

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SHOOK & FLETCHER ASBESTOS )  
SETTLEMENT TRUST, as Successor to )  
Certain Assets and Liabilities of Shook & )  
Fletcher Insulation Co., on the Trust's )  
Own Behalf and on behalf of the Shook )  
Payment Trust, ) C.A. No. 04C-02-087 MMJ  
)  
Plaintiff, )  
)  
v. )  
)  
SAFETY NATIONAL CASUALTY )  
CORPORATION, )  
)  
Defendant. )

Submitted : October 21, 2005

Decided: October 27, 2005

**ORDER GRANTING LEAVE TO APPEAL**  
**FROM INTERLOCUTORY OPINION**

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(1) Plaintiff Shook & Fletcher Asbestos Settlement Trust, as Successor or Assignee of Shook & Fletcher Insulation Company (collectively “Shook & Fletcher”) has applied pursuant to Supreme Court Rule 42 for an order certifying an appeal from the interlocutory Opinion of this Court, dated September 29, 2005. The court finds that this Opinion determines substantial issues and establishes legal rights. The court also finds that the following criteria apply: as set forth in

Supreme Court Rule 42(b)(i) and Supreme Court Rule 41(b)(i) (original question of law); and Supreme Court Rule 42(b)(v) (review of the interlocutory order may terminate the litigation or may otherwise serve considerations of justice).

(2) Shook & Fletcher filed this complex coverage action, seeking to establish insurance coverage for asbestos bodily injury claims and suits under three excess liability policies issued by Safety National Casualty Company, successor to Safety Mutual Casualty Company (“Safety”), during 1983 through 1985.

(3) Shook & Fletcher is a thermal insulation contractor and distributor. Since its establishment in 1949, Shook & Fletcher’s principal place of business has been Birmingham, Alabama. Beginning in 1976, Shook & Fletcher has received claims for injuries and diseases relating to exposure to asbestos it installed or distributed.

(4) The September 29, 2005 Opinion decided cross motions for summary judgment. The court found that the laws of Delaware and Alabama are in conflict on the issue of the proper insurance coverage trigger - continuous trigger or exposure trigger. The Delaware Supreme Court has accepted the continuous trigger standard. The exposure trigger applies in Alabama. Using the “most

significant relationship” test, the court held that Alabama law ( *i.e.*, the exposure coverage trigger) applies.

(5) Shook & Fletcher asserts that:

[I]nterlocutory review of that holding is appropriate under Rule 42. The result of the Court’s decision is that thousands of claims for which the Trust would be entitled to coverage under the continuous trigger are excluded from coverage under Safety’s policies, which, in turn, significantly affects the amount and/or timing of Safety’s coverage obligations. If the parties proceed to trial without a final resolution of this issue, and the Trust ultimately succeeds on appeal, then the parties and this Court would need to undergo a second time-consuming and expensive trial. Resolution of the trigger issue by an interlocutory appeal, on the other hand, will ensure that the parties undergo only one trial.

(6) Safety opposes certification of interlocutory appeal on the trigger issue, arguing:

The unique posture of this case makes interlocutory review wasteful and ill-advised. To be sure, the Superior Court’s ruling on choice of law – for that is the ruling that cemented the result on trigger of coverage, and is thus the one from which the Trust actually seeks to appeal – narrowed the Trust’s claims dramatically.... But one major issue still remains to be decided; and unlike trigger and choice of law, its resolution would dispose of the entire case.

That issue is breach of contract. Safety believes it is entitled to summary judgment on this issue; and if Safety is correct, it is clear that the entry of summary judgment on the Trust’s breach of contract claim will result in a final judgment....

Interlocutory review of the trigger issue alone will thus do little to advance the case. By contrast, a decision on the breach of contract

issue would be dispositive, and allow a unitary appeal from final judgment that would bundle all issues together for appellate review.

(7) The extent of insurance coverage as a matter of law is a substantial issue for purposes of interlocutory appeal.<sup>1</sup> By holding that the exposure trigger applies, the court determined Safety's substantial legal right to refuse to provide insurance coverage for any claim that does not involve exposure to asbestos during Safety's policy periods. While interlocutory review at this point may not terminate completely the litigation, the resolution of the legal issues in the interlocutory appeal could nevertheless significantly affect the resolution of the remaining legal issues, considerably curtail the length and cost of trial, substantially reduce the scope of any additional discovery, and also may provide a potential framework for settlement of the remaining claims, "thus making unnecessary the expenditure of Delaware's limited judicial resources."<sup>2</sup> Finally, the determination of whether the laws of Delaware and Alabama are in conflict, resulting in the court's holding that the exposure trigger applies, is an issue of first impression in Delaware.

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<sup>1</sup>See *Rhone-Poulenc Basic Chemicals Co. v. American Motorists Ins. Co.*, 606 A.2d 73, 74 (Del. 1992).

<sup>2</sup>See *Monsanto Co. v. Aetna Cas. & Surety Co.*, Del. Super., C.A. No. 88C-JA-118, Ridgely, P.J. (Feb. 10, 1994) (ORDER).

**THEREFORE, IT IS ORDERED** that the Court's Opinion dated September 29, 2004, is hereby certified to the Supreme Court of the State of Delaware for disposition in accordance with Rule 42 of that Court.

**IT IS SO ORDERED.**

*/s/ Mary M. Johnston*  
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The Honorable Mary M. Johnston

oc: Prothonotary - Civil Division