

**U.S. District Court**  
**Western District of North Carolina (Charlotte)**  
**CIVIL DOCKET FOR CASE #: 3:22-mc-00166-RJC-DSC**  
**Internal Use Only**

In Re: Aldrich Pump LLC et al  
Assigned to: District Judge Robert J. Conrad, Jr  
Referred to: Magistrate Judge David S. Cayer  
Related Cases: [3:22-mc-00164-RJC-DSC](#)  
[3:22-mc-00165-RJC-DSC](#)  
Case in other court: Delaware, 1:22-mc-00308  
USBK/WDNC, 20-30608 (JCW)  
Cause: Motion to Quash

Date Filed: 09/27/2022  
Date Terminated: 10/03/2022  
Jury Demand: None  
Nature of Suit: 890 Other Statutory  
Actions  
Jurisdiction: Federal Question

**Petitioner**

**Armstrong World Industries, Inc.  
Asbestos Personal Injury Settlement  
Trust**

represented by **Beth Moskow-Schnoll**  
Ballard Spahr LLP  
919 North Market Street  
11th Floor  
Wilmington, DE 19801-3034  
(302) 252-4465  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Tyler B. Burns**  
Ballard Spahr LLP  
919 N. Market Street  
11th Floor  
Wilmington, DE 19801  
302-252-2856  
*ATTORNEY TO BE NOTICED*

**Petitioner**

**The Babcock & Wilcox Company  
Asbestos PI Trust**

represented by **Beth Moskow-Schnoll**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Tyler B. Burns**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Petitioner**

**Celotex Asbestos Settlement Trust**

represented by **Beth Moskow-Schnoll**  
(See above for address)



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*ATTORNEY TO BE NOTICED*

**Tyler B. Burns**

(See above for address)

*ATTORNEY TO BE NOTICED*

**Petitioner**

**DII Industries, LLC Asbestos PI Trust**

represented by **Beth Moskow-Schnoll**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Tyler B. Burns**

(See above for address)

*ATTORNEY TO BE NOTICED*

**Petitioner**

**Federal-Mogul Asbestos Personal Injury Trust**

represented by **Beth Moskow-Schnoll**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Tyler B. Burns**

(See above for address)

*ATTORNEY TO BE NOTICED*

**Petitioner**

**Flintkote Asbestos Trust**

represented by **Beth Moskow-Schnoll**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Tyler B. Burns**

(See above for address)

*ATTORNEY TO BE NOTICED*

**Petitioner**

**Owens Corning / Fibreboard Asbestos Personal Injury Trust**

represented by **Beth Moskow-Schnoll**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Tyler B. Burns**

(See above for address)

*ATTORNEY TO BE NOTICED*

**Petitioner**

**Pittsburgh Corning Corporation  
Asbestos Personal Injury Settlement  
Trust**

represented by **Beth Moskow-Schnoll**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Tyler B. Burns**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Petitioner**

**United States Gypsum Asbestos  
Personal Injury Settlement Trust**

represented by **Beth Moskow-Schnoll**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Tyler B. Burns**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Petitioner**

**WRG Asbestos PI Trust**

represented by **Beth Moskow-Schnoll**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Tyler B. Burns**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

V.

**Respondent**

**Aldrich Pump LLC**

represented by **Kelly E. Farnan**  
Richards, Layton & Finger, PA  
One Rodney Square  
Suite 600  
920 N. King Street  
Wilmington, DE 19801  
(302) 651-7705  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Respondent**

**Murray Boiler LLC**

represented by **Kelly E. Farnan**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Interested Party****Delaware Claims Processing Facility,  
LLC**represented by **Kevin A. Guerke**  
Young, Conaway, Stargatt & Taylor LLP  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
(302) 571-6600  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED***Interested Party****Certain Matching Claimants**represented by **Daniel K. Hogan**  
Hogan McDaniel  
1311 Delaware Ave.  
Suite 1  
Wilmington, DE 19806  
302-656-7540  
Fax: 302-656-7599  
Email: dkhogan@dkhogan.com  
*ATTORNEY TO BE NOTICED***Interested Party****Kazan McClain Matching Claimants**represented by **William D. Sullivan**  
Sullivan Hazeltine Allinson LLC  
919 N. Market Street  
Suite 420  
Wilmington, DE 19801  
302-428-8191  
Fax: 302-428-8195  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
07/25/2022	<a href="#">1</a>	MOTION to Quash - filed by Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust, Celotex Asbestos Settlement Trust, DII Industries, LLC Asbestos PI Trust, Federal-Mogul Asbestos Personal Injury Trust, Flintkote Asbestos Trust, Owens Corning/ Fibreboard Asbestos Personal Injury Trust, Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust, The Babcock & Wilcox Company Asbestos PI Trust, United States Gypsum Asbestos Personal Injury Settlement Trust, WRG Asbestos PI Trust. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Text of Proposed Order, # <a href="#">11</a> Certificate of Service, # <a href="#">12</a> Civil Cover Sheet)(apk) [Transferred from Delaware on 9/27/2022.] (Entered: 07/26/2022)
07/25/2022	<a href="#">2</a>	Notice, Consent and Referral forms re: U.S. Magistrate Judge jurisdiction. (apk) [Transferred from Delaware on 9/27/2022.] (Entered: 07/26/2022)

07/25/2022		Remark: Case Submitted for Routine Judicial Assignment. (apk) [Transferred from Delaware on 9/27/2022.] (Entered: 07/26/2022)
07/26/2022	 <a href="#">3</a>	MOTION to Quash - filed by Delaware Claims Processing Facility, LLC. (Attachments: # <a href="#">1</a> Text of Proposed Order, # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Certificate of Service)(Guerke, Kevin) [Transferred from Delaware on 9/27/2022.] (Entered: 07/26/2022)
07/26/2022	 <a href="#">4</a>	DECLARATION re <a href="#">3</a> MOTION to Quash by Delaware Claims Processing Facility, LLC. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Certificate of Service)(Guerke, Kevin) [Transferred from Delaware on 9/27/2022.] (Entered: 07/26/2022)
07/27/2022		Case Assigned to Judge Colm F. Connolly. Please include the initials of the Judge (CFC) after the case number on all documents filed. (rjb) [Transferred from Delaware on 9/27/2022.] (Entered: 07/27/2022)
08/08/2022	 <a href="#">5</a>	STIPULATION TO EXTEND TIME to Respond to Motion to Quash or Modify Subpoenas to through and including August 22, 2022 and File a Reply Brief to through and including September 6, 2022 - filed by Aldrich Pump LLC, Murray Boiler LLC. (Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 08/08/2022)
08/08/2022	 <a href="#">6</a>	SO ORDERED, re <a href="#">5</a> STIPULATION TO EXTEND TIME to Respond to Motion to Quash or Modify Subpoenas to through and including August 22, 2022 and File a Reply Brief to through and including September 6, 2022, filed by Aldrich Pump LLC, Murray Boiler LLC. Reset Briefing Schedule: re <a href="#">1</a> MOTION to Quash. Answering Brief due 8/22/2022., Reply Brief due 9/6/2022 Signed by Judge Colm F. Connolly on 8/8/2022. (kmd) [Transferred from Delaware on 9/27/2022.] (Entered: 08/08/2022)
08/09/2022	 <a href="#">7</a>	STIPULATION TO EXTEND TIME to Respond to Motion to Quash or Modify Subpoenas to through and including August 22, 2022 and File a Reply Brief to through and including September 6, 2022 - filed by Aldrich Pump LLC, Murray Boiler LLC. (Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 08/09/2022)
08/09/2022	 <a href="#">8</a>	SO ORDERED, re <a href="#">7</a> STIPULATION TO EXTEND TIME to Respond to Motion to Quash or Modify Subpoenas to through and including August 22, 2022, and File a Reply Brief to through and including September 6, 2022 filed by Aldrich Pump LLC, Murray Boiler LLC. Reset Briefing Schedule: re <a href="#">3</a> MOTION to Quash . Answering Brief due 8/22/2022. Reply Brief due 9/6/2022. Signed by Judge Colm F. Connolly on 8/9/2022. (kmd) [Transferred from Delaware on 9/27/2022.] (Entered: 08/09/2022)

08/18/2022	<a href="#">9</a>	MOTION to Stay <i>Third-Party Asbestos Trusts' Motion To Stay</i> - filed by Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust, Celotex Asbestos Settlement Trust, DII Industries, LLC Asbestos PI Trust, Federal-Mogul Asbestos Personal Injury Trust, Flintkote Asbestos Trust, Owens Corning/ Fibreboard Asbestos Personal Injury Trust, Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust, The Babcock & Wilcox Company Asbestos PI Trust, United States Gypsum Asbestos Personal Injury Settlement Trust, WRG Asbestos PI Trust. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Moskow-Schnoll, Beth) [Transferred from Delaware on 9/27/2022.] (Entered: 08/18/2022)
08/22/2022	<a href="#">10</a>	MEMORANDUM in Opposition re <a href="#">3</a> MOTION to Quash , <a href="#">9</a> MOTION to Stay <i>Third-Party Asbestos Trusts' Motion To Stay</i> filed by Aldrich Pump LLC, Murray Boiler LLC.Reply Brief due date per Local Rules is 8/29/2022. (Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 08/22/2022)
08/22/2022	<a href="#">11</a>	DECLARATION re <a href="#">10</a> Memorandum in Opposition, <i>Kelly E. Farnan</i> by Aldrich Pump LLC, Murray Boiler LLC. (Attachments: # <a href="#">1</a> Exhibit A-R)(Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 08/22/2022)
08/22/2022	<a href="#">12</a>	Disclosure Statement pursuant to Rule 7.1: identifying Other Affiliate Trane U.S. Inc., Other Affiliate Trane Technologies plc, Other Affiliate Trane Technologies Company LLC, Other Affiliate Trane Technologies Global Holding Company Limited, Other Affiliate Trane Technologies HoldCo Inc., Other Affiliate Trane Technologies Irish Holdings Unlimited Company, Other Affiliate Trane Technologies Lux International Holding Company S. r.l, Other Affiliate Murray Boiler Holdings LLC, Other Affiliate Trane Inc., Other Affiliate TUI Holdings Inc. for Murray Boiler LLC; Other Affiliate Trane Technologies plc, Other Affiliate Trane Technologies Global Holding Company Limited, Other Affiliate Trane Technologies HoldCo Inc., Other Affiliate Trane Technologies Irish Holdings Unlimited Company, Other Affiliate Trane Technologies Lux International Holding Company S. r.l for Aldrich Pump LLC filed by Aldrich Pump LLC, Murray Boiler LLC. (Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 08/22/2022)
08/23/2022	<a href="#">13</a>	MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and (II) Joinders</i> - filed by Certain Matching Claimants. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Proposed Order, # <a href="#">3</a> Certificate of Service)(Hogan, Daniel) (Main Document 13 replaced on 8/24/2022) (apk). (Attachment 1 replaced on 8/24/2022) (apk). [Transferred from Delaware on 9/27/2022.] (Entered: 08/23/2022)
08/23/2022	<a href="#">14</a>	MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and (II) Joinders</i> - filed by Certain Matching Claimants. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Proposed Order, # <a href="#">4</a> Certificate of Service)(Hogan, Daniel) (Main Document 14 replaced on 8/24/2022) (apk). (Attachment 1 replaced on 8/24/2022) (apk). [Transferred from Delaware on 9/27/2022.] (Entered: 08/23/2022)
08/23/2022	<a href="#">15</a>	MOTION to Quash <i>and Joinders in Third Party Asbestos Trusts and Delaware Claims Processing Facility, LLCs Motions to Quash or Modify Subpoenas</i> - filed by Kazan McClain Matching Claimants. (Attachments: # <a href="#">1</a> Text of Proposed Order, # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Exhibit B, # <a href="#">4</a> Certificate of Service)(Sullivan, William) [Transferred from Delaware on 9/27/2022.] (Entered: 08/23/2022)

08/24/2022		CORRECTING ENTRY: D.I. <a href="#">13</a> and <a href="#">14</a> Main Documents and Exhibit A have been replaced per counsels request. (apk) [Transferred from Delaware on 9/27/2022.] (Entered: 08/24/2022)
08/26/2022	 <a href="#">16</a>	NOTICE of Withdrawal of Motion to Stay by Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust, Celotex Asbestos Settlement Trust, DII Industries, LLC Asbestos PI Trust, Federal-Mogul Asbestos Personal Injury Trust, Flintkote Asbestos Trust, Owens Corning/ Fibreboard Asbestos Personal Injury Trust, Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust, The Babcock & Wilcox Company Asbestos PI Trust, United States Gypsum Asbestos Personal Injury Settlement Trust, WRG Asbestos PI Trust re <a href="#">9</a> MOTION to Stay <i>Third-Party Asbestos Trusts' Motion To Stay</i> (Burns, Tyler) [Transferred from Delaware on 9/27/2022.] (Entered: 08/26/2022)
08/26/2022		(Court only) ***Motions terminated: <a href="#">9</a> MOTION to Stay <i>Third-Party Asbestos Trusts' Motion To Stay</i> , filed by Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust, Owens Corning/ Fibreboard Asbestos Personal Injury Trust, Federal-Mogul Asbestos Personal Injury Trust, Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust, DII Industries, LLC Asbestos PI Trust, WRG Asbestos PI Trust, The Babcock & Wilcox Company Asbestos PI Trust, Celotex Asbestos Settlement Trust, Flintkote Asbestos Trust, United States Gypsum Asbestos Personal Injury Settlement Trust, per <a href="#">16</a> Notice of Withdrawal. (kmd) [Transferred from Delaware on 9/27/2022.] (Entered: 08/26/2022)
08/31/2022	 <a href="#">17</a>	MOTION to Transfer Subpoena-Related Motions to the Issuing Court, The United States Bankruptcy Court for the Western District of North Carolina re <a href="#">14</a> MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and (II) Joinders</i> , <a href="#">1</a> MOTION to Quash, <a href="#">3</a> MOTION to Quash , <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and (II) Joinders</i> , <a href="#">15</a> MOTION to Quash <i>and Joinders in Third Party Asbestos Trusts and Delaware Claims Processing Facility, LLCs Motions to Quash or Modify Subpoenas</i> - filed by Aldrich Pump LLC, Murray Boiler LLC. (Attachments: # <a href="#">1</a> 7.1.1 Certification, # <a href="#">2</a> Text of Proposed Order Proposed Order)(Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 08/31/2022)
08/31/2022	 <a href="#">18</a>	OPENING BRIEF in Support re <a href="#">17</a> MOTION to Transfer Subpoena-Related Motions to the Issuing Court, The United States Bankruptcy Court for the Western District of North Carolina re <a href="#">14</a> MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claim filed by Aldrich Pump LLC, Murray Boiler LLC. Answering Brief/Response due date per Local Rules is 9/14/2022.</i> (Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 08/31/2022)
08/31/2022	 <a href="#">19</a>	DECLARATION re <a href="#">18</a> Opening Brief in Support, <i>Kelly E. Farnan</i> by Aldrich Pump LLC, Murray Boiler LLC. (Attachments: # <a href="#">1</a> Exhibit A-C)(Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 08/31/2022)
09/06/2022	 <a href="#">20</a>	REPLY BRIEF re <a href="#">1</a> MOTION to Quash filed by Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust, Celotex Asbestos Settlement Trust, DII Industries, LLC Asbestos PI Trust, Federal-Mogul Asbestos Personal Injury Trust, Flintkote Asbestos Trust, Owens Corning/ Fibreboard Asbestos Personal Injury Trust, Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust,

		The Babcock & Wilcox Company Asbestos PI Trust, United States Gypsum Asbestos Personal Injury Settlement Trust, WRG Asbestos PI Trust. (Burns, Tyler) [Transferred from Delaware on 9/27/2022.] (Entered: 09/06/2022)
09/06/2022	<a href="#">21</a>	ANSWERING BRIEF in Opposition re <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and (II) Joinders</i> , <a href="#">15</a> MOTION to Quash and Joinders in Third Party Asbestos Trusts and Delaware Claims Processing Facility, LLCs Motions to Quash or Modify Subpoenas filed by Aldrich Pump LLC, Murray Boiler LLC.Reply Brief due date per Local Rules is 9/13/2022. (Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 09/06/2022)
09/06/2022	<a href="#">22</a>	DECLARATION re <a href="#">21</a> Answering Brief in Opposition, of <i>Kelly E. Farnan</i> by Aldrich Pump LLC, Murray Boiler LLC. (Attachments: # <a href="#">1</a> Exhibit A)(Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 09/06/2022)
09/06/2022	<a href="#">23</a>	REPLY to Response to Motion re <a href="#">3</a> MOTION to Quash filed by Delaware Claims Processing Facility, LLC. (Attachments: # <a href="#">1</a> Certificate of Compliance, # <a href="#">2</a> Certificate of Service)(Guerke, Kevin) [Transferred from Delaware on 9/27/2022.] (Entered: 09/06/2022)
09/06/2022	<a href="#">24</a>	ANSWERING BRIEF in Opposition re <a href="#">14</a> MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and (II) Joinders</i> filed by Aldrich Pump LLC, Murray Boiler LLC.Reply Brief due date per Local Rules is 9/13/2022. (Attachments: # <a href="#">1</a> Certificate of Compliance)(Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 09/06/2022)
09/06/2022	<a href="#">25</a>	DECLARATION re <a href="#">24</a> Answering Brief in Opposition, by Aldrich Pump LLC, Murray Boiler LLC. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B)(Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 09/06/2022)
09/13/2022	<a href="#">26</a>	REPLY to Response to Motion re <a href="#">1</a> MOTION to Quash, <a href="#">3</a> MOTION to Quash , <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and (II) Joinders</i> filed by Certain Matching Claimants. (Hogan, Daniel) [Transferred from Delaware on 9/27/2022.] (Entered: 09/13/2022)
09/13/2022	<a href="#">27</a>	REPLY to Response to Motion re <a href="#">14</a> MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and (II) Joinders</i> , <a href="#">1</a> MOTION to Quash, <a href="#">3</a> MOTION to Quash , <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and (II) Joinders</i> filed by Certain Matching Claimants. (Attachments: # <a href="#">1</a> Exhibit)(Hogan, Daniel)[Transferred from Delaware on 9/27/2022.] (Entered: 09/13/2022)
09/13/2022	<a href="#">28</a>	REQUEST for Oral Argument by Aldrich Pump LLC, Murray Boiler LLC re <a href="#">17</a> MOTION to Transfer Subpoena-Related Motions to the Issuing Court, The United States Bankruptcy Court for the Western District of North Carolina re <a href="#">14</a> MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claim</i> , <a href="#">14</a> MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and (II) Joinders</i> , <a href="#">1</a> MOTION to Quash, <a href="#">3</a> MOTION to Quash , <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and</i>

		(II) Joinders, <a href="#">15</a> MOTION to Quash and Joinders in Third Party Asbestos Trusts and Delaware Claims Processing Facility, LLCs Motions to Quash or Modify Subpoenas. (Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 09/13/2022)
09/13/2022	<a href="#">29</a>	JOINDER by Kazan McClain Matching Claimants, joining in <a href="#">14</a> Motion for Miscellaneous Relief, <a href="#">27</a> Reply to Response to Motion, to Proceed Anonymously. (Sullivan, William) [Transferred from Delaware on 9/27/2022.] (Entered: 09/13/2022)
09/13/2022	<a href="#">30</a>	JOINDER by Kazan McClain Matching Claimants, joining in <a href="#">26</a> Reply to Response to Motion, in Support of (I) Motion to Quash or Modify Subpoenas and (II) Joinders. (Sullivan, William) [Transferred from Delaware on 9/27/2022.] (Entered: 09/13/2022)
09/14/2022	<a href="#">31</a>	ANSWERING BRIEF in Opposition re <a href="#">17</a> MOTION to Transfer Subpoena-Related Motions to the Issuing Court, The United States Bankruptcy Court for the Western District of North Carolina re <a href="#">14</a> MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash Non-Party Certain Matching Claim filed by Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust, Celotex Asbestos Settlement Trust, DII Industries, LLC Asbestos PI Trust, Federal-Mogul Asbestos Personal Injury Trust, Flintkote Asbestos Trust, Owens Corning/ Fibreboard Asbestos Personal Injury Trust, Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust, The Babcock & Wilcox Company Asbestos PI Trust, United States Gypsum Asbestos Personal Injury Settlement Trust, WRG Asbestos PI Trust.Reply Brief due date per Local Rules is 9/21/2022. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Burns, Tyler) [Transferred from Delaware on 9/27/2022.] (Entered: 09/14/2022)
09/14/2022	<a href="#">32</a>	ANSWERING BRIEF in Opposition re <a href="#">17</a> MOTION to Transfer Subpoena-Related Motions to the Issuing Court, The United States Bankruptcy Court for the Western District of North Carolina re <a href="#">14</a> MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash Non-Party Certain Matching Claim filed by Kazan McClain Matching Claimants.Reply Brief due date per Local Rules is 9/21/2022. (Sullivan, William) [Transferred from Delaware on 9/27/2022.] (Entered: 09/14/2022)
09/14/2022	<a href="#">33</a>	DECLARATION re <a href="#">32</a> Answering Brief in Opposition, by Kazan McClain Matching Claimants. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3)(Sullivan, William) [Transferred from Delaware on 9/27/2022.] (Entered: 09/14/2022)
09/14/2022	<a href="#">34</a>	RESPONSE to Motion re <a href="#">17</a> MOTION to Transfer Subpoena-Related Motions to the Issuing Court, The United States Bankruptcy Court for the Western District of North Carolina re <a href="#">14</a> MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash Non-Party Certain Matching Claim filed by Delaware Claims Processing Facility, LLC. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Certificate of Service)(Guerke, Kevin) [Transferred from Delaware on 9/27/2022.] (Entered: 09/14/2022)

09/14/2022	<a href="#">35</a>	ANSWERING BRIEF in Opposition re <a href="#">17</a> MOTION to Transfer Subpoena-Related Motions to the Issuing Court, The United States Bankruptcy Court for the Western District of North Carolina re <a href="#">14</a> MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claim</i> filed by Certain Matching Claimants. Reply Brief due date per Local Rules is 9/21/2022. (Attachments: # <a href="#">1</a> Exhibit) (Hogan, Daniel) (Main Document 35 replaced on 9/15/2022) (apk). (Attachment 1 replaced on 9/15/2022) (apk). Modified on 9/15/2022 (kmd). [Transferred from Delaware on 9/27/2022.] (Entered: 09/14/2022)
09/15/2022		CORRECTING ENTRY: D.I. <a href="#">35</a> main document and attachment replaced per counsels request. (apk) [Transferred from Delaware on 9/27/2022.] (Entered: 09/15/2022)
09/15/2022	<a href="#">36</a>	DECLARATION re <a href="#">35</a> Answering Brief in Opposition,, <i>Declaration of Daniel K. Hogan Regarding Exhibit A to Certain Matching Claimants' Brief in Opposition to Motion to Transfer</i> by Certain Matching Claimants. (Hogan, Daniel) [Transferred from Delaware on 9/27/2022.] (Entered: 09/15/2022)
09/20/2022	<a href="#">37</a>	STIPULATION Regarding Word Count of Reply Brief by Aldrich Pump LLC, Murray Boiler LLC. (Farnan, Kelly) [Transferred from Delaware on 9/27/2022.] (Entered: 09/20/2022)
09/21/2022	<a href="#">38</a>	SO ORDERED, re <a href="#">37</a> Stipulation Regarding Word Count of Reply Brief, filed by Aldrich Pump LLC, Murray Boiler LLC. Signed by Judge Colm F. Connolly on 9/21/2022. (kmd) [Transferred from Delaware on 9/27/2022.] (Entered: 09/21/2022)
09/21/2022	<a href="#">39</a>	REPLY BRIEF re <a href="#">17</a> MOTION to Transfer Subpoena-Related Motions to the Issuing Court, The United States Bankruptcy Court for the Western District of North Carolina re <a href="#">14</a> MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claim</i> filed by <i>Aldrich Pump LLC, Murray Boiler LLC. (Farnan, Kelly)</i> [Transferred from Delaware on 9/27/2022.] (Entered: 09/21/2022)
09/26/2022	<a href="#">40</a>	MEMORANDUM ORDER. (i) All remaining subpoena-related motions in Misc. No. 21-141-CFC, are TRANSFERRED to the Issuing Court; (ii) The Aldrich Motion to Transfer (Misc. No. 22-139-CFC, D.I. 16) is GRANTED; and (iii) The DBMP Motion to Transfer (Misc. No. 22-308-CFC, D.I. 17) is GRANTED. Signed by Judge Colm F. Connolly on 9/26/2022. Associated Cases: 1:21-mc-00141-CFC, 1:22-mc-00139-CFC, 1:22-mc-00308-CFC(kmd) [Transferred from Delaware on 9/27/2022.] (Entered: 09/26/2022)
09/27/2022		ORAL ORDER re (51 in 1:22-mc-00139-CFC, 40 in 1:22-mc-00308-CFC, 76 in 1:21-mc-00141-CFC) Memorandum Order. IT IS ORDERED that miscellaneous case numbers 1:22-mc-00139-CFC, 1:22-mc-00308-CFC and 1:21-mc-00141-CFC are transferred to the United States District Court for the Western District of North Carolina for transfer to the United States Bankruptcy Court for the Western District of North Carolina. Ordered by Judge Colm F. Connolly on 9/27/2022. Associated Cases: 1:21-mc-00141-CFC, 1:22-mc-00139-CFC, 1:22-mc-00308-CFC(nmf) [Transferred from Delaware on 9/27/2022.] (Entered: 09/27/2022)
09/27/2022	<a href="#">41</a>	Case transferred in from District of Delaware; Case Number 1:22-mc-00308. Original electronic file and docket sheet received. (Entered: 09/27/2022)

09/27/2022		Case assigned to District Judge Robert J. Conrad, Jr and Magistrate Judge David S. Cayer. Motions referred to David S. Cayer: <a href="#">1</a> MOTION to Quash, <a href="#">14</a> MOTION to Proceed Anonymously re <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and (II) Joinders</i> , <a href="#">13</a> MOTION to Quash <i>Non-Party Certain Matching Claimants' (I) Motion to Quash or Modify Subpoenas and (II) Joinders</i> , <a href="#">3</a> MOTION to Quash , <a href="#">15</a> MOTION to Quash and Joinders in Third Party Asbestos Trusts and Delaware Claims Processing Facility, LLCs Motions to Quash or Modify Subpoenas This is your only notice - you will not receive a separate document.(rth) (Entered: 09/27/2022)
09/28/2022		Notice to Beth Moskow-Schnoll, Tyler B. Burns, Kelly E. Farnan, Kevin A. Guerke, Daniel K. Hogan, William D. Sullivan: Pursuant to Local Rule 83.1 you are required to <b>Associate</b> local counsel and <b>File</b> a motion pro hac vice. ( <i>Attorney served via NEF</i> ) Deadline by 10/5/2022. (rth) (Entered: 09/28/2022)
09/30/2022	 <a href="#">42</a>	MOTION for Leave to Appear Pro Hac Vice as to Daniel K. Hogan Filing fee \$ 288, receipt number ANCWDC-5767793. by Certain Matching Claimants. (Waldrep, Thomas). Motions referred to David S. Cayer. (Entered: 09/30/2022)
10/03/2022	 <a href="#">43</a>	<b>ORDER granting <a href="#">42</a> Motion for Leave to Appear Pro Hac Vice added Daniel K. Hogan for Certain Matching Claimants (<i>Pro Hac Vice Attorney served via NEF</i>). Signed by Magistrate Judge David S. Cayer on 9/30/2022. (mek)</b> (Entered: 10/03/2022)
10/03/2022		Notice to Daniel K. Hogan: Pursuant to Local Rule 83.1 you are required to <b>Register</b> for E-Filing Access or Link Existing Account <a href="#">Link</a> . ( <i>Attorney served via NEF</i> ) Deadline by 10/11/2022. (mek) (Entered: 10/03/2022)
10/03/2022	 <a href="#">44</a>	<b>Order that this matter is REFERRED to the United States Bankruptcy Court for the Western District of North Carolina. The Clerk of Court is directed to close this case. Signed by District Judge Robert J. Conrad, Jr on 9/30/2022. (brl)</b> (Entered: 10/03/2022)

OFFICE OF THE CLERK  
**UNITED STATES DISTRICT COURT**  
DISTRICT OF DELAWARE

John A. Cerino  
CLERK OF COURT

844 North King Street, Unit 18  
Wilmington, DE 19801-3570  
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(302) 573-6170

**DISTRICT OF DELAWARE**  
**LOCAL RULE 73.1**  
**Magistrate Judges; Trial by Consent**

Where the parties consent, the Magistrate Judge may conduct a jury or nonjury trial in any civil action and order the entry of final judgment in accordance with 28 U.S.C. § 636 (c) and Fed. R. Civ. P. 73-76. In the course of conducting proceedings in any civil action upon the consent of the parties, a Magistrate Judge may hear and determine any an all pretrial and post-trial motions including case dispositive motions.

(a) The Clerk shall notify the parties in all cases that they may consent to have a Magistrate Judge conduct any or all proceedings in the case and order the entry of final judgment.

(b) **The Clerk shall not accept a consent form for filing unless it has been signed by all parties in a case.** Plaintiff shall be responsible for securing execution and filing of such a consent form. No consent form will be made available, nor will its contents be made known to any District Judge or Magistrate Judge, unless all stated parties have consented to the reference to a Magistrate Judge.

(c) The consent form shall be filed with the Clerk not later than the final pretrial conference, unless otherwise ordered.

(d) After the consent form has been executed and filed, the Clerk shall so advise the District Court Judge to whom the case has been assigned. At the discretion of the District Judge, the Clerk shall prepare, for the District Judge's signature, an order referring the case to the Magistrate Judge. Once the case has been referred, the Magistrate Judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk to enter a final judgment in the same manner as if a District Judge presided.

AO 85 (Rev. 01/09) Notice, Consent, and Reference of a Civil Action to a Magistrate Judge

UNITED STATES DISTRICT COURT
for the
District of Delaware

Plaintiff
v.
Defendant
Civil Action No.

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

Table with 3 columns: Parties' printed names, Signatures of parties or attorneys, Dates. Includes four rows of blank lines for entry.

Reference Order

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date:

District Judge's signature

Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.

AO 85A (Rev. 01/09) Notice, Consent, and Reference of a Dispositive Motion to a Magistrate Judge

UNITED STATES DISTRICT COURT

for the District of Delaware

Plaintiff v. Defendant Civil Action No.

NOTICE, CONSENT, AND REFERENCE OF A DISPOSITIVE MOTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings and enter a final order dispositive of each motion. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have motions referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's consideration of a dispositive motion. The following parties consent to have a United States magistrate judge conduct any and all proceedings and enter a final order as to each motion identified below (identify each motion by document number and title).

Motions:

Parties' printed names Signatures of parties or attorneys Dates

Reference Order

IT IS ORDERED: The motions are referred to a United States magistrate judge to conduct all proceedings and enter a final order on the motions identified above in accordance with 28 U.S.C. § 636(c).

Date: District Judge's signature Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

In re: ) Misc. No.  
)  
ALDRICH PUMP, LLC, *et al.*, ) Underlying Case No. 20-30608 (JCW)  
) (U.S. Bankruptcy Court for the  
Debtors. ) Western District of North Carolina)

**DELAWARE CLAIMS PROCESSING FACILITY, LLC’S (I) MOTION  
TO QUASH OR MODIFY SUBPOENA AND (II) JOINDER**

The Delaware Claims Processing Facility, LLC (the “DCPF”) hereby submits (i) this motion (the “Motion”) under Rule 45(d)(3) of the Federal Rules of Civil Procedure (the “Rules”) to quash or modify the *Subpoena to Produce Documents, Information or Objects or to Permit Inspection of Premises in a Bankruptcy Case (or Adversary Proceeding)* and accompanying order (the “Order” and, together with the subpoena, the “Subpoena”) served on the DCPF by Aldrich Pump LLC and Murray Boiler LLC (the “Debtors”) and (ii) this joinder (the “Joinder”) to *Third Party Asbestos Trusts’ Motion to Quash or Modify Subpoenas* being filed concurrently by the Trusts.<sup>1</sup> In support of the Motion and Joinder, the DCPF relies on and incorporates by reference the *Declaration of Richard Winner* (the “Winner Decl.”), which is filed contemporaneously herewith. In further support of the Motion and Joinder, the DCPF respectfully states as follows:

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<sup>1</sup> As defined in the *Third Party Asbestos Trusts Motion to Quash of Modify Subpoenas*.

## INTRODUCTION

1. The DCPF takes its responsibility to protect trust data and claimants' privacy seriously. Protecting the security of claimants' highly sensitive data is the DCPF's highest operational priority. It maintains a proprietary claims-management system and has comprehensive privacy protections in place to ensure the security and integrity of the trust claim process that the DCPF facilitates.

2. Each trust has confidentiality obligations outlined in numerous court-approved trust documents. The trusts are charged with maintaining the confidentiality of the sensitive information that claimants submit as part of the trust claims process. The trusts' governing documents authorize the trusts to retain third-party claim processors such as the DCPF,<sup>2</sup> and the DCPF in turn is contractually obligated to maintain the confidentiality of claimants' sensitive, personal data. The DCPF employs stringent access limitations and layers of highly specialized, proprietary safety measures to ensure security. The massive transfer of data called for in the Subpoena would be antithetical to the trusts' confidentiality mandate and the DCPF's contractual obligations. The DCPF understands, however, it may be

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<sup>2</sup> See, e.g., Winner Decl., Ex. C § 7.9 (“Nothing in this TDP shall preclude the Trust from contracting with another asbestos claims resolution organization to provide services to the Trust . . . .”); The Flintkote Company and Flintkote Mines Limited Asbestos Personal Injury Trust Agreement § 2.1(c).

required to respond to valid subpoenas that comply with the Rules and this Court's precedents. This is not such a subpoena.

3. The Subpoena at issue goes far beyond what Rule 45 would require from the DCPF. Indeed, the Subpoena does not identify information requests—rather, it attaches a 17-page Order from a North Carolina bankruptcy court and attempts to require the DCPF to comply with it. But the North Carolina court lacks jurisdiction over the DCPF because it has not appeared before that court. And a subpoena is not an appropriate vehicle for such a mandatory injunction.

4. The Subpoena also exceeds what this Court has permitted in prior cases. Indeed, just last year, the Court quashed a subpoena, authorized by the same bankruptcy court, requesting claimant information from the same trusts. The Court made clear that such subpoenas require safeguards to protect claimants' confidential information, specifically including limiting any requests to a random sampling of up to 10% of claims and the pre-production anonymization of claimants' information. *See In re Bestwall LLC*, No. 17-BK-31795 (LTB), [2021 WL 2209884](#) (D. Del. June 1, 2021); *cf.* June 17, 2021 Order, *In re Bestwall, LLC*, Misc. No. 21-141-CFC, Case No. 17-BK-31795, [ECF No. 33](#). Despite this, the Subpoena here does not limit the data requested to a 10% random sample (or any sample at all), and it proposes an “anonymization” process designed to defeat the purpose of anonymizing claimants' data to protect their privacy.

5. To protect claimants’ sensitive, personal and confidential information, and reduce the undue burden on the DCPF, the Court should quash the Subpoena and require any subpoenas to adhere to the *Bestwall* safeguards. If DCPF is forced to comply with the Subpoena without additional safety measures, claimants’ highly sensitive personal information will be susceptible to security breaches, fraud and identify theft.

### **BACKGROUND**

6. The DCPF processes asbestos-related claims asserted against each of the 15 asbestos settlement trusts and sub-funds identified in the Subpoena (“Trusts”),<sup>3</sup> as well as a number of other settlement trusts. Winner Decl., ¶ 2. As

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<sup>3</sup> The Trusts are:

- The Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust;
- The Babcock and Wilcox Company Asbestos Personal Injury Trust;
- The Celotex Asbestos Settlement Trust;
- DII Industries, LLC Asbestos PI Trusts (Halliburton, Harbinson-Walker Subfunds);
- The Federal-Mogul Asbestos Personal Injury Trust;
- The Flintkote Asbestos Trust;
- The Owens Corning / Fibreboard Asbestos Personal Injury Trust;
- The Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust;
- The United States Gypsum Asbestos Personal Injury Settlement Trust; and
- The WRG Asbestos PI Trust.

part of that claim-settlement process, each claimant provides highly sensitive information to the Trusts, including personally identifiable information (“PII”), such as the claimant’s name, Social Security number (“SSN”) and date of birth; other personal demographic information, such as the claimant’s date of death (if applicable); and medical records, which can detail sensitive personal information unrelated to asbestos injuries (e.g., a claimant’s history of drug and alcohol abuse, HIV status, sexual or emotional dysfunction) and other private health information. Claimants’ submissions to the Trusts also often include confidential information concerning (i) claimants’ finances or (ii) their spouse and dependents (e.g., descriptions of a child’s mental and/or physical disabilities or drug addictions). *Id.*, ¶ 7. As a result, the DCPF is the custodian of significant amounts of highly sensitive, private and confidential information provided by people who are often extremely ill, unsophisticated and/or elderly (or by the estates of such people). For this reason, the DCPF has made, and is continually making, significant investments in data and security measures, many of which are proprietary. *Id.*, ¶ 10–11.

7. For example, in 2006, the DCPF implemented “Trust Online,” a proprietary claims-management platform that helps facilitate the secure transmission, management-review and retention of confidential claimant data. *Id.* Rather than pass claimant data through various systems, Trust Online allows for the data to be centrally maintained, thus eliminating the security risks that arise from

subsequent data transfers. *Id.* Trust Online’s security measures are comprehensive and routinely updated. *Id.*, ¶ 13. All access to the data is monitored and strictly limited. *Id.*, ¶ 14. The DCPF employees are permitted to access only the information that is necessary for them to do their jobs (access levels are determined on an employee-by-employee basis, depending on the employee’s role), and the DCPF maintains supplemental security protocols to prevent any misuse of claimant information. *Id.*, ¶ 14. For example, the DCPF computers that are used to access Trust Online maintain endpoint security that includes local firewalls and virus protection, among other things. *Id.* Similar stringent restrictions apply to any law firms that can access Trust Online. *Id.*, ¶15.

8. All claims submitted and data used in evaluating and settling claims are the property of the respective Trusts. *Id.*, ¶ 9. Other than publicly available trust distribution procedures (“TDPs”) and trust agreements (“Trust Agreements”), the Trusts’ evaluation policies and decisions are protected under the work-product or attorney-client privileges, and all documents and information relating to the processing and settlement of claims are confidential and privileged.

9. The claims submitted to the Trusts are settlement communications. The Trusts receive claim submissions as part of a process designed to settle claims that would otherwise give rise to lawsuits in the tort system, since claimants can always reject a Trust’s settlement offer and proceed to the tort system for trial. The claim

submissions are therefore confidential and protected by all state and federal privileges, including all settlement privileges. *Id.*

10. On July 5, 2022, the Debtors served the DCPF with the Subpoena seeking discovery of the confidential information and settlement communications of thousands of asbestos victims. The Subpoena commands the DCPF to comply with the Order of a North Carolina bankruptcy court that authorized the Debtors to seek discovery from the DCPF. The Order requires the DCPF to, among other things, create lists, notify affected claimants and meet and confer with the Debtors—all actions outside the scope of Rule 45. Without any sampling or de-anonymization protections, the Subpoena requires the DCPF to produce certain highly sensitive data for claimants listed on a “Matching Key”<sup>4</sup> created by Bates White, the Debtors’ retained expert. The Matching Key lists the last names and SSNs for claimants who asserted mesothelioma claims resolved by settlement or verdict against the Debtors, their predecessors and successors. The Subpoena specifically directs the DCPF to: (1) search its databases for the claimants identified in the Matching Key; (2) compile a list of first and last names and SSNs of any asbestos claimants who match the identifying information in the Matching Key; (3) meet and confer with the Debtors regarding the findings of the DCPF’s database searches; (4) notify the counsel to any asbestos claimants who were identified by the database searches of the Subpoena

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<sup>4</sup> See Order ¶ 6 (defining “Matching Key”).

and explain that the information will be produced if the claimants do not file a motion to quash; and then (5) produce the highly sensitive information if no motion to quash is filed by the claimant's counsel.

11. The Debtors seek the following categories of information contained in the DCPF's database:

- a. Claimant Pseudonym;
- b. Claimant's law firm (with email and address of contact person);
- c. Date claim filed against Trust;
- d. Date claim approved by Trust, if approved;
- e. Date claim paid by Trust, if paid;
- f. If not approved or paid, status of claim; and
- g. All exposure-related fields, including:
  - i. Date(s) exposure(s) began;
  - ii. Date(s) exposure(s) ended;
  - iii. Manner of exposure;
  - iv. Occupation and industry when exposed; and
  - v. Products to which exposed.

Order, ¶ 10.

12. The "[a]ll exposure-related fields" is particularly pernicious because that request would capture claimants' narrative responses in their claim submissions.

Winner Decl., ¶ 27. The narrative response fields that claimants complete often contain SSNs, names and addresses and other highly sensitive information. These narrative fields are: (i) the exposure field where claimants describe how they were exposed; (ii) the debtor’s product description field where claimants describe how they were exposed to the debtor’s product; (iii) the secondary exposure field where claimants describe secondary exposure from other persons; and (iv) the product exposure field where claimants describe exposure to other potential products. *Id.* The DCPF has no easy way to identify and remove or redact the sensitive and confidential information contained in these narrative fields before production. Since each Trust collects information differently, it would be a herculean task to undertake. *Id.*, ¶¶ 27, 29. The DCPF would be required to manually review all text fields, which would be a timely, costly and burdensome undertaking. *Id.*, ¶ 29.

### ARGUMENT

13. The Court should quash the Subpoena.<sup>5</sup> Under Rule 45(d)(3)(A) of the Federal Rules of Civil Procedure, a court must quash or modify a subpoena that “requires disclosure of privileged or other protected matter.” Fed. R. Civ. Pro.

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<sup>5</sup> This Court has jurisdiction over this Motion because the DCPF resides in this district and its compliance with subpoenas is therefore required here. *See, e.g., N. Atl. Operating Co. v. Dunhuang Grp.*, C.A. No. 18-mc-154-LPS, [2018 WL 3381300](#), at \*1-2 (D. Del. July 11, 2018) (adjudicating motion to compel where the subpoenaed party resided in this district but the subpoena required the documents to be produced to an office in Michigan).

45(d)(3)(A). Courts in Delaware also specifically recognize that they must exercise their discretion to avoid the unnecessary disclosure of confidential material. *Verisign, Inc. v. XYZ.com, LLC*, No. CA No. 15-MC-175-RGA-MPT, [2015 WL 7960976](#), at \*4 (D. Del. Dec. 4, 2015). A subpoena should be quashed where it constitutes “an overbroad, general request for unlimited access to Defendants’ [confidential] information.” *Apex Fin. Options, LLC v. Gilbertson*, No. 21-023-LPS-SRF, [2021 WL 965509](#), at \*5 (D. Del. Mar. 15, 2021) (quashing a subpoena that was “a fishing expedition for which Plaintiffs have presented no factual support, only conclusory arguments”).

14. The Court should grant this Motion for two reasons. First, the Subpoena requires the DCPF to take and perform actions that go far beyond what Rule 45 would require. *See* [Fed. R. Civ. P. 45\(a\)\(1\)\(A\)\(iii\)](#). Indeed, the Subpoena here is not simply seeking electronically stored information (“ESI”); it effectively seeks a mandatory injunction requiring the DCPF to comply with the Order of the North Carolina bankruptcy court. Second, the Subpoena requires the DCPF to disclose privileged and protected material without necessary *Bestwall*-level protections. *See* [Fed. R. Civ. P. 45\(d\)\(3\)\(A\)](#). The Court should thus quash the Subpoena.

**A. The Subpoena overreaches.**

15. A subpoena issued under Rule 45 may only “command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person’s possession, custody, or control; or permit the inspection of premises.” Fed. R. Civ. P. 45(a)(1)(A)(iii). Based on the language of the Rule, a subpoena may only require a non-party to appear and give testimony, produce documents or permit inspection. Fed. R. Civ. P. 45(a)(1)(B)-(D).

16. The Subpoena here does not simply identify ESI that the Debtors claim to need; rather, it attaches an extensive discovery Order issued from the United States Bankruptcy Court for the Western District of North Carolina (the “NC Bankruptcy Court”), which lacks jurisdiction over non-party DCPF. The Order imposes requirements on the DCPF far beyond producing “information” as described on the face of the Subpoena. The Subpoena commands the DCPF to take action, perform analysis and follow an extensive discovery process described in the NC Bankruptcy Court’s 17-page Order. But Rule 45 does not allow a party to command a non-party to create a notice, determine who should receive that notice, prescribe what the notice will include or determine what to do if counsel cannot be located. Rule 45, similarly, cannot require the creation of a meet-and-confer list or even command a non-party to meet and confer.

17. Rule 45 makes clear that the compliance court, rather than the issuing court, decides non-party disputes relating to a subpoena. *See* [Fed. R. Civ. P. 45\(d\)](#) (providing for “the court for the district where compliance is required” to protect those subject to a subpoena or to enforce a subpoena). Here, however, the Order forces the DCPF to submit to the NC Bankruptcy Court’s jurisdiction, by ordering that exclusive jurisdiction to interpret, modify, apply and enforce the Order resides with the NC Bankruptcy Court. Order, ¶¶ 13(b), 20. The Subpoena far exceeds the scope and reach of Rule 45. It is akin to a mandatory injunction, requiring the DCPF to act in response to a court order. *See Griaznov v. J-K Techs., LLC*, C.A. No. ELH-16-2522, [2018 WL 4353989](#), at \*26 (D. Md. Sept. 11, 2018) (“A mandatory injunction is a court order compelling a party to act.”) (citing *Moor v. Texas & N.O.R. Co.*, [297 U.S. 101, 103](#) (1936)).

**B. The Subpoena requires the production of highly sensitive information.**

18. The Court should quash or modify the Subpoena for the further reason that it puts the asbestos claimants’ sensitive personal information at risk. Winner Decl., ¶¶ 19, 25. As this Court has itself explained, “the potential risk to privacy interests in disclosure is self-evident.” *In re Motions Seeking Access to 2019 Statements*, [585 B.R. 733, 752](#) (D. Del. 2018), *aff’d sub nom. In re A C & S Inc*, [775 F. App’x 78](#) (3d Cir. 2019). In *Access*, this Court upheld the bankruptcy court’s order protecting the information and quoted the lower court’s concern that “[m]ost

of these claimants are, frankly, elderly. They don't want to be harassed by third parties. . . . They signed up, not to have their social security numbers and their disease spread around the country or to their neighbors or anyone else.” *Id.* at 750 (“I am really concerned about the privacy of these individuals and, with respect to social security numbers, even the last four digits are used for so many things.” (internal quotation marks omitted)). The Third Circuit affirmed *Access*, noting that Congress “specifically authorized courts to protect ‘any means of identification.’” *In re A C & S Inc.*, [775 F. App'x 78, 79](#) (3d Cir. 2019) (internal citations omitted).

19. Just over a year ago, this Court granted a motion to quash a subpoena authorized by the NC Bankruptcy Court for a similar asbestos debtor. *See In re Bestwall LLC*, Case No. 17-BK-31795 (LTB), [2021 WL 2209884](#) (D. Del. June 1, 2021). In *Bestwall*, the Trusts similarly moved to quash the debtor's subpoenas under Rule 45(d)(3)(A). *Id.* at \*3. This Court granted the motion to quash, finding that the subpoenas sought “sweeping personal data” and failed to provide the protections required by the bankruptcy court in *Access*. *Id.* at \*6–7. The motion to quash was granted without prejudice to the debtor's “right to seek reissuance of the subpoenas seeking a narrower document production that is consistent with the protections afforded by the Bankruptcy Court's *Access* Decision.” *Id.* at \*7. While the debtor had sought the confidential claimant data of approximately 15,000 Trust claimants, the Court recognized the highly confidential and protected nature of

claimants' information and held that the disclosure of claimants' data must be limited to a random sample of no more than 10% and that the data had to be anonymized by DCPF or a third party before production. *Id.* at \*2.

20. The Trusts then sought a clarifying order, asking this Court to clarify the practical implications of its ruling. See Third Party Trusts' Request for Clarification and for Expedited Treatment, *In re Bestwall, LLC*, Misc. No. 21-141-CFC, Case No. 17-BK-31795, [ECF No. 31](#). This Court confirmed that the subpoena should be revised to "(i) limit the production of Trust Claimants' data to a random sample of no more than 10% of the 15,000 mesothelioma victims at issue; (ii) authorize the Delaware Claims Processing Facility, or a neutral third party, to anonymize the Trust Claimants' data before producing it, and (iii) include additional protections consistent with the *Access Decision*." June 17, 2021 Order ¶ 2, *In re Bestwall, LLC*, Misc. No. 21-141-CFC, Case No. 17-BK-31795, [ECF No. 33](#).

21. The Debtors have failed "to comply with the previous protections" ordered by this Court, and the Subpoena should be quashed. *In re Bestwall LLC*, [2021 WL 2209884](#), at \*7. Allowing the production of the sensitive claimant information would put thousands of claimants at risk of identity theft, fraud and other abuse. Winner Decl., ¶¶ 19, 25.

22. The Debtors' plan to combine and consolidate the data from various claimants and from various Trusts raises significant issues. "[T]he compilation of

otherwise hard-to-obtain information alters the privacy interest implicated by disclosure of that information,” and a “computerized summary located in a single clearinghouse of information” warrants particular scrutiny. *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 763–64 (1989). Even aggregations of public data present privacy and security concerns, because the “unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse.” *United States v. Jones*, 565 U.S. 400, 416 (2012) (Sotomayor, J., concurring). The right to access information is “not unfettered” and “must account for the risk of identity theft and other potential injury to individuals’ personal-identifying information.” *In re Motions Seeking Access to 2019 Statements*, 585 B.R. at 754. The Debtors’ planned single, aggregated database of information could be misappropriated to discern patterns and reveal insights about individual claimants unrelated to the Debtors’ purpose, and, despite any proposed safety precautions, aggregating such a large amount of sensitive data significantly increases the risk and impact of a data breach. Winner Decl., ¶¶ 25–28.

23. Any future subpoenas from the Debtors should have the protections confirmed in *Bestwall*, specifically including sampling and anonymization requirements. The Court has required these measures for good reason; they are crucial to help protect the sensitive information and to minimize the potential damage in the event of a security breach. This is why the DCPF itself goes to great

lengths to secure claimants' sensitive and confidential information, and never aggregates or comingles the claimants' data, and why DCPF employees are permitted access to only the information that is necessary for them to do their jobs. *Id.*, ¶ 14. The Subpoena, however, seeks to allow the Debtors' expert to aggregate claimants' sensitive information into a single database that removes the pre-production anonymization. This poses an enormous security threat. The Court should quash the Subpoena and require Debtors to modify any future subpoenas to remove the request for all exposure-related fields and include the claimant protections required by the Court in its precedent cases.

## CONCLUSION

WHEREFORE, for the reasons set forth herein, the DCPF respectfully requests that this Court enter an order, substantially in the form of the order (“Proposed Order”) attached hereto, granting the DCPF’s Motion to quash or modify the Subpoena, and such other and further relief as the Court deems just and proper.

Dated: July 25, 2022      YOUNG CONAWAY STARGATT & TAYLOR, LLP

*/s/ Kevin A. Guerke*

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*Attorneys for Delaware Claims Processing Facility, LLC*

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this motion is in 14-point Times New Roman font and that it contains 3,651 words as determined by Microsoft Word, excluding the case caption, signature block, and this certificate.

Dated: July 25, 2022

/s/ Kevin A. Guerke  
Kevin A. Guerke (No. 4096)

**[Proposed] Order**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

In re: ) Misc. No.  
)  
ALDRICH PUMP, LLC, *et al.*, ) Underlying Case No. 20-30608 (JCW)  
) (U.S. Bankruptcy Court for the  
Debtors. ) Western District of North Carolina)

**[PROPOSED] ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, upon consideration of The Delaware Claims Processing Facility, LLC’s (the “DCPF”) (*I Motion to Quash or Modify Subpoena and (II) Joinder* (the “Motion”), and any response thereto, it is hereby ORDERED the Motion is GRANTED. The July 5, 2022 subpoenas seeking the production of documents from the Third Party Asbestos Trusts (“Trusts”) and the DCPF are QUASHED.

It is FURTHER ORDERED that any revised subpoena must:

- (i) limit the production of Trust Claimants’ data to a random sample of no more than 10% of the 12,000 mesothelioma victims at issue; (ii) authorize DCPF, or a neutral third party, to anonymize the Trust Claimants’ data before producing it; (iii) eliminate the production of the narrative response fields from the claim forms, and (iv) include additional protections consistent with the *Access Decision*.

BY THE COURT:

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USDJ.

**Exhibit A**

**Subpoena**

UNITED STATES BANKRUPTCY COURT

Western

District of

North Carolina

In re Aldrich Pump LLC, et al.

Debtor

(Complete if issued in an adversary proceeding)

Case No. 20-30608

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Delaware Claims Processing Facility c/o Officer, Director or Agent 1000 N. West St., Suite 300, Wilmington, DE 19801

(Name of person to whom the subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: The information ordered to be produced in the attached Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC (Dkt. 1240) (the "Order"), entered in the above-captioned case, limited to individuals identified in the "Matching Key" described in paragraph 6 of the Order, identifying individuals whose mesothelioma claims the Debtors or their predecessors resolved through settlement or verdict between January 1, 2005 and June 18, 2020. The Matching Key will be provided by Bates White via secure electronic transmission following service of this subpoena upon identification of the appropriate recipient.

PLACE Bates White LLC c/o Kelly Farnan, Richards, Layton & Finger, P.A. 920 North King St., Wilmington, DE 19801

DATE AND TIME See dates in Order

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE

DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 07/05/22

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Morgan Hirst Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Aldrich Pump LLC, et al., who issues or requests this subpoena, are:

Morgan Hirst, Jones Day, 110 N. Wacker Dr., Suite 4800, Chicago, IL 60606, mhirst@jonesday.com, (312) 269-1535

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

FILED & JUDGMENT ENTERED  
Steven T. Salata  
  
July 1 2022  
  
Clerk, U.S. Bankruptcy Court  
Western District of North Carolina



  
J. Craig Whitley  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

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In re : Chapter 11  
: :  
ALDRICH PUMP LLC, *et al.*,<sup>1</sup> : Case No. 20-30608 (JCW)  
: :  
Debtors. : (Jointly Administered)  
: :  

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**ORDER GRANTING MOTION OF THE DEBTORS  
FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE  
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

This matter coming before the Court pursuant to the *Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Dkt. 1111] (the "Motion"),<sup>2</sup> filed by Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), as debtors and debtors-in-possession in the above-captioned cases (together, the "Debtors"). Based upon a review of the Motion, the objections to the Motion filed by Paddock [Dkt. 1161] and the ACC [Dkt. 1162], the reply in support of the Motion filed by the

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<sup>1</sup> The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

Debtors [Dkt. 1182], the evidence presented, and the arguments of counsel at the hearing on this matter held on May 26, 2022 (the “May 26 Hearing”), the Court finds good cause for the relief granted herein and hereby ORDERS, ADJUDGES, AND DECREES as follows:

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Adequate notice of the Motion was given and it appears that no other notice need be given (except as set forth herein).

2. For the reasons stated on the record at the May 26 Hearing, which are incorporated herein by reference, the Motion is GRANTED on the terms and conditions set forth herein. All objections to the relief granted herein are OVERRULED, except to the extent stated by the Court on the record at the May 26 Hearing.

3. Upon entry of this Order, the Debtors are authorized to issue and serve subpoenas requesting the data described in paragraph 10 below on:

- a. the Manville Personal Injury Settlement Trust (“Manville Trust”);
- b. the Delaware Claims Processing Facility (“DCPF”) with respect to the following asbestos personal injury trusts whose claims are handled by DCPF (the “DCPF Trusts”):<sup>3</sup>
  - (i) Armstrong World Industries Asbestos Personal Injury Settlement Trust;
  - (ii) Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust;
  - (iii) Celotex Asbestos Settlement Trust;
  - (iv) DII Industries, LLC Asbestos PI Trust (Halliburton, Harbison-Walker Subfunds);

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<sup>3</sup> The Debtors also may subpoena the DCPF Trusts to effectuate this Order.

- (v) Federal Mogul U.S. Asbestos Personal Injury Trust (T&N, FMP, Flexitallic, Ferodo);
  - (vi) Flintkote Asbestos Trust;
  - (vii) Owens Corning Fibreboard Asbestos Personal Injury Trust (FB and OC Subfunds);
  - (viii) Pittsburgh Corning Corporation Asbestos PI Trust;
  - (ix) United States Gypsum Asbestos Personal Injury Settlement Trust; and
  - (x) WRG Asbestos PI Trust;
- c. Verus Claims Services, LLC (“Verus”<sup>4</sup> and, collectively with the Manville Trust and DCPF, the “Trust Producing Parties,” and each, individually, a “Trust Producing Party”) with respect to the following asbestos personal injury trusts whose claims are handled by Verus (the “Verus Trusts” and, collectively with the Manville Trust and the DCPF Trusts, the “Trusts”):<sup>5</sup>
- (i) ACandS Asbestos Settlement Trust;
  - (ii) Combustion Engineering 524(g) Asbestos PI Trust;
  - (iii) G-I Holdings Inc. Asbestos Personal Injury Settlement Trust;
  - (iv) GST Settlement Facility;
  - (v) Kaiser Aluminum & Chemical Corporation Asbestos Personal Injury Trust;
  - (vi) Quigley Company, Inc. Asbestos PI Trust;
  - (vii) T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust; and
  - (viii) Yarway Asbestos Personal Injury Trust.

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<sup>4</sup> To the extent that another entity is responsible for managing or otherwise processing claims for the Verus Trusts (as defined herein), including, without limitation, Verus, LLC, the term “Verus” shall include such entity.

<sup>5</sup> The Debtors also may subpoena the Verus Trusts to effectuate this Order.

4. On or after June 30, 2022, the Debtors are authorized to issue and serve a subpoena requesting the data described in paragraph 11 below on Paddock Enterprises, LLC ("Paddock").

5. The subpoenas seek evidence that is relevant and necessary to specific purposes in connection with the estimation of the Debtors' liability for current and future asbestos-related claims and the negotiation, formulation, and confirmation of a plan of reorganization in these cases, specifically: the determination of whether pre-petition settlements of mesothelioma claims provide a reliable basis for estimating the Debtors' asbestos liability; the estimation of the Debtors' asbestos liability; and the development and evaluation of trust distribution procedures for any plan of reorganization confirmed in these cases (collectively, such purposes, the "Permitted Purposes").

6. Bates White, in its capacity as a Retained Expert (as defined herein) for the Debtors, shall create a "Matching Key", which shall be a list (in electronic, text searchable format) of last names and Social Security numbers ("SSNs"), in separate fields, for claimants who asserted mesothelioma claims against the Debtors, Aldrich's predecessor, the former Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company (a former New Jersey Corporation) ("Old IRNJ"), or Murray's predecessor, the former Trane U.S. Inc. ("Old Trane") that were resolved by settlement or verdict and for whom the Debtors possess SSNs, as well as the corresponding last names and SSNs of any injured party if different from the claimant (the "Claimants"), as well as a unique numerical pseudonym (the "Claimant Pseudonym") assigned by Bates White and corresponding to each Claimant. On the same day the Debtors effect service of a subpoena authorized by this order (as applicable, the "Service Date"), Bates White shall provide the Matching Key to the Manville Trust, DCPF, Verus, and Paddock (each,

individually, a “Producing Party” and, collectively, the “Producing Parties”), as applicable. On the earliest Service Date following entry of this Order, Bates White shall also provide the Matching Key to Legal Analysis Systems, Inc. (“LAS”), and Ankura Consulting Group, LLC (“Ankura”), each in its capacity as a Retained Expert (as defined herein) for the ACC, and the FCR, respectively.

7. On or before the twenty-first (21st) day following the applicable Service Date,<sup>6</sup> DCPF, the Manville Trust, and Verus shall identify the claimants in the Trusts’ databases, and Paddock shall identify the claimants in any claims database within Paddock’s possession, custody, or control whose purpose is or was to track asbestos personal injury claims asserted against Paddock or Owens-Illinois, Inc. (the “Paddock Database”), whose injured party datafields or related claimant datafields match any (a) nine-digit SSN and (b) last name associated with a Claimant and who did not file their Trust claims *pro se* or, in the case of Paddock, who are listed in the Paddock Database as having a claim that was not asserted *pro se* (the “Matching Claimants”). In performing this match, the Producing Parties shall disregard punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name (“executor,” “deceased,” “dec,” etc.) but that may be contained in a last-name field, and shall also close spaces between parts of a name (e.g., “Van” or “De”) as necessary to ensure the most comprehensive initial match.

8. On or before the twenty-first (21st) day following the applicable Service Date, the Producing Parties shall also provide to counsel for the Debtors a list of the first and last names and SSNs of claimants in the Trusts’ databases or, in the case of Paddock, in the Paddock

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<sup>6</sup> If any deadline set forth in this Order falls on a Saturday, Sunday, or legal holiday, then such deadline shall be extended to the next day that is not a weekend or legal holiday.

Database, who match the nine-digit SSN of any Claimant but who (a) filed their Trust claims *pro se* or, in the case of Paddock, who appear in the Paddock Database as having asserted a claim *pro se*, (and identify such claimants on the list) or (b) in the view of the Producing Party do not match the last name associated with the Claimant (the “Meet and Confer List”). The Meet and Confer List shall be subject to the same confidentiality and use restrictions as Confidential Data (as defined herein). On or before the thirty-fifth (35th) day following the applicable Service Date, the Debtors and the Producing Parties shall meet and confer concerning whether any of the claimants on the Meet and Confer List should instead be classified as Matching Claimants. On or before the sixtieth (60th) day following the applicable Service Date, the Debtors (and the Debtors’ Retained Experts, as defined herein) shall permanently delete the Meet and Confer List and provide the Producing Parties with written confirmation of such deletion; provided, however, that such deletion deadline shall be extended for each day the meet and confer process between the Debtors, on the one hand, and the Producing Parties, on the other hand, continues after the sixtieth (60th) day following the applicable Service Date. In the event the Debtors and the Producing Parties cannot reach agreement regarding the status of any claimant on the Meet and Confer List, any of them may seek judicial resolution of such dispute.

9. Within seven (7) days of the identification of Matching Claimants in the Trusts’ databases (collectively the “Trust Matching Claimants,” and each, individually, a “Trust Matching Claimant”), whether pursuant to paragraph 7 or paragraph 8 above (and this paragraph 9, as applicable), the Trust Producing Parties shall notify the Trust Matching Claimants’ counsel of record that the relevant Trusts have received a subpoena from the Debtors. The notice from the Trust Producing Parties shall state that the data associated with the Trust Matching Claimants, as described in paragraph 10 below, will be produced if they do not file a motion to

quash the subpoena in the court of compliance for the Trust Producing Party by the later of the forty-ninth (49th) day following the applicable Service Date, or the fourteenth (14th) day following the provision of notice to their counsel of record by the Trust Producing Party. The Trust Producing Parties shall exercise reasonable efforts to provide actual notice to counsel of record in connection with the claim that is the subject of disclosure. If, despite their reasonable efforts, the Trust Producing Party is unable to provide actual notice to counsel of record for a Trust Matching Claimant, including without limitation because counsel of record is unreachable (for example, counsel of record has died, retired, or closed or dissolved his, her or its legal practice), they shall not be required to make a production of data relating to such Trust Matching Claimant (such Trust Matching Claimants being the “Unnoticeable Claimants”). The Trust Producing Parties shall provide the Debtors on or before the thirtieth (30th) day following the applicable Service Date with a list of such Unnoticeable Claimants identifying the counsel that filed the trust claim and counsel of record, if different, and the reasons such counsel of record is unreachable. Unnoticeable Claimants will be added to the Meet and Confer List to enable the Debtors and the Trust Producing Parties to discuss other means, if any, of providing notice to such Trust Matching Claimants. Any Trust Matching Claimant for whom the Debtors and the Trust Producing Party are able to agree on another means of providing notice will no longer be classified as Unnoticeable Claimants. As to all Trust Matching Claimants other than the Unnoticeable Claimants, if a motion to quash is filed by a Trust Matching Claimant in the court of compliance for the Trust Producing Party before the applicable deadlines set forth above in this paragraph 9, the Trust Producing Party will stay the production of any data relating to such Trust Matching Claimant until such motion is resolved. If a motion to quash is not filed by a Trust Matching Claimant in the court of compliance for the Trust Producing Party before the

applicable deadlines set forth above in this paragraph 9, the Trust Producing Party shall produce to the Debtors the data described in paragraph 10 below, relating to the Trust Matching Claimant (other than the Unnoticeable Claimants) on or before the seventh (7th) day after the date by which any motion to quash must be filed (as applicable, the “Trust Production Date”). As to all Matching Claimants identified in the Paddock Database (collectively, the “Paddock Matching Claimants” and each, individually, a “Paddock Matching Claimant”), Paddock shall produce to the Debtors the data described in paragraph 11 below, relating to the Paddock Matching Claimants: (a) for Paddock Matching Claimants identified pursuant to paragraph 7 of this Order, on or before the forty-ninth (49th) day following the Service Date applicable to Paddock; and (b) for any claimant on the Meet and Confer List that the Debtors and Paddock agree, after meeting and conferring, should be classified as a Paddock Matching Claimant pursuant to paragraph 8 of this Order, on or before the later of (i) the forty-ninth (49th) day following the Service Date applicable to Paddock and (ii) the seventh (7th) day following the agreement by the Debtors and Paddock that such claimant should be classified as a Paddock Matching Claimant (as applicable, the “Paddock Production Date”).

10. On or before the applicable Trust Production Date, DCPF, the Manville Trust, and Verus shall produce to Bates White (in electronic database format and, with respect to DCPF and Verus, separately for each Trust) the following information pertaining to each Trust Matching Claimant<sup>7</sup> (to the extent the relevant Trust databases contain such information) (the “Trust Anonymized Matched Production”):

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<sup>7</sup> For the avoidance of doubt, the terms “Trust Matching Claimant” and “Paddock Matching Claimant” referenced in paragraphs 10 and 11 of this Order include, as applicable, any claimant on the Meet and Confer List that the parties agree, after meeting and conferring, should be classified as a Trust Matching Claimant or Paddock Matching Claimant.

- a. Claimant Pseudonym;
- b. Claimant's law firm (with email and address of contact person);
- c. Date claim filed against Trust;
- d. Date claim approved by Trust, if approved;
- e. Date claim paid by Trust, if paid;
- f. If not approved or paid, status of claim; and
- g. All exposure-related fields,<sup>8</sup> including:
  - (i) Date(s) exposure(s) began;
  - (ii) Date(s) exposure(s) ended;
  - (iii) Manner of exposure;
  - (iv) Occupation and industry when exposed; and
  - (v) Products to which exposed.

11. On or before the applicable Paddock Production Date, Paddock shall produce to Bates White (in electronic database format) the following information pertaining to each Paddock Matching Claimant (to the extent the Paddock Database contains such information) (the "Paddock Anonymized Matched Production" and, together with the Trust Anonymized Matched Production, the "Anonymized Matched Productions"):

- a. Claimant Pseudonym;
- b. Claimant's law firm (with email and address of contact person);
- c. Date claim filed or otherwise asserted;
- d. Jurisdiction and state of filing (if applicable);

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<sup>8</sup> To the extent any names or SSNs appear in any exposure-related field, the Manville Trust, DCPF, and Verus may redact such names and SSNs prior to production of the Trust Anonymized Matched Production. In addition, prior to delivery of the Trust Anonymized Matched Production to the other Retained Experts, Bates White shall search for and permanently delete any such names and SSNs that may be inadvertently included in the Trust Anonymized Matched Production.

- e. Status of claim (e.g., settled, dismissed, plaintiff verdict, defense verdict, settled pending payment, open, etc.);
- f. Date claim resolved, if resolved;
- g. Date claim paid, if paid; and
- h. All exposure-related fields,<sup>9</sup> including:
  - (i) Date(s) exposure(s) began;
  - (ii) Date(s) exposure(s) ended;
  - (iii) Manner of exposure;
  - (iv) Occupation and industry when exposed; and
  - (v) Products to which exposed.

12. The Anonymized Matched Productions shall be used as follows:

a. Subject to and without in any way limiting the restrictions described in paragraph 13(d) below concerning access to the Matching Key (or information derived therefrom), Retained Experts and Authorized Representatives (each as defined below) of the Debtors, the ACC, the FCR, Trane Technologies Company LLC (“New Trane Technologies”) and Trane U.S., Inc. (“New Trane” and, together with the Debtors, New Trane Technologies, the ACC, and the FCR, the “Parties”), if otherwise entitled to such access pursuant to this Order, may obtain a copy of the Matching Key (or information derived therefrom) and the Anonymized Matched Productions.

b. The Retained Experts (as defined in paragraph 13(d)) shall use the Matching Key only to (i) match and combine the Anonymized Matched Productions, on a

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<sup>9</sup> To the extent any names or SSNs appear in any exposure-related field, Paddock may redact such names and SSNs prior to production of the Paddock Anonymized Matched Production. In addition, prior to delivery of the Paddock Anonymized Matched Production to the other Retained Experts, Bates White shall search for and permanently delete any such names and SSNs that may be inadvertently included in the Paddock Anonymized Matched Production.

claimant-by-claimant basis, with data from the Debtors' database or other sources;

(ii) provide sufficient identifying information from the Matching Key to an Authorized Representative to permit such Authorized Representative to match data from the Anonymized Matched Productions with and analyze individual claims (provided that such identifying information shall be limited to data corresponding to the specific individual claims in the Anonymized Matched Productions that are the subject of individual claims analysis, shall not contain data corresponding to claims that are not the subject of individual claims analysis, and shall not include data beyond that which is strictly necessary to effectuate the individual matches and analysis contemplated by this subdivision (ii)); (iii) verify the accuracy of any matching of data performed by another Authorized Representative; and (iv) defend challenges to the accuracy of any matching of data performed by an Authorized Representative, provided, however, that the Matching Key may be used in the manner described in (i), (ii), (iii), and (iv) only in connection with a Permitted Purpose. No Retained Expert or Authorized Representative shall use the Matching Key, or any portion or element thereof, for any other purpose, and shall not retain any other record of any kind linking the complete set of Claimant Pseudonyms in the Anonymized Matched Productions to the Matching Key.

c. To the extent a Retained Expert uses the Matching Key to match the Anonymized Matched Productions, on a claimant-by-claimant basis, to the Debtors' database or other sources of information, such Retained Expert shall delete from any resulting database the names and SSNs of injured parties and any related claimants (any such database being an "Anonymized Database").

13. The Matching Key (and any portion or extract thereof), the Anonymized Matched Productions, and any Anonymized Databases (together, the “Confidential Data”) shall be deemed “Confidential” pursuant to the *Agreed Protective Order Governing Confidential Information* [Dkt. 345] (the “Protective Order”). In addition to the protections in the Protective Order, the provisions in this Order (which will supersede the Protective Order in the event of any conflict) shall apply, including the following:

a. No Confidential Data shall be disseminated or disclosed, whether in written or electronic form, to any individual other than an individual (1) who has a clear need to know or access the data to perform work in connection with a Permitted Purpose and (2) who is (i) a lawyer, employee, agent, or representative of a law firm representing a Party in connection with these cases, (ii) a lawyer, paralegal, or legal support staff for a Party (and working in a legal role for the Party), or (iii) a Party’s Retained Expert (defined below) in these cases (collectively, the “Authorized Representatives”); provided, however, that the right of access to the Confidential Data hereby conferred on the foregoing persons shall be subject to the conditions precedent set forth in paragraph 13(b) immediately below.

b. Any person exercising a right of access to the Confidential Data shall thereby consent, and be deemed to consent, to be bound by this Order and shall thereby submit, and be deemed to submit, to the exclusive jurisdiction and venue of this Court for any dispute pertaining to the interpretation or enforcement of this Order. Without limitation of the generality of the foregoing sentence, as a condition of the right of access to the Confidential Data conferred by paragraph 13(a) above, each entity whose Authorized Representatives will receive access to the Confidential Data and any other

Authorized Representatives not associated with such an entity who will receive a right of access to the Confidential Data under paragraph 13(a) above in their individual capacity shall execute a joinder in the form annexed to this Order as Exhibit A.1 or Exhibit A.2. Exhibit A.1 shall be executed on the part of corporations, partnerships, companies, or firms whose Authorized Representatives will receive access to the Confidential Data in the performance of the entity's duties with respect to these bankruptcy cases. Exhibit A.2 shall be signed in an individual capacity by individuals (such as witnesses or self-employed experts) who receive a right of access to the Confidential Data under paragraph 13(a) above in their individual capacities, rather than as employees, agents, or representatives of an entity.

c. Any entity whose Authorized Representatives receive access to any Confidential Data and any Authorized Representative who receives access to any Confidential Data in their individual capacity as provided in this Order shall provide for physical, managerial, and electronic security thereof such that the Confidential Data are reasonably maintained and secured, ensuring that they are safe from unauthorized access or use during utilization, transmission, and storage. Any electronic transmission of the Confidential Data (including without limitation the Matching Key or any information derived therefrom) must be through a secure encrypted service, and not as an ordinary email attachment.

d. Notwithstanding anything in this Order to the contrary, access to the Matching Key shall be limited to (i) Bates White, LAS, and Ankura, each in its capacity as a retained claims expert for the Debtors, the ACC, and the FCR, respectively, and (ii) to the professional staff employed by such experts (each of (i) and (ii), a

“Retained Expert”), and (iii) such other persons as the Parties and the Producing Parties may agree to in writing from time to time; provided, however, that a Retained Expert shall be permitted to access the Matching Key only in connection with a Permitted Purpose and only if the Retained Expert has a clear need for such access. Any Retained Expert granted access to the Matching Key shall store the Matching Key in a separate, password-protected folder on Retained Expert’s network, accessible only to individuals authorized to access the Matching Key under this paragraph 13(d), and the same data security requirement shall apply to any other person granted access to the Matching Key under this paragraph 13(d). Any electronic transmission of the Matching Key must be through a secure encrypted service, and not as an ordinary email attachment.

e. No claimant-specific data from or derived from any Confidential Data shall be (i) offered as evidence in these bankruptcy cases, (ii) placed on the public record, or (iii) filed with this Court, the District Court, or any reviewing court (including under seal), absent further order by this Court, made after notice of hearing of a motion (with notice to the Producing Parties and claimants provided to their attorneys at the addresses contained in the data produced by the Producing Parties) authorizing such use. Such motion shall be brought by the movant no later than 30 days before such offer or use. The restrictions of this paragraph 13(e) also shall apply to any de-identified data (i.e., data that does not contain claimant-specific details) from or derived from any Confidential Data that could reasonably be used, by cross-referencing publicly available information or otherwise, to determine or reveal a claimant’s identity.

f. If, in connection with a motion pursuant to paragraph 13(e), or any response to such motion, a Party proposes to place any Confidential Data under seal, that

Party shall have the burden of making the showing required for sealing under applicable law.

g. In addition to, and without diminution of any other use restrictions in this Order, unless otherwise ordered by the Court, the Confidential Data shall be used only in connection with a Permitted Purpose.

h. Notwithstanding the foregoing, a Party may use in connection with a Permitted Purpose in this Court, or any reviewing court, summaries or analyses derived from the Confidential Data if such material is redacted so as not to reveal any identifying detail of any individual claimant, including, without limitation any of the identifying details subject to the restrictions of paragraph 13(e) above.

i. Likewise, nothing herein shall prohibit a Retained Expert with access to the Confidential Data from using or referring to the Confidential Data (in connection with a Permitted Purpose) in an expert report, preparing summaries of information for other experts to rely on, or testifying concerning the Confidential Data, so long as any such testimony, summary, or report does not reveal any identifying detail of any individual claimant, including, without limitation any of the identifying details subject to the restrictions of paragraph 13(e) above.

14. Pursuant to section 105(a) of the Bankruptcy Code, no Confidential Data shall be subject to subpoena or otherwise discoverable by any person or entity other than the Parties.

15. Within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the "Deletion Date"), the Parties and any Authorized Representatives (and any of their associated entities), including,

without limitation, any Retained Experts, who received access to or who possess any Confidential Data or any excerpts thereof, including without limitation any person or entity that executed a joinder in the form annexed to this Order as Exhibit A.1 or Exhibit A.2, shall permanently delete such Confidential Data and any excerpts thereof, without in any way retaining, preserving, or copying the Confidential Data or any excerpts thereof; provided, however, that any such data stored on a Party's or Authorized Representative's back-up computer system for the purpose of system recovery or information recovery may be deleted after this period when the applicable back-up copies are deleted in the ordinary course of such Party's or Authorized Representative's operations.

16. Within 30 days after the Deletion Date, the Parties and any Authorized Representatives (and any of their associated entities), including, without limitation, any Retained Experts, who received access to or who possess any Confidential Data or any excerpts thereof, shall file a declaration made pursuant to 28 U.S.C. § 1746, affirming that he, she or it: (a) used any Confidential Data solely for the Permitted Purposes authorized by this Order; (b) did not share any Confidential Data with any other person or entity except as authorized by this Order or another court order; (c) complied with the restrictions of this Order concerning disclosure of claimant-specific data, including, without limitation, the provisions in paragraph 13(g); and (d) complied with the requirements in paragraph 15 concerning the deletion of any Confidential Data.

17. Subject to the requirements of paragraphs 12 and 13 above, nothing in this Order shall restrict any person's right to make lawful use of:

- a. any discrete data set or materials that came into the possession of such person lawfully and free of any confidentiality obligation;
- b. any exhibit or other document that is placed on the public record in these bankruptcy cases in conformity with this Order, or any data

or material that is or becomes publicly available other than by a breach of this Order; or

- c. any discrete data set or materials developed by or on behalf of such person independent of any Confidential Data.

18. For the avoidance of doubt, nothing in this Order shall prohibit any Party from seeking discovery in connection with a Permitted Purpose with respect to any particular Claimants, including where such Claimants are selected using knowledge gained from the discovery ordered herein, so long as such discovery requests do not disclose any information that is derived solely from or contained exclusively in the Anonymized Matched Productions.

19. The Debtors shall reimburse the Producing Parties for their reasonable and documented expenses in complying with this Order and the subpoenas. The Producing Parties shall have no liability in connection with their compliance with the subpoenas described in this Order.

20. This Court shall retain exclusive jurisdiction to interpret, modify, apply, and enforce this Order to the full extent permitted by law.

This Order has been signed electronically.  
The Judge's signature and Court's seal appear  
at the top of the Order.

United States Bankruptcy Court

**EXHIBIT A.1 TO ORDER GRANTING MOTION OF THE  
DEBTORS FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE  
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

**Re: *In re Aldrich Pump LLC, et al.*  
Case No. 20-30608 (JCW)  
United States Bankruptcy Court  
for the Western District of North Carolina**

***Instructions:*** This joinder must be executed by an authorized representative of any corporation, partnership, company, or firm required to execute a joinder pursuant to paragraph 13(b) of the above-referenced Order.

**A C K N O W L E D G E M E N T**

On behalf of my employer, \_\_\_\_\_ [write in name of employer] ("Employer"), I and Authorized Representatives of Employer may be given access to Confidential Data. The Confidential Data constitutes confidential and protected information in connection with the above-referenced *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* (the "Order"), entered by the United States Bankruptcy Court for the Western District of North Carolina (the "Bankruptcy Court") in the above-referenced chapter 11 cases. Capitalized terms used in this Acknowledgment but not otherwise defined herein shall have the meanings ascribed to them in the Order.

I have read the Order on behalf of Employer as part of performing its duties to \_\_\_\_\_ [name of the Party or other client for whom Employer is rendering services in connection with the bankruptcy case]. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to the Confidential Data. By my signature below, Employer, for itself and all of its Authorized Representatives who receive access to any Confidential Data, hereby accepts and agrees to be bound by, and to abide by, those conditions, obligations, and restrictions. On Employer's behalf, I represent that Employer has made, or will make the Order and this joinder known in advance to all of Employer's Authorized Representatives who are to receive access to any Confidential Data, so that they will be on notice of Employer's duties in connection therewith and their own responsibilities to ensure compliance with the Order.

Employer and its Authorized Representatives will not disclose any Confidential Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. They will not use any Confidential Data except in connection with a Permitted Purpose (as defined in the Order).

Pursuant to paragraph 15 of the Order, within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the "Deletion Date"), Employer will destroy any Confidential Data. Within 30 days after the Deletion Date, Employer will file a declaration in compliance with paragraph 16 of the Order.

Employer and I (in my individual capacity and my capacity as a representative of Employer) consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of the Order and this joinder.

I represent that I am duly authorized to execute this joinder on behalf of Employer.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dated: \_\_\_\_\_  
Relationship to Employer: \_\_\_\_\_

**EXHIBIT A.2 TO ORDER GRANTING MOTION OF THE  
DEBTORS FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE  
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

**Re: *In re Aldrich Pump LLC, et al.*  
Case No. 20-30608 (JCW)  
United States Bankruptcy Court  
for the Western District of North Carolina**

***Instructions:*** This joinder must be executed by any individual required to execute a joinder in his or her individual capacity pursuant to paragraph 13(b) of the above-referenced Order.

**ACKNOWLEDGEMENT**

I may be given access to certain confidential and protected information in connection with the above-referenced *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* (the "Order"), entered by the United States Bankruptcy Court for the Western District of North Carolina (the "Bankruptcy Court") in the above-referenced chapter 11 cases.

I have read the Order. Capitalized terms used in this joinder but not otherwise defined herein shall have the meanings ascribed to them in the Order. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to the Confidential Data and hereby accept and agree to be bound by, and to abide by, those conditions, obligations, and restrictions.

I will not disclose any Confidential Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. I will not use any Confidential Data except in connection with a Permitted Purpose (as defined in the Order).

Pursuant to paragraph 15 of the Order, within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the "Deletion Date"), I will destroy any Confidential Data. Within 30 days after the Deletion Date, I will file a declaration in compliance with paragraph 16 of the Order.

I consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of this Order and this joinder.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dated: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 2022, the *Delaware Claims Processing Facility, LLC's*

*(I) Motion to Quash or Modify Subpoena and (II) Joinder* was caused to be served as indicated

upon the following parties:

Morgan R. Hirst  
Jones Day  
110 North Wacker Drive, Suite 4800  
Chicago, IL 60606  
mhirst@jonesday.com  
(Electronic Mail and First Class Mail)

Kevin Gross  
Kelly E. Farnan  
Richards, Layton & Finger, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801  
gross@rlf.com  
farnan@rlf.com  
(Electronic Mail and Hand Delivery)

Dated: July 26, 2022

/s/ Kevin A. Guerke  
Kevin A. Guerke (No. 4096)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

In re: ) Misc. No.  
)  
ALDRICH PUMP, LLC, *et al.*, ) Underlying Case No. 20-30608 (JCW)  
) (U.S. Bankruptcy Court for the  
Debtors. ) Western District of North Carolina)

**DECLARATION OF RICHARD WINNER**

1. I am the Chief Operating Officer (“COO”) of the Delaware Claims Processing Facility (“DCPF”). I make this declaration in support of DCPF’s Motion to Quash (“Motion”) Aldrich Pump LLC, *et al.*’s (“Debtors”) subpoena (“Subpoena”). The statements in this declaration are based on my personal knowledge or information collected at my direction.

**Introduction**

2. DCPF was formed in 2006 to administer and process asbestos-related personal injury claims on behalf of multiple personal injury settlement trusts (the “DCPF Client Trusts”). The DCPF Client Trusts are entities established pursuant to Section 524(g) of the Bankruptcy Code, and are charged with ensuring that claimants’ asbestos-related personal injury claims are processed and, when appropriate, settled in accordance with bankruptcy court directives.

3. DCPF processes claims on behalf of the DCPF Client Trusts pursuant to the terms of contracts that it has entered into with each of them. As a contractual

counterparty of the DCPF Client Trusts, DCPF is legally and organizationally distinct from them.

4. The DCPF Client Trusts have assumed the asbestos-related liabilities of the debtor companies, as set forth in the respective plans of reorganization. Certain of the DCPF Client Trusts, as noted below, have sub-funds or multiple entities. Claimants can make claims against some or all of the entities or sub-funds, and each such claim is processed as if made against an entirely separate entity. Altogether, DCPF processes claims for fifteen client trusts and related entities. They are:

- a. Armstrong World Industries Asbestos Personal Injury Settlement Trust;
- b. Babcock & Wilcox Asbestos Personal Injury Settlement Trust;
- c. Celotex Asbestos Settlement Trust;
- d. DII Industries, LLC Asbestos PI Trust;
  - i. Two entities: Halliburton & Harbison-Walker;
- e. Federal Mogul Asbestos Personal Injury Trust;
  - i. Four entities: Turner & Newall, Flexitallic Gasket Company, Ferodo America Inc., and Federal Mogul Products Inc.;
- f. The Flintkote Asbestos Trust;
- g. Owens Corning/Fibreboard Asbestos Personal Injury Trust;

- i. Two sub-funds: Owens Corning & Fibreboard;
  - h. Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust;
  - i. United States Gypsum Asbestos Personal Injury Settlement Trust; and
  - j. WRG Asbestos PI Trust
5. The Debtors seek information from all fifteen of the foregoing DCPF Client Trusts and sub-funds through the Subpoena.

#### **Confidentiality and Claim Submissions**

6. Each of the DCPF Client Trusts has established trust distribution procedures (“TDPs”) for processing and evaluating claims on an impartial, first-in-first-out basis, with the intention of paying all claimants over time in as equal a share as possible of their claims’ values. As examples, attached hereto as **Exhibits A – C** are true and correct copies of the TDPs for Federal Mogul Asbestos Personal Injury Trust, Babcock & Wilcox Asbestos Personal Injury Settlement Trust and The Flintkote Asbestos Trust. These TDPs, as well as the TDPs for all of the other DCPF Client Trusts, are available on their respective websites.

7. The DCPF Client Trusts’ TDPs require claimants to provide them (through DCPF, at the DCPF Client Trusts’ direction) detailed information to substantiate and value their claims. This information is highly sensitive, personal, and confidential. It includes, among other things, claimants’ personally identifiable

information (“PII”), such as their names, social security numbers (“SSNs”) and dates of birth; other personal demographic information about claimants, such as their dates of death (if applicable); and medical records, which can detail sensitive personal information unrelated to asbestos injuries (e.g., a claimant’s history of drug and alcohol abuse, HIV status, sexual or emotional dysfunction) and other private health information. Claimants’ submissions to the DCPF Client Trusts also often include confidential information concerning (i) claimants’ finances or (ii) their spouses and dependents (e.g., descriptions of a child’s mental and/or physical disabilities or drug addictions).

8. Given the extraordinary sensitivity of this information, it is essential that claimants trust that DCPF will take all appropriate measures to protect their claims submissions. If claimants lose faith in DCPF’s efforts or ability to maintain the security of this information, they and their counsel may become unwilling to provide the sensitive, private information needed to evaluate their claims. This in turn could interfere with the DCPF’s business operations.

9. Although DCPF is the custodian of the claimant data for the DCPF Client Trusts, the data belong to the DCPF Client Trusts. The duty of each of the DCPF Client Trusts to protect the confidentiality of claimant information is memorialized in the bankruptcy plans of reorganization and related court-approved documents that created the trusts (e.g., the DCPF Client Trusts’ TDPs). For example

in the TDP of the Federal Mogul Asbestos Personal Injury Trust, attached hereto as **Exhibit A**, the trust undertakes to treat all submissions by claimants of claim materials “as made in the ordinary course of settlement discussions between the holder and the [trust] and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including, but not limited to, those directly applicable to settlement discussion” and will “preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only with the permission of the holder.” *See*, Exhibit A, § 6.5.

10. For these reasons and others, DCPF regards all claimant information as highly confidential and sensitive. Protecting the security of these sensitive data is DCPF’s highest operational priority and therefore DCPF has made significant investments in data security measures, many of which are proprietary.

11. For example, all claimant data sought by the Subpoena are maintained on DCPF’s proprietary claims management platform, “Trust Online.” DCPF developed Trust Online to facilitate the secure transmission, management, review, and retention of confidential claimant data. Rather than pass claimant data through various systems, Trust Online allows for the data to be centrally maintained, thus eliminating the security risks that arise from subsequent data transfers. Claimants’ legal representatives submit their clients’ claims electronically through Trust Online’s secure data portal. They can also monitor the status of their clients’ claims

as such claims are processed. DCPF employees are also able to review and evaluate these claims through Trust Online.

12. DCPF implemented Trust Online in 2006. Since then, DCPF has continued devoting substantial resources to enhancing and updating Trust Online to meet DCPF's own needs and the needs of the DCPF Client Trusts, claimants, and their representatives.

13. Data security enhancements are a core component of these regular updates. Data security technology is constantly evolving, and DCPF routinely updates Trust Online to implement state-of-the-art data security measures. DCPF deploys security updates to Trust Online at least quarterly, and often more frequently.

14. Trust Online's security measures are comprehensive. Claimant data are protected by a series of confidential and proprietary security measures. All access to these data is monitored, and access limitations are stringent. DCPF employees are permitted to access only the information that is necessary for them to do their jobs (access levels are determined on an employee-by-employee basis, depending on the employee's role), and DCPF maintains supplemental security protocols to prevent any misuse of claimant information. For example, DCPF computers used to access Trust Online maintain endpoint security that includes local firewalls and virus protection, among other things.

15. Stringent access restrictions also apply to the law firms that submit data through Trust Online. For example, only credentialed law firms may access Trust Online to submit claims, and I must personally approve every new law firm that applies to be an electronic claim filer through Trust Online.

16. DCPF takes still further security precautions to protect claimants' SSNs.<sup>1</sup> SSNs are never stored with, or correlated with, any other claimant data in the Trust Online database. Claimants' SSNs are maintained entirely independently in a restricted and encrypted location that contains only the SSNs and correlated hashed values (with no other claimant data). In addition, all incoming and outgoing email through DCPF's servers is automatically scanned for SSNs, and any incoming message or attachment containing an unencrypted SSN is quarantined (for inbound email) or rejected (for outbound email).

17. DCPF does not combine or commingle one DCPF Client Trust's data with any other DCPF Client Trust's data. This restriction on commingling is in the DCPF's claims processing agreements with the DCPF Client Trusts.

18. DCPF has never sold or licensed access to any claimant information. Nor, to my knowledge, has any Delaware Trust.

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<sup>1</sup> Because they are the single best unique identifier for each individual claimant (although they are not sufficient to conclusively match claimant records), SSNs are essential claims information, and required to be submitted for all U.S. citizens' claims where the asbestos exposure took place within the United States.

19. In sum, DCPF is keenly aware that it holds extraordinarily sensitive information, and it takes great pride in its responsible management of that information. DCPF is also aware that such information is highly susceptible to abuse and exploitation if it is disclosed improperly, including as the result of a data breach, and its data security measures are informed by that knowledge.

**Disclosure of Information Pursuant to Subpoenas**

20. As noted, claimant data submitted to DCPF belongs to the DCPF Client Trusts. Accordingly, DCPF instructs requesting parties that serve subpoenas for claimant information to direct such subpoenas to the DCPF Client Trust against whom the claimant at issue has asserted a claim.

21. Whenever data submitted to DCPF may be subject to production pursuant to a subpoena seeking claimants' records, the DCPF Client Trusts require that written notice of the subpoena be provided to claimants' counsel. *See e.g.* Ex. A § 6.5; Ex. B § 6.5; Ex. C § 6.5. The claimants' counsel are then afforded a reasonable period to take protective action before any production is made, and if a claimant moves to modify or quash the subpoena, any production is deferred pending the resolution of that motion. If any data or records are ultimately produced, claimants' SSNs, and certain other identifying information, are redacted from the production.

22. The volume of data sought by mass subpoenas in litigation or

bankruptcy matters (including the data sought by the Subpoena) and the centralized, easily searchable manner in which such data must be produced creates confidentiality concerns that subpoenas in individual actions do not. DCPF is also aware that the use of claimant information in individual litigations generally varies significantly from the use of information in mass litigations. The former involve the adjudication of legal and factual issues on an individualized basis, with a court making findings specific to each claimant. By contrast, mass adjudications entail fact-finding as to representative claimants, and the extensive use of sampling and other statistical techniques to resolve legal and factual issues on an aggregate basis.

23. Because of the highly sensitive nature of the claimant data it maintains, DCPF opposes the disclosure of data on a wholesale basis in mass litigations when only a random, anonymized sampling of such data is likely sufficient.

24. When validly served with a mass subpoena seeking information about thousands or tens of thousands of claimants, the DCPF Client Trusts attempt to work with the party seeking disclosure to (a) impose meaningful limitations on the use and disclosure of PII, and (b) craft a sampling protocol that satisfies that party's valid need for disclosure but limits disclosure of claimant data and documents that will not be used by the requesting party for the purpose for which disclosure is sought.

25. Complying with the Subpoena will create security risks DCPF has spent years working to minimize through its internal security procedures and protocols. In

spite of protections outlined in the Subpoena, the mere fact that the information will be transferred and stored on different platforms by different parties increases the risk of a data breach and misuse of the data, including the potential for identity theft or exploitation of vulnerable asbestos claimants, particularly the senior claimants. Therefore, any recipient should be precluded from pooling sensitive personal claims data from DCPF Client Trusts into a centralized database that is accessible to countless individuals. Any production of sensitive, private and confidential data should be limited to the production of only a random sample of claims to significantly limit the scope of disclosure and the review burden on DCPF. Any production should also require anonymization, confidentiality, and other use restrictions.

26. Selecting a randomized sampling of claimants, such as that which was ordered in the *Bestwall* case, mitigates risk and burden on DCPF. The Debtors purported purpose described in the Subpoena can be established through a representative sample, and sampling will help ease the burden on DCPF to review, redact and produce all of the information and mitigate the risk of a data breach or misuse of sensitive confidential information.

27. Producing information in response to the “[a]ll exposure-related fields” requested in the court order attached to the Subpoena will result in disclosure of sensitive PII unless DCPF manually reviews and redacts such information.

Narrowing that category of requested information to exclude all fields in the claim submission form in which claimants have the ability to include narrative responses will significantly reduce the risk that sensitive, personal information is produced. These narrative response fields that claimants complete can contain SSNs, names and other highly sensitive information. The narrative fields at issue are: (i) the occupational exposure field where claimants describe how they were exposed to asbestos; (ii) the debtor's exposure field where claimants describe how they were exposed to the debtor's product; (iii) the secondary exposure field where claimants describe secondary exposure from other persons; and (iv) the product exposure field where claimants describe the debtor's products to which they were exposed. Excluding production of data from these narrative fields in the claim forms will allow the Debtors to still obtain the information they request, while significantly eliminating the risk of sensitive information being disclosed or misused and eliminates DCPF's need to manually review each exposure record submitted in each claim.

28. Anonymizing disclosure of sensitive confidential information as described in the Subpoena provides insufficient protection because anyone with the Matching Key will be able to de-anonymize the data. The Subpoena permits various parties and party representatives to have access to the Matching Key and Trust Anonymized Matched Production, including Bates White, Manville Trust, Verus,

Paddock, Legal Analysis Systems, Inc., and Ankura Consulting, LLC.<sup>2</sup> In addition innumerable representatives of the Debtors, the ACC, the FCR, Trane Technologies Company LLC and Trane U.S., Inc. will also have access to the Matching Key and Anonymized Matched Production. The data can then easily be de-anonymized, combined and pooled into master databases. The process permitted in the Subpoena will defeat the purpose of anonymization and DCPF's extensive security measures in place to limit access and risk of a data breach.

29. Responding to the Subpoena will also impose a significant burden on DCPF as a business for two reasons. First, this production has already taken up a significant amount of DCPF employees' time. After completing a preliminary database search over a series of days for more than 12,000 claimants, almost 150,000 potential relevant claims came up. Any claim that does not match exactly on SSN and last name then has to be manually reviewed to determine if the claim should be considered a match under the Subpoena. DCPF would then be compelled to meet and confer with the Debtors to receive additional information on any hits that came up as inconclusive. The Subpoena then requires DCPF to send notice to the legal counsel of any claimants who were identified in the search if any of their personal information could potentially be produced. This process is time consuming and burdensome and significantly detracts from DCPF's other operations. Second, once

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<sup>2</sup> As defined in the Subpoena.

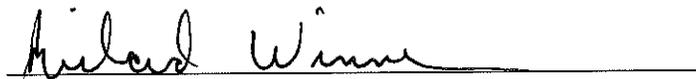
DCPF produces the sensitive information, it is outside of DCPF's control, no longer protected by DCPF's security measures, and it becomes impossible for DCