

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

In re:

Case No. 8:90-bk-10016-PMG

THE CELOTEX CORPORATION,

Debtor.

Chapter 11

**ORDER ON PROPERTY DAMAGE ADVISORY COMMITTEE'S
MOTION TO COMPEL PAYMENT OF COUNSEL'S FEES**

THIS CASE came before the Court for hearing to consider the Motion to Compel Payment of Counsel's Fees filed by the Property Damage Advisory Committee (PDAC). (Doc. 14084).

The Celotex Asbestos Settlement Trust Agreement provides that the Asbestos Settlement Trust (the Trust) will pay all reasonable legal fees of the PDAC that are incurred in connection with the PDAC's performance of its duties under the Trust Agreement. The Trust contends, however, that the PDAC is not entitled to payment of any legal fees incurred after June 12, 2009, because it ceased to exist on that date in accordance with the terms of the Trust Agreement.

In the Motion presently before the Court, the PDAC asserts that "there are still remaining disputes relating to PD Claims outstanding, and as a consequence the Trust's present refusal to pay the PDAC counsel's fees on the theory that the PDAC has been dissolved is unfounded." (Doc. 14084, pp. 1-2). The PDAC therefore seeks the entry of an Order directing the Trust to pay its attorney's fees and costs.

The resolution of the issue is governed by the Plan Documents. Pursuant to the Plan Documents, the test to determine whether the PDAC continues to exist is different from the test to determine whether the PDAC is entitled to reimbursement of its expenses.

Specifically, the Plan Documents provide that the PDAC shall exist until “the Trust pays the last Allowed PD Claim and all disallowed PD Claims have been disallowed by final, non-appealable order.” Since not all PD Claims have been either disallowed or allowed and paid, the Court finds that the PDAC has not ceased to exist.

The PDAC is only entitled to reimbursement of its expenses, however, to the extent that they are incurred “in connection with the performance of the PDAC’s duties” under the Plan Documents. Since the PDAC no longer had any duties to perform after August 12, 2009, the Court finds that it is not entitled to reimbursement of any expenses after that date.

Although the Court recognizes that the two provisions lead to the anomalous result of maintaining the existence of an entity that has no function, the express terms of the Plan Documents are controlling with respect to the rights and obligations of the parties that it governs. In re Celotex Corporation, 487 F.3d 1320, 1330 (11th Cir. 2007).

I. Background

The Celotex Corporation and Carey Canada filed petitions under Chapter 11 of the Bankruptcy Code on October 12, 1990. At the time that the petitions were filed, Celotex and Carey Canada had been named as defendants in thousands of lawsuits filed by Asbestos Personal Injury (PI) Claimants, and in hundreds of lawsuits filed by Asbestos Property Damage (PD) Claimants.

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

A principal feature of the Plan is the creation of the Trust. 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. (Plan, §5.1; Trust, §2.2).

In order to resolve all of the Asbestos Claims asserted against Celotex, the Trust adopted “a hybrid approach by segregating the processing but not the payment of PI and PD claims.”

To ensure substantially equal treatment among both classes, all allowed claims are to be paid out of the Trust as a unified fund, with the distribution of payments administered by a panel of Trustees. *See* Plan arts. 4.8(a)(8), 5.1; Trust arts. 2.2, 3.3, 3.4. The claims are processed in the first place, however, under separate procedures administered by different entities. PI claims are administered by the Trustees under the Asbestos Personal Injury Claims Resolution Procedures (“APICRP”). Trust arts. 3.1(c)(viii), 3.3(b)(iii). PD claims are administered by the Property Damage Claims Administrator (the “Administrator”) under the Asbestos Property Damage Claims Resolution Procedures (“APDCRP”). Plan art. 4.8(a)(8); Trust arts. 1.2, 3.3(c). As the Administrator is but one person, he is charged with the establishment and supervision of a claims facility (the “PD Facility”) to conduct the day-to-day processing and disposition of PD claims under the APDCRP. APDCRP §IV(A)(35).

