New York, the State of Illinois, and Prince George Center on behalf of the certified class of Federal Lessors) pursuant to which the Trust agreed to segregate funds sufficient to pay the respective Claims in exchange for certain stipulations by the Claimants. (Doc. 13602, pp. 8-9). According to the PDAC, "the PD Escrow Account consisting of these three PD claimants accounted for roughly \$54 million" as of December 31, 2004. (Doc. 13602, p. 9).

Third, the PDAC asserts that this Court has entered an Order determining that the Trust does not have the authority to review the PDCA's allowance of PD Claims, other than in limited circumstances, and the Order has been affirmed by the United States District Court. (Doc. 13602, pp. 9-12).

Finally, the PDAC asserts that legislation is presently pending in Congress that may significantly affect the manner in which asbestos claims are administered and paid nationwide. According to the PDAC, the bill as currently proposed provides for the creation of a national trust fund that would be the sole recourse for holders of certain asbestos claims. Further, according to the PDAC, the proposed legislation appears to provide that existing asbestos trusts may be required to transfer their assets to fund the national trust. (Doc. 13602, pp. 12-13).

Because of these changed circumstances, the PDAC contends that additional protections are needed for the funds that are currently only "earmarked" to pay allowed PD Claims.

In response, the Trust contends that the funds should not be transferred to an account controlled by the PDAC because (1) the pending legislation affects only personal injury claimants, and does not require the turnover of funds related to PD Claims; (2) the Trust has responded appropriately to the pending legislation by engaging an attorney to challenge the proposed bill on constitutional grounds; (3) the transfer of the funds to the PDAC would violate the terms of the Plan documents; and (4) the Trust has offered to segregate funds

associated with individual PD Claimants' Claims, subject to certain conditions set forth in its written proposal. (Doc. 13619).

David S. Shrager, the Legal Representative for Unknown Asbestos Bodily Injury Claimants, filed a Joinder to the Asbestos Settlement Trust's response to the PDAC's Motion. (Doc. 13624).

Discussion

As set forth above, the PDAC requests that the Court direct the Trust to transfer the "remaining PD Claim funds" to the PDAC. The funds at issue consist of the funds that have been "earmarked" for allowed, unpaid PD Claims, other than those funds that have been segregated by the Trust pursuant to separate agreements with particular PD Claimants. (Doc. 13602, p. 3). The amount at issue is approximately \$55,000,000. (Transcript, p. 10).

The Court determines that the relief requested by the PDAC is not consistent with either the Plan Documents or the Trust Documents that govern the administration of the Trust. Accordingly, the Court cannot compel the Trust to transfer the funds to the PDAC as requested in the Motion.

Additionally, the Court finds that the PDAC has not demonstrated that the transfer of funds would achieve its intended purpose, since there is no showing that the transfer would protect the funds from "turnover" to the proposed national asbestos trust fund in the event that the pending legislation is enacted. Consequently, the Court finds that the PDAC's Motion should be denied.

I. The Court cannot compel the Trust to transfer funds to the PDAC.

The transfer of funds from the Trust to the PDAC is not consistent with either the Plan Documents or the Trust Documents that govern the administration of the Trust. Accordingly, the Court cannot compel the Trust to transfer the funds to the PDAC as requested.

A. Jurisdictional provisions

The Order Confirming the Plan of Reorganization for The Celotex Corporation and Carey Canada, Inc. includes the following provisions regarding the Court's postconfirmation jurisdiction:

J. Jurisdiction

68. Until the Reorganization Cases are closed, the Bankruptcy Court shall retain the fullest and most extensive jurisdiction that is permissible, including that necessary to ensure that the purposes and intent of the Plan are carried out. . . .

70. In addition to the foregoing, the Bankruptcy Court shall retain jurisdiction for the following specific purposes after Confirmation of the Plan:

. . .

(b) to correct any defect, cure any omission, reconcile any inconsistency or make any other necessary changes or modifications in or to the Plan, Trust Documents (in the case of PD Amendments, with the consent or upon the motion of the Property Damage Claims Administrator) or this Order as may be necessary to carry out the purposes and intent of the Plan, including the adjustment of the date(s) of performance under the Plan in the event the Effective Date does not occur as provided herein so that the intended effect of the Plan may be substantially realized thereby;

(c) to assure the performance by the Disbursing Agent and the Trust of their respective obligations to make distributions under the Plan;

(d) to enforce and interpret the terms and conditions of the Plan, the Plan Documents, and the Trust Documents.

