

Settlement ends Honeywell's 'ill-fated' funding of asbestos trust; Company claimed lawyers (Steven Kazan and Ken Kawaichi) were bleeding it dry

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[U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA](#)

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ERIE, Pa. (Legal Newsline) - Likening the two sides to exhausted boxers or a quarreling couple, a bankruptcy judge approved a settlement between Honeywell and trustees overseeing a fund for paying asbestos claimants under which Honeywell will end its involvement for a lump-sum payment of \$1.3 billion.

Honeywell had been paying the bills at the NARCO bankruptcy trust under a seldom-used “evergreen” agreement that effectively left it with unlimited liability. Honeywell began questioning the way the trust was paying claims almost immediately and sued the trustees in 2021, with the trust countersuing and accusing Honeywell of coercion and acting in bad faith.

The fighting continued this year, with Honeywell [accusing plaintiff lawyers](#) of submitting “copy-and-paste” claims by clients who told inconsistent stories about how they were exposed to asbestos, while displaying a pristine memory of being around products made by the old North American Refractories Co. The settlement likely [ends another fight](#), in which insurance companies sought information

about NARCO claimants so they could further investigate conflicting claims intended to extract money from multiple asbestos bankruptcy trusts.

Siding with neither party, U.S. Bankruptcy Judge Thomas Agresti said that the best way out of the mess was for Honeywell to pay a lump sum and go away.

“Honeywell and the Trust are like two boxers who are able to continue pummeling each other without being able to deliver a knockout blow,” the judge wrote in his in a Dec. 8 ruling approving the settlement. “In short, upon closing, the Agreement will essentially provide for a ‘divorce’ between Honeywell and the Trust and a conclusion of the innovative ‘evergreen’ approach which has in actual practice proven to be untenable.”

The NARCO trust was a failed experiment that required Honeywell and the trust to work together to pay legitimate claims and control expenses, the judge said. Instead, costs exploded, as is typical with asbestos bankruptcy trusts. Trust operating expenses soared to nearly \$100 million through the end of 2021, including \$14 million in disbursements to trustees Ken Kawaichi, Richard Schiro, and Mark Gleason.

The trust was established in 2013 after claims against the old NARCO business exploded, in a pattern typical across entire industries that produced or used asbestos-containing products. Within a year, Honeywell was threatening litigation against the trustees over the management of the trust and “Trustee Gleason credibly testified that he does not think there has been a moment of peace between the Trustees and Honeywell since 2014,” the judge wrote.

Most of the fighting was over the payment of questionable claims by plaintiffs who displayed remarkable memory of being exposed to NARCO products that sometimes conflicted with their testimony or written filings in litigation against other companies.

Judge Agresti said Honeywell’s evidence wasn’t enough to order changes in how the trust is administered, but it was troubling.

“It is jarring to compare affidavits or depositions from two places by the same individual with diametrically opposed content concerning obviously material exposure allegations,” he wrote. “Honeywell and its attorneys believed and still believe very strongly in the validity of the basic claims that they have threatened or asserted against the Trust over the years.

"Thus, while Honeywell was no doubt engaging in hardball tactics, to say the least, in some of its dealings with the Trust and the Trustees, it did not cross the line into legally impermissible conduct or in bad faith.”

The trust also claimed Honeywell “kept it in the dark” by negotiating a lump sum payment with the plaintiff lawyers and future claims representative and then presenting the trust with a “take it or leave it” proposal. Since the trustees themselves had supported a buyout and the judge considered it an acceptable way to end what one lawyer called the “failed experiment” of an evergreen trust, it was not improper, the judge concluded.

He described it as “an ill-fated attempt to fashion a funding mechanism that required an ongoing relationship between Honeywell and the Trust, coupled with the extensive audit and oversight rights enjoyed by Honeywell.”

“Perhaps such an approach could work with different personalities involved, but experience has demonstrated that it has not worked here.” He said there is a chance the fixed sum of money will run out before future claimants can be paid, but said that risk is less than the benefits of ending the acrimony between Honeywell and the trust.