In re Celotex Corporation (Asbestos Settlement Trust v. City of New York), 487 F.3d 1320, 1325 (11th Cir. 2007)(Emphasis supplied). Once a PD Claim was allowed by the Property Damage Claims Administrator (PDCA) and accepted by the claimant, the Plan Documents provided for payment of the Claim by the Trust. (Plan, §4.2(a)(8); Trust, §3.3(a),(c), §3.4(a)).

II. The PDAC continues to exist.

The PDAC was formed under the Plan Documents to “serve in a fiduciary capacity representing all holders of PD Claims.” (Trust, §8.1). In the Motion presently before the Court, the PDAC seeks the reimbursement of its legal fees from the Trust, and the Trust has asserted that no fees are reimbursable after June 12, 2009, because the PDAC ceased to exist on that date in accordance with the terms of the Trust Agreement.

A. Section 8.1 of the Trust Agreement

Section 8.1 of the Trust Agreement provides in part:

ARTICLE 8

PD ADVISORY COMMITTEE AND PDCA CONSENT

8.1 Formation; Duties. The PD Advisory Committee shall be formed and shall exist from the Confirmation Date until the date the Trust pays the last Allowed PD Claim and all disallowed PD Claims have been disallowed by final, non-appealable order. . . .

(Trust, §8.1). Under this provision, therefore, the PDAC exists until all PD Claims have been either disallowed or allowed and paid.

The PDAC asserts that “there are still remaining disputes relating to PD Claims outstanding,” and that the pending disputes preclude its termination under §8.1. (Doc. 14084, pp. 1-2). Consequently, the first issue before the Court is whether the pending disputes constitute PD Claims within the meaning of the Plan Documents.

B. “PD Claims”

The term “Asbestos Property Damage Claim” is broadly defined in the Plan.

1.24 “Asbestos Property Damage Claim” means (a) any claim (including, but not limited to, any Claim) whenever and wherever arising or asserted against the Debtors, their predecessors, successors, subsidiaries or Affiliates, or their present or former officers, directors or employees and (b) any debt, obligation or liability (whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured), whenever and wherever arising or asserted, of the Debtors, their predecessors, successors, subsidiaries or Affiliates, or their present or former officers, directors or employees (including, but not limited to, all thereof in the nature of or sounding in tort, contract, warranty, or any other theory of law, equity or admiralty); in either case (a) or (b) for, relating to, or arising by reason of, directly or indirectly, property damage (including, but not limited to, diminution in the value thereof) or economic loss related thereto (including, but not limited to, any claim for compensatory damages, proximate, consequential, general, special or punitive damages, reimbursement, indemnity, warranty, contribution or

subrogation) caused or allegedly caused, in whole or in part, directly or indirectly, by the presence of asbestos or asbestos-containing products in or on buildings or other property, whether or not arising or allegedly arising, directly or indirectly, from acts or omissions of the Debtors, their predecessors, subsidiaries or Affiliates, or their present or former officers, directors or employees, or any other Entity for or with which the Debtors or their successors are or may be liable, including, but not limited to, Indirect Asbestos Claims arising from or relating to Asbestos Property Damage Claims.

(Plan, ¶ 1.24)(Emphasis supplied). The term “claim” is defined in §1.45 of the Plan as having the meaning ascribed in the Bankruptcy Code. (Plan, ¶1.45). Section 101(5) of the Bankruptcy Code provides that the term “claim” means a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” 11 U.S.C. §101(5).

Under ¶1.24 of the Plan, therefore, it appears that an Asbestos PD Claim may include any obligation for economic loss arising directly or indirectly from the presence of asbestos on the claimant’s property.

C. The pending disputes

To support its contention that “there are still remaining disputes relating to PD Claims outstanding,” the PDAC identified three proceedings involving the holders of PD Claims. Since the filing of the PDAC’s Motion to Compel Payment, however, the Eleventh Circuit Court of Appeals issued its decision in the proceeding styled Claremont McKenna College et al v. Asbestos Settlement Trust, 2010 WL 3155493 (11th Cir.). In that decision, the Eleventh Circuit determined that the PD Claimants were not entitled to post-judgment interest on their claims at the federal judgment rate.