In re The Celotex Corporation, 204 B.R. 586, 630-31 (Bankr. M.D. Fla. 1996)(Emphasis supplied). It is clear that the Court must be guided by the Plan Documents and Trust Documents in its determination of the postconfirmation matters that come before it.

The Court's primary objective in evaluating the PDAC's Motion, therefore, is to effectuate the purpose and intent of the confirmed Plan.

B. The Plan Documents and Trust Documents

To determine the intent of the Plan, the Court has considered, among other documents, the Modified Joint Plan of Reorganization, the Findings of Fact and Conclusions of Law Regarding the Modified Joint Plan of Reorganization, the Order Confirming Plan of Reorganization, and the Second Amended and Restated Asbestos Settlement Trust Agreement.

Based on the clear terms of the negotiated agreements and Confirmation Orders, the Court is satisfied that the Plan Documents and Trust Documents vest the exclusive authority to manage the Trust Assets, and the exclusive authority to pay Asbestos Claims, solely in the Trust. The Documents do not contemplate any circumstance under which the Trust may be divested of control over Trust Assets.

This conclusion is based on specific provisions set forth in the Plan Documents and Trust Agreement.

The Plan, for example, includes the following provisions relating to the obligations of the Trust:

5.1 Establishment And Purpose Of Trust. On the Confirmation Date, the Trust shall be established in accordance with the Trust Documents. . . . The purpose of the Trust shall be to, among other things, (a) direct the liquidation and resolution of all Asbestos Claims in accordance with the Plan and the Asbestos Claims Resolution Procedures and (b) preserve, hold, manage and maximize the Trust Assets for use in paying and satisfying Allowed Asbestos Claims. . . . The Trust shall pay Allowed Asbestos Claims based upon the Payment Percentage, subject to the powers of the Trustees to modify the Payment Percentage.

...

5.4 Discharge Of Liabilities To Holders Of Asbestos Claims. . . . The Trust shall assume sole responsibility and liability for all Asbestos Claims, including, but not limited to, Indirect Asbestos Claims, against the Debtors, Reorganized Celotex, Reorganized Carey Canada and their respective Estates, Affiliates and subsidiaries and such Claims shall be paid solely by the Trust from the Trust Assets.

...

8.1 Conditions To Confirmation. Confirmation of the Plan shall not occur unless each of the following conditions has been satisfied or waived by the Plan Proponents; provided, however, that none of the conditions set forth in subpart (a) of this Article 8.1 shall be waivable. . . .

(a) The Bankruptcy Court shall have made the following findings in substantially the following form:

...

(iii) The Trust, upon Confirmation, shall assume the liabilities of the Debtors with respect to Asbestos Claims.

...

(vi) The Trust is to use its assets or income to pay Asbestos Claims.

...

8.2 Conditions To Effectiveness. Notwithstanding any other provision of the Plan or the Confirmation Order, the Effective Date of the Plan shall not occur unless and until each of the following conditions has been satisfied or waived by the Plan Proponents.

...

(c) Trust. The Trust Assets shall have been transferred to, vested in and assumed by the Trust in accordance with Article 5.2 of the Plan other than any of the Trust Assets to be transferred to, vested in and assumed by the Trust after the Effective Date.

(Modified Joint Plan of Reorganization, §§5.1, 5.4, 8.1, 8.2)(Emphasis supplied).

Next, the Findings of Fact and Conclusions of Law Regarding the Modified Joint Plan of Reorganization include the following determinations by the Bankruptcy Court:

121. The Plan establishes a Trust to address, liquidate, resolve, and disallow or allow and pay Asbestos Claims, which will operate in accordance with the Asbestos Claims Resolution Procedures.

...

139. The Trust Assets are segregated for use by the Trust. A principal purpose of the Trust is to preserve, manage and maximize Trust Assets for use in paying and satisfying Allowed Asbestos Claims.

...

158. The Trust is to use its assets and income to pay Asbestos Claims.

(The Celotex Corporation, 204 B.R. at 602, 604-05)(Emphasis supplied).

Third, the Order Confirming the Plan of Reorganization contains the following ordering paragraphs:

14. The Trust shall assume sole responsibility and liability for all Asbestos Claims, including, but not limited to, Indirect Asbestos Claims, against the Debtors, Reorganized Celotex, Reorganized Carey Canada

and their respective Estates, Affiliates and subsidiaries and such Claims shall be liabilities solely of the Trust and shall be paid solely by the Trust.

