



Honeywell, asbestos lawyer to argue over subpoena in Pittsburgh

ASBESTOS



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PENNSYLVANIA WESTERN DISTRICT COURT

Nicholl

By John O'Brien

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PITTSBURGH (Legal Newsline) – Federal bankruptcy court in Pittsburgh will be the venue where an asbestos lawyer accused of pocketing millions of dollars by filling out inaccurate forms fights a defendant tired of paying him.

Though Honeywell originally filed its motion to enforce a subpoena issued to attorney Peter Nicholl in Washington, D.C., federal court, it

also asked that dispute to be transferred to Pittsburgh – where the bankruptcy of North American Refractories Company (NARCO) is overseen.

On Jan. 5, Judge Colleen Kollar-Kotelly granted its request.

“That court is in a better position to rule on the Honeywell motion to compel in light of its history and familiarity with the parties and the issues underlying the subpoena dispute,” she wrote.

“In addition, transfer would mitigate the risks of delaying those proceedings and inconsistent discovery rulings.”

Honeywell International, as a former parent company who funds its trust on an evergreen basis, recently stepped into the NARCO bankruptcy proceeding. The NARCO trust, like dozens of others created by once-popular defendants in asbestos lawsuits, was established to pay claimants in a more expedient and less costly manner than litigation.

In September, Honeywell filed its complaints that the NARCO trust is paying millions of dollars to claimants who do not have credible evidence of exposure to NARCO products. A return to accepting simple form submissions from claimants has created a windfall for lawyers, the company says.

A recent subpoena targets Maryland asbestos lawyer Peter Nicholl, who has earned more than \$85 million for his clients from the NARCO trust, Honeywell says. The company wants 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.

“Nicholl’s form affidavits are not ‘credible’ or ‘competent’ evidence, however, as it is not possible that thousands of claimants – working at different sites, in different jobs, in different industries, and in different time periods – all were exposed to NARCO asbestos-containing products in the same precise manner and all had the very

same recollection of that exposure (from as much as 50 years ago), including the packaging the product came in and the trade name of the product.”

In 2006, the judge overseeing NARCO’s bankruptcy found only 2.6% of claimants could identify a specific NARCO product, but in the years since, almost 100% of Nicholl’s clients have been able to conjure memories of the specific NARCO product they say they were exposed to, Honeywell argues.

"The submission of inaccurate exposure evidence like this is, according to the Department of Justice, a problem being faced in the tort and asbestos trust system generally," the company says.

Honeywell is upset the NARCO trust went back to taking simple form submissions from asbestos claimants, despite concerns that arose in 2015 that claimants will blindly sign those forms even if the exposure language is not offered by them.

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 forms, and it says it needs information from Nicholl to prove its case.

Nicholl says Honeywell is attempting to evade the terms of the deal it made to fund the NARCO trust and trying to keep him from being able to represent his clients with full effort.

“Locating, reviewing and producing the requested documents would take many months for the Nicholl Firm to complete, even if the subpoena response became its full-time task, and at great expense to the firm, including by undermining its ability to represent its clients,” lawyers for the firm wrote on Dec. 23.

Another request made in the subpoena is information submitted to the auditor of the trust and Nicholl’s communications “which the auditor relied upon almost exclusively to override concerns about material inconsistencies in Nicholl’s claim filings.”

Nicholl says 550 audits of his firm's claims have found no wrongdoing.

“There is no reason to expect Honeywell's fishing expedition is likely to uncover anything different,” it wrote. “The burden the subpoena would impose on the Nicholl Firm far outweighs the negligible benefit the requested documents are likely to bring to the underlying case.”

Honeywell is represented by Michael Nadel, John Calandra and Guyon Knight of McDermott Will & Emery. Judge Thomas Agresti of the Western District of Pennsylvania is presiding over Honeywell's September litigation, and the company would like the motion to enforce its subpoena transferred by the District of Columbia to him.