The other two disputes cited by the PDAC are actions against the Trust for breach of duty.

1. The School Districts v. the Trust

In Maine Township High School District 207 and Township High School District 211 v. Asbestos Settlement Trust, Adv. 02-307, the School Districts assert that they had filed six PD Claims that were allowed by the PDCA, but that the Trust had not paid the Claims until a number of years after the determinations. Consequently, the School Districts assert five separate causes of action against the Trust. (Adv. 02-307, Doc. 153).

Count I is an action for breach of express contract, and Count II is an action for breach of implied contract. In Counts I and II, the School Districts allege that the Trustees breached the contract consisting of the Plan, the APDCRP, the Trust Agreement, and the Notices of Final Determination.

Count III and Count IV are actions for breach of trust. In these Counts, the School Districts allege that the Trust breached its fiduciary duty to comply with the PDCA's determination and to promptly pay their allowed claims.

Finally, Count V is an action for unjust enrichment. In Count V, the School Districts allege that the Trust "had the benefit of the money that it had refused to pay the School Districts for over six years." (Adv. 02-307, Doc. 153, ¶94).

As compensation for the Trust's breaches, the School Districts seek an award of damages consisting of (1) the profits that the Trust received as a result of delayed payment to the School Districts, and compensation for the School District's loss of use of money during the period that the Trust withheld payment; (2) an amount sufficient to equalize payment to the School Districts in proportion to payments to PI Claimants; and (3) an amount sufficient to compensate the School Districts for the Trust's breach of the "low transaction cost" provisions of the APDCRP.

2. The Colleges v. the Trust

In Southern Wesleyan University, et al v. Asbestos Settlement Trust, Adv. 09-558, the Colleges assert that the Trust had no authority to review or overrule the PDCA's allowance of PD Claims, and that the Trust owed PD Claimants "a fiduciary duty to determine the amount and timing of the Payment Percentage in good faith so as not to discriminate against PD Claimants in favor of BI claimants." (Adv. 09-558, Doc. 23, p. 5).

According to the Colleges, the Trust breached its fiduciary duties under the Plan Documents by (1) denying PD Claimants equality of payment in relation to the PI Claimants, (2) paying PI Claims "with standards less than required under the Plan and the tort system," and (3) delaying or refusing to pay allowed PD Claims.

As compensation for the Trust's alleged breaches, the Colleges seek an award of actual and punitive damages.

D. The pending actions are PD Claims.

The Court finds that the claims asserted by the School Districts and the Colleges constitute PD Claims within the meaning of the Plan Documents.

In both instances, PD Claims had been filed with the PD Facility and processed by the PDCA. The Trust ultimately recognized the PD Claims underlying the actions as "Allowed," and paid the amounts authorized by the Plan Documents. The claimants, however, did not recover the full amount of their losses.

Under the Plan Documents, the amount actually paid by the Trust is a percentage of the amount of the Allowed Claim. (Trust, §3.4). See In re Celotex, 487 F.3d at 1326(The Plan "directs the Trustees to pay all allowed PI and PD claims according to a 'Payment Percentage,' which the Trustees may adjust

from time to time to ensure substantially equal treatment of all present and future claims.”). The current actions seek additional amounts from the Trust to compensate the claimants for the losses that they allegedly sustained during the claims resolution process.

As shown above, the Plan’s definition of PD Claims includes obligations for economic loss arising directly or indirectly from the presence of asbestos on the claimants’ property. By their requests for compensation, the School Districts and Colleges are seeking to recover for economic losses that allegedly continue to flow from the initial presence of asbestos in their buildings. Although the losses stem from alleged breaches of the very procedures that were established to liquidate and pay the underlying claims, they are nevertheless economic losses that resulted indirectly from the damage to the claimant’s property.

Further, the actions were filed as Additional Claims pursuant to an Order entered by this Court on February 5, 2009. According to the Order, Additional Claims were defined as “all claims arising from or related to PD Claims that were allowed by the Property Damage Claims Administrator but not promptly paid by the Trust.” (Doc. 13992, p. 6)(Emphasis supplied). Consequently, the Court finds that the claims constitute PD Claims within the broad definition of “Asbestos Property Damage Claim” contained in the Plan.

This result is consistent with the Court’s Order on the Colleges’ Motion to Pursue Claims against the Trustees. (Doc. 14040). Although that Order dealt with the separate issue of the Bankruptcy Court’s jurisdiction to hear the claims under 28 U.S.C. §1334(b), the Court found that the Colleges’ breach of trust claims were related to the underlying Asbestos Claims that triggered the claims resolution process. (Doc. 14040, pp. 19-20).

E. Conclusion

Since the pending claims by the School Districts and the Colleges are PD Claims within the meaning of the Plan Documents, the Court cannot find that all PD Claims have been either disallowed or allowed and paid by the Trust. Accordingly, the PDAC has not ceased to exist pursuant to §8.1 of the Trust Agreement.

III. The PDAC has no duties to perform.

Even though the PDAC continues to exist, it is not entitled to reimbursement of any expenses that it incurred after August 12, 2009, because it had no duties or functions to perform after that date.

A. Sections 3.1 and 8.6 of the Trust Agreement

The provisions for reimbursement of the PDAC's expenses are found in two separate sections of the Trust Agreement. First, §3.1(c)(xi) authorizes the Trustees to reimburse the disinterested members of the PDAC "all reasonable out-of-pocket costs and expenses incurred by such persons in connection with the performance of their duties hereunder." (Trust, §3.1(c)(xi)).

Second, §8.6 of the Trust Agreement provides that the Trust "will promptly reimburse, or pay directly if so instructed, all reasonable out-of-pocket costs and expenses incurred by the PDCA and the members of the PD Advisory Committee, in connection with the performance of his or her duties hereunder, including costs and fees of professionals and experts." (Trust, §8.6).

B. The PDAC's duties

The PDAC was formed to serve in a fiduciary capacity representing all holders of PD Claims. (Trust, §8.1). The PDAC's functions are described in the Trust Agreement and APDCRP.

The Trust Agreement describes the PDAC's duties in relation to the Trustees. According to §3.2(e) of the Trust Agreement, for example, the Trustees were required to consult with the PDAC "on

the implementation and administration of the APDCRP.” (Trust, §3.2(e)). The APDCRP were the “exclusive procedures for evaluating, liquidating, paying and disposing of” PD Claims pursuant to the Plan. (APDCRP, Section I). The Trustees were not permitted to amend the APDCRP without the consent of the PDAC, and the PDAC was required to consider any request for consent by the Trustees in good faith. (Trust, §§3.3(c), 8.3(b)).

Section 8.5 of the Trust Agreement describes the PDAC’s relationship with the PDCA. The PDCA was the officer responsible for implementation of the APDCRP and the day-to-day processing of PD Claims. (Trust, §1.2). Section 8.5 of the Trust Agreement provides that the PDAC nominates and removes the PDCA, advises the PDCA regarding the retention of professionals, and advises the PDCA regarding his involvement in any judicial, administrative, or other proceedings. (Trust, §8.5(a),(c),(g)).

Section II of the APDCRP also sets forth certain functions of the PDAC with respect to the PDCA:

II. PROPERTY DAMAGE ADVISORY COMMITTEE

. . . The PDCA shall participate and consult with the PD Advisory Committee on all major policy and administrative decisions affecting, and the interpretation and implementation of, the APDCRP. Where consultation is required under the Trust Agreement or these APDCRP, the PDCA need only seek advice and counsel from the PD Advisory Committee and is independent and free to accept or reject any recommendation of the PD Advisory Committee. In addition to any provisions in the Trust Agreement that may require the consent of the PD Advisory Committee, the PDCA shall obtain the consent of the PD Advisory Committee regarding (i) participation or merger with another claim resolution organization or contracting the operation of the Property Damage Facility (as defined herein) to another claim resolution organization; (ii) material changes other than any changes related to specific amounts to be paid or percentages to be paid in these APDCRP for processing Asbestos Property Damages Claims, but not related to specific amounts to be paid or percentages to be paid; (iii) the designation of approved laboratories; and (iv) the approval of a Cost Model for Past and Future Abatement Costs (as defined herein) under these APDCRP.

(APDCRP, Section II)(Emphasis supplied). Finally, if a claimant requested reconsideration of a disallowed claim, the APDCRP provides that one member of the PDAC shall participate in a review of the claim by the Property Damage Facility. (APDCRP, §IV.E.3).

It is clear from reviewing the PDAC's duties that the PDAC functioned solely in connection with the PD Facility's overall policies and procedures for processing PD Claims. The APDCRP expressly requires the PDAC to participate in "all major policy and administrative decisions" affecting the APDCRP. The Trust Agreement and the APDCRP both describe the PDAC's duties in terms of the administration and implementation of the APDCRP. The APDCRP, of course, were the procedures established for the processing of all PD Claims.

The APDCRP defines the PD Facility as the "mechanism or system established by the PDCA for the disposition and payment of claims" pursuant to the ADPCR. (APDCRP, §IV.A.35)(Emphasis supplied). A key responsibility of the PDAC was to consult with and advise the PDCA as the person charged with establishing the PD Facility and implementing its procedures. In fact, the PDCA was required to obtain the PDAC's consent regarding any material changes to the APDCRP, other than changes to specific amounts or percentages to be paid. (APDCRP, Section II)(Emphasis supplied). Nothing in either the Trust Agreement or the APDCRP created any duty on the part of the PDAC to advocate the payment of individual PD Claimants who had filed claims with the PD Facility.

The PDAC's duties were limited to the formulation and administration of the claims resolution procedures within the PD Facility, and to consultation with the PDCA as the officer responsible for processing all PD Claims. The PDAC's function with respect to the overall system is consistent with its formation to "serve in a fiduciary capacity representing all holders of PD Claims." (Trust, §8.1)(Emphasis supplied).

C. The PD Facility

The processing of PD Claims concluded in 2006, and the PD Facility closed in that year.

On September 15, 2006, the Trust filed a Motion for Approval of Stipulation Regarding PDCA's Incentive Bonus and Related Matters. (Doc. 13751). According to the Trust Agreement, the incentive bonus was authorized "as a reward to be paid at the conclusion of the claims resolution process, thus providing an incentive for the staff of the PDCA Facility to remain engaged until the end of the project." (Trust, §8.6(a))(Emphasis supplied).

On September 25, 2006, the PDCA filed his Final Report on PD Claims. (Doc. 13755). In the Final Report, the PDCA stated that "[a]ll of the 4,835 PD Claims filed with the PD Facility have completed the PD Claims determination process." (Doc. 13755, p. 8). The PDCA acknowledged that the Trust had not paid certain Allowed Claims, and that the unpaid Claims were the subject of litigation between the Trust and the unpaid PD Claimants, but represented that the PDCA was not a party to the litigation. (Doc. 13755, p. 12).

On October 16, 2006, a hearing was conducted to consider the Motion for Approval of Stipulation Regarding PDCA's Incentive Bonus, and also to consider the PDCA's Final Report. At the hearing, the PDCA stated that the PDCA and the Trust had agreed that the PDCA's "active involvement should end and the PD Facility should be closed since there's really no work left, based on the PD procedures." (Doc. 13778, p. 10). Additionally, counsel for the Trust stated that the "last property damage claim that needed to be addressed by the Property Damage Facility was resolved in December of 2005," that it was appropriate to close the PD Facility in order to avoid paying for activities that were no longer necessary, and that an agreement had been reached as to how the PD Facility would be shut down. (Doc. 13778, pp. 12-15, 18).

The PDAC was represented at the hearing, and asserted no objection either to the PDCA's Final Report or to the Motion to approve the PDCA's incentive bonus. The PDAC endorsed the Motion, thanked the PDCA for his work, and encouraged the Court to approve the incentive bonus. (Doc. 13778, pp. 11, 27).

On October 18, 2006, the Court entered an Order Granting Motion for Approval of Stipulation Regarding PDCA's Incentive Bonus and Related Matters. (Doc. 13773). The Order provides that "since the PDCA has no present functions or responsibilities to perform or discharge, from the date of entry of this Order, [the PDCA] shall have no further duties or responsibilities under any of the Plan Documents except as expressly set forth in the Stipulation or as otherwise ordered by the Bankruptcy Court or any other court of competent jurisdiction (including, without limitation, any order directing the PDCA to reconsider or reevaluate any Asbestos Property Damage Claim). (Doc. 13773, p. 2).

According to the Trust, the PDCA was recalled one time since the closure of the PD Facility. (Doc. 14111, p. 2). The PD Facility has otherwise remained closed, and its records have been placed with a records custodian. (Doc. 13778, p. 18).

D. The Additional Claims

Despite the closure of the PD Facility, the PD Claims asserted by the School Districts and the Colleges remain pending. The School Districts and the Colleges filed the actions as Court-authorized exceptions to the releases granted to the Trust under the Plan Documents.

In connection with the general administration of the Trust, the Trust Agreement requires the filing of an Annual Report following the end of each fiscal year. (Trust, §3.2). The Report includes "a summary regarding the number and type of claims disposed of during the period covered by the financial statements." (Trust, §3.2(c)(ii)). The Trust Agreement further provides that, upon approval of

the Annual Report, “the Trustees shall be discharged from any further liability or responsibility as to all matters disclosed in such periodic account.” (Trust, §5.12).

With respect to the Annual Reports for the fiscal years through 2000, each of the Orders approving the Reports contained a general release of the Trustees in accordance with §5.12 of the Trust Agreement.

The Order approving the Annual Report for 2001 also released and discharged the Trustees as to all matters contained in the 2001 Report. The Order approving the 2001 Report, however, contained a “carve-out” from the general release with respect to certain “Disputed Claims” as defined in the Order. (Doc. 13222). Disputed Claims were PD Claims that had been allowed by the PDCA but that the Trust had not promptly paid. The Orders approving the 2002, 2003, 2004, 2005, and 2006 Annual Reports also contained the “carve-out” for Disputed Claims. (Docs. 13280, 13729, 13730, 13731, and 13855).

Pursuant to the Trust’s request, the Order approving the 2007 Annual Report terminated the “carve-out” provisions, and established a bar date for the assertion of the Disputed Claims. Specifically, the Order established “a Bar Date for the filing of any and all Additional Claims against the trustees, that is, any and all claims arising from or relating to PD Claims that were allowed by the Property Damage Claims Administrator but not promptly paid by the Trust. The Bar Date shall be the date that falls 180 days after service of the Notice.” (Doc. 13992, p. 6).

The Order directed the Trust to serve a copy of the Order and a Notice of the Bar Date on “all persons who held or hold Disputed PD Claims, as well as the Property Damage Advisory Committee, and certain other parties in interest.” (Doc. 13992, p. 5)(Emphasis supplied).

On February 10, 2009, a Notice Regarding Bar Date for Additional Claims was served on the PDAC and all interested parties. (Doc. 13994). The Notice provided:

Finally, you are hereby notified that the Court has established a Bar Date for the filing of any and all Additional Claims against the trustees, that is, any and all claims arising from or relating to PD Claims that were allowed by the Property Damage Claims Administrator but not promptly paid by the Trust. **The Bar Date is August 12, 2009.** Any and all claims that are subject to the Bar Date but not filed on or before the Bar Date shall be forever barred.

(Doc. 13994, Notice p. 3)(Emphasis in original).

Additional Claims, as defined in the Order and Notice, were asserted against the Trust by the School Districts and by the Colleges. No other Additional Claims were asserted prior to the Bar Date established in the Notice.

Consequently, the Trust has been discharged from all matters disclosed in the Annual Reports, including disposed PD Claims, by virtue of the releases contained in the Orders approving the Reports. Additionally, the Trust has been discharged from all Disputed PD Claims, other than the Additional Claims asserted by the School Districts and the Colleges, by virtue of the Court-established Bar Date for filing such Claims.

The Additional Claims asserted by the School Districts and the Colleges are not subject to any further processing under the APDCRP. Instead, the School Districts and the Colleges are seeking an award of damages based on the delayed payment of their Allowed Claims and the allegedly unequal treatment in relation to PI Claims. (Adv. 02-307, Doc. 153; Adv. 09-558, Doc. 23). The School Districts and Colleges did not file the Additional Claims on behalf of all PD Claimants, and did not ask to reopen the claims review process. They ask only for payment of additional alleged losses with respect to their particular claims.

E. The PDAC had no duties to perform after August 12, 2009.

The Court has considered the duties and functions of the PDAC, the closure of the PD Facility in 2006, and the expiration of the Bar Date for filing Additional Claims against the Trust. Based on these considerations, the Court finds that the PDAC is not entitled to the reimbursement of any expenses incurred after the Court-established Bar Date of August 12, 2009.

The functions of the PDAC related solely to the PD Facility's overall system of policies and procedures for processing PD Claims. The PD Facility closed in 2006 after the PDCA filed his Final Report stating that all PD Claims had completed the process, and the PDCA was released from any further responsibilities under the Plan Documents pursuant to the Court Order. The PDAC has no further duties with respect to the PDCA.

The Court subsequently established a Bar Date for the filing of certain Additional Claims against the Trust. As defined, Additional Claims were claims that related to PD Claims that had been allowed by the PDCA but not promptly paid by the Trust. The Bar Date was August 12, 2009.

The Notice of the Bar Date was served on the PDAC in accordance with the Court's Order. (Doc. 13994).

The Court finds that the PDAC retained its function under the Trust Agreement until the expiration of the Bar Date on August 12, 2009. The PDAC was formed to "serve in a fiduciary capacity representing all holders of PD Claims." (Trust, §8.1). Prior to the expiration of the Bar Date, therefore, the PDAC's duties included consulting with members of its constituency, and evaluating whether Additional Claims should be filed against the Trust on behalf of all PD Claimants.

The School Districts and the Colleges, however, were the only parties who filed Additional Claims against the Trust. The School Districts and Colleges do not seek to reopen the claims resolution process, but only seek payment of the specific losses related to their allowed claims.

As shown above, the PDAC's duties regarding PD Claims related solely to the overall policies and procedures for processing claims. The PDAC's functions do not involve the payment or advocacy of particular Claims. Consequently, the PDAC has no role in the prosecution of the specific claims asserted by the School Districts and the Colleges.

Since no Additional Claims were filed on behalf of all PD Claimants, and since the PDAC has no function with respect to the only two PD Claims that remain pending, the Court finds that the PDAC had no duties to perform under the Plan Documents after August 12, 2009.

F. Conclusion

The PDAC is entitled to reimbursement of the legal fees that it incurred "in connection with the performance of [its] duties." (Trust, §3.1(c)(xi), §8.6(c)). The PDAC had no duties to perform after August 12, 2009, and therefore is not entitled to the reimbursement of any expenses incurred after that date.

Conclusion

For the reasons discussed above, the Court finds that the claims asserted by the School Districts and the Colleges constitute PD Claims within the meaning of the Plan Documents. Consequently, all PD Claims have not been either disallowed or allowed and paid by the Trust, and the PDAC has not ceased to exist pursuant to §8.1 of the Trust Agreement.

The functions of the PDAC, however, relate solely to the overall policies and procedures of the PD Facility. The PD Facility closed in 2006, and the Court subsequently established August 12, 2009, as the Bar Date for filing Additional Claims against the Trust. The PDAC has no role with respect to the only two Additional Claims that were filed by the Bar Date. Consequently, the PDAC's duties ended

on August 12, 2009, and it is not entitled to the reimbursement of any expenses incurred after that date.

Accordingly:

IT IS ORDERED that:

1. The Property Damage Advisory Committee's Motion to Compel Payment of Counsel's Fees is granted in part and denied in part as set forth in this Order.

2. The Motion is granted to the extent that the PDAC seeks reimbursement of the legal fees that it incurred through August 12, 2009, and denied to the extent that it seeks reimbursement of the legal fees that it incurred after August 12, 2009.

DATED this 24 day of March, 2011.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN
Chief Bankruptcy Judge