15. No Entity shall be permitted to execute against or receive distributions from the Trust except in accordance with the terms of the Trust Documents and the Plan.

(The Celotex Corporation, 204 B.R. at 619)(Emphasis supplied).

Finally, the Second Amended and Restated Asbestos Settlement Trust Agreement contains the following provisions regarding payment of Asbestos Claims by the Trust:

2.2 Purpose. The purpose of the Trust is to assume the liabilities of the Debtors, their successors in interest and their affiliates, arising from or relating to Asbestos Claims and to use the Trust's assets and income to pay holders of Allowed Asbestos Claims in accordance with the Trust Agreement .

...

...

3.3 Claims Administration.

(a) General Principles. . . . However, the Trustees shall promptly pay both Asbestos Personal Injury Claims and PD Claims under the terms of both the APICRP and the APDCRP

...

(c) PD Claims. . . . Payment of PD Claims shall be made by the Trustees in the amount determined by the PDCA pursuant to the APDCRP.

3.4 Claims Payment.

...

(c) Payment. The Trustees shall have complete discretion to

determine the timing and the appropriate method for making payments, subject to the requirements of the CRP with respect to the processing and ordering of claims for payment.

...

4.1 Accounts. The Trustees may, from time to time, create such accounts and reserves within the Trust estate as they may deem necessary, prudent or useful in order to provide for the payment of expenses and valid Asbestos Claims and may, with respect to any such account or reserve, restrict the use of monies therein.

...

4.3 Source of Payments. All Trust expenses, payments and all liabilities with respect to Asbestos Claims shall be payable solely out of the Trust estate.

(Second Amended and Restated Asbestos Settlement Trust Agreement, §§ 2.2, 3.3, 3.4, 4.1, 4.3)(Emphasis supplied).

C. The transfer is not authorized

The terms and provisions recited above establish two fundamental precepts concerning the purpose and function of the Trust.

First, two primary obligations of the Trust are (1) to manage the Trust Assets, and (2) to pay Asbestos Claims. In other words, two primary duties of the Trust are to preserve the Trust's Assets, and to use those assets to pay Allowed Asbestos Claims. (Plan, §§ 5.1, 8.1, 8.2; Findings of Fact and Conclusions of Law, Paragraphs 121, 139, 158; Trust Agreement, §§ 2.2, 3.3).

Second, these two duties are imposed exclusively on the Trust. Asbestos Claims "shall be paid solely by the Trust from the Trust Assets." (Plan, § 5.4). Asbestos Claims "shall be liabilities solely of the Trust and shall be paid solely by the Trust." (Confirmation Order, Paragraph 14). See also the Trust Agreement, §4.3).

Given the scope of the duties imposed exclusively on the Trust, the Court concludes that only the Trust and the Trustees are permitted to maintain control over the Trust Assets. There are no provisions in the Plan Documents or the Trust Documents that permit the Trust to share control of the Trust's assets with any other entity. In fact, at least two provisions of the Documents appear to expressly prohibit such shared control.

First, the Confirmation Order provides that "[n]o Entity shall be permitted to . . . receive distributions from the Trust except in accordance with the terms of the Trust Documents and the Plan." (Confirmation Order, Paragraph 15). The term "Entity" is defined in the Plan as "any Person, estate, trust, Governmental Unit, or the United States Trustee." (Plan, §1.70). The term "Person" is broadly defined in the Plan as "any person, individual, partnership, corporation, limited liability company, joint venture company, association or other entity or being of whatever kind." (Plan, § 1.104).

Consequently, pursuant to Paragraph 15 of the Confirmation Order, it appears that the PDAC is prohibited from receiving distributions from the Trust, unless such distributions are otherwise authorized under the Trust Documents.

Second, the Trust Agreement authorizes the Trustees to "create such accounts and reserves within the Trust estate as they may deem necessary" to pay expenses or valid Asbestos Claims, and to restrict the use of monies "with respect to any such account or reserve." (Trust Agreement, § 4.1)(Emphasis supplied). While this section appears to contemplate the need to allocate Trust funds for particular purposes or Claims under certain circumstances, the provision only authorizes the allocation within the accounts established under the Trust.

In other words, although the Trust Agreement addresses the need to allocate or "reserve" funds under appropriate conditions, it does not provide for the creation of separate accounts outside the Trust estate.

The relief requested by the PDAC entails the transfer of funds out of the Trust estate, and into a separate account established and maintained by the PDAC. The transfer of funds requested by the PDAC would therefore divest the Trust and the Trustees of control over assets of the Trust, and permit the PDAC to exercise control over the funds.

The requested transfer is not consistent with either the Plan Documents or the Trust Documents. Accordingly, the Court cannot compel the Trust to transfer the funds to the PDAC as requested in its Motion.

II. The PDAC did not establish that the transfer would accomplish its intended purpose of protecting the funds from the reach of the proposed national asbestos trust fund.

The PDAC contends that the Trust should be directed to transfer the funds because circumstances have changed since the Trust began "earmarking" the PD Claimants' funds. The PDAC further contends that the issue has now gained a sense of urgency because of proposed legislation currently pending in Congress. Specifically, the PDAC asserts:

42. As mentioned above, Congress is currently considering enacting the Asbestos Trust Fund Bill, which would create a national asbestos trust fund for the payment of all asbestos-related claims, and it is uncertain whether the Asbestos Trust Fund Bill would require all funds held by existing trusts be rolled up into the national asbestos trust fund.

43. At this juncture, neither the Trust nor the PDAC can state with certainty how the pending legislation would affect the PD claim funds and the timing of resolving and/or litigating the remaining PD claims. Admittedly, the legislative process is fluid, however, in order to prevent the unintended result of having the Remaining Disputed PD Claim funds be rolled up as part of the national asbestos trust fund, the PDAC requests merely that the Remaining Disputed PD Claim funds be transferred out of the Trust to the PDAC.

(Doc. 13602, p. 13). The PDAC therefore contends that the pending legislation creates a serious risk that the PD Claims funds will be removed from the Court's supervision, and that the integration of the funds into the national trust would dilute the payments available to the PD Claimants in this case.

The Court previously has found that the transfer of the funds to the PDAC is not consistent with either the Plan Documents or the Trust Documents, and that the Court therefore cannot compel the transfer requested by the PDAC.

Even if the transfer were authorized by the Documents, however, the PDAC has not established that the transfer would achieve the intended result of protecting the funds from incorporation into the national fund.

The Court has reviewed the proposed Fairness in Asbestos Injury Resolution Act of 2004 (the Proposed Fair Act).

First, it is noteworthy that the Fair Act, in its current form, relates only to asbestos personal injury claims, and not to property damage claims.

The stated purpose of the Act, for example, is to "create a privately funded, publicly administered fund to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure," and to "provide compensation to those present and future victims based on the severity of their injuries." (Proposed Fair Act, §2(b)(1),(2)).

Further, the term "asbestos claim" is defined in the Fair Act as follows:

(3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term "asbestos claim" means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child or other relative of any exposed person.

(B) EXCLUSION.—The term does not include claims alleging damage or injury to tangible property, or claims for benefits under a workers' compensation law or veterans' benefits program.

(Proposed Fair Act, §3(3)). The Fair Act, as presently proposed, is designed to deal only with the administration of asbestos personal injury claims, and not to provide compensation for asbestos-related property damage.

Consequently, the relief requested by the PDAC may not achieve its intended purpose of protecting the PD Funds from the Fair Act, because the Fair Act may not apply to the PD Claims funds if it is enacted in its present form.

Even if the proposed Act did apply to PD Claims funds, however, there has been no showing that the transfer of the funds to the PDAC would insulate the funds from the application of the Act.

The Fair Act, as currently proposed, clearly is designed to effectuate a sweeping change in the manner in which asbestos personal injury claims are processed and paid. See, for example, §202(f) of the proposed Act, which generally provides that the Act supersedes all bankruptcy reorganization plans and the treatment of asbestos personal injury claims under those plans. (Proposed Fair Act, § 202(f)).

To implement this sweeping change, the Act calls for the creation of the Asbestos Injury Claims Resolution Fund, "which shall be available to pay" asbestos personal injury claims. (Proposed Fair Act, § 221(a)).

Section 202(a)(1) of the Act provides that "Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants." Participants in the tiers include "debtors," defined as "a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date." (Proposed Fair Act, §§ 201(3), 202(b)).

The amount of a "defendant participant's" liability is determined by a complex series of calculations based on the participant's "prior asbestos expenditures"

and revenues, among other factors. (Proposed Fair Act, §§ 202(b), 202(d), 203(a)).

For purposes of the issue in this case, however, the significant feature of the proposed Act is its broad definition of the "participants" that would be liable for payments to the Fund.

The term "participant" is defined to mean "any person subject to the funding requirements" of the Act, including "any defendant participant subject to liability for payments" under the Act, and "any successor in interest of a participant." (Proposed Fair Act, § 3(11)). The term "successor in interest" is defined as "any person that acquires assets, and substantially continues the business operations, of a participant." (Proposed Fair Act, § 3(15)).

Additionally, § 203(a) of the Act, entitled "Subtiers," provides that "persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section." (Proposed Fair Act, § 203(a)(1)). "Person" is defined to mean "an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation." (Proposed Fair Act, § 3(12)). "Affiliated group" is defined to mean "a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act." (Proposed Fair Act, § 201(1)).

The provisions recited above illustrate the expansive reach of the proposed Act in terms of the multiple entities that may be liable to the Fund. The liable entities, for example, appear to include "defendant participants," "successors in interest" to participants, "debtors," and "affiliated groups," all as broadly defined in the Act. (See also, the enforcement provisions set forth in § 223 of the proposed Fair Act.)

In this case, the PDAC proposes the transfer of funds from the Asbestos Settlement Trust to a newly-created escrow account for the benefit of specific asbestos claimants. Given the expansive reach of the proposed Fair Act, the Court is not persuaded that such a transfer would shield the transferred assets from liability to the Asbestos Injury Claims Resolution Fund, provided other conditions contained in the Act were satisfied.

The PDAC has not shown that the requested relief would achieve its intended purpose of protecting the PD Claimants' funds from incorporation into the

proposed national asbestos fund. The Court therefore finds that the PDAC's Motion should be denied.

III. The Court need not determine at this time the propriety of the Trust's offer to specific PD Claimants.

As set forth above, the PDAC is seeking the entry of an Order directing the Trust to transfer the remaining PD Claims funds to the PDAC.

In response, the Trust asserts that "the relief sought by the PDAC is unnecessary because the Trust has made a proposal to each PD claimant (the "Proposal") to agree voluntarily to the (a) segregation of the funds needed for payment of their PD claims remaining in dispute before this Court to the existing separate escrow account established for the payment of the claims of the City of New York, Illinois, and the Federal Lessors class action and (b) stay of the respective adversary proceedings before this Court pending a ruling by the United States Court of Appeals for the Eleventh Circuit in the appeal of the dispute with the City of New York." (Doc. 13619, p. 2).

A copy of the Trust's Proposal is attached to its Response.

The terms of the Proposal are the subject of considerable controversy. Specifically, the Claimants contend that the proposed escrow arrangement is conditioned on the Claimants' agreement to release the Trust and the Trustees from any claims that they might assert based on the Trust's failure to pay their allowed claims. (Transcript, pp. 24, 54).

The Trust's Proposal is not before the Court, however, other than as a reason offered by the Trust to explain why it is unnecessary to transfer any funds to the PDAC.

The only issue presented by the PDAC's Motion is whether the Court can compel the Trust to transfer the funds allocated to the "remaining PD Claimants." The Court has determined that it cannot direct the Trust to transfer the funds to the PDAC. In so finding, the Court need not rule on the propriety of the Trust's Proposal to the PD Claimants.

Conclusion

The PDAC requests "the entry of an order directing the Asbestos Settlement Trust to transfer

previously earmarked Property Damage claim funds to the PDAC c/o its attorneys, Kozyak Tropin & Throckmorton, P.A., either for investment by Cambridge Associates, LLC, the Trust's financial managers, or for investment in Treasury bill securities to avoid investment risks." (Doc. 13602).

The Court finds that it cannot compel the Trust to transfer the funds to the PDAC as requested because (1) the transfer is not consistent with either the Plan Documents or the Trust Documents that govern the administration of the Trust, and also because (2) the PDAC has not shown that the transfer would achieve its intended purpose of protecting the funds from the reach of the proposed Fairness in Asbestos Injury Resolution Act that is currently pending in Congress.

The PDAC's Motion should be denied.

Accordingly:

IT IS ORDERED that the Motion for Entry of an Order Directing the Trust to Transfer the Remaining Property Damage Claim Funds to the PDAC, filed by the Property Damage Advisory Committee, is denied.

DATED this 14th day of October, 2005.

BY THE COURT

/s/ Paul M. Glenn

PAUL M. GLENN

Chief Bankruptcy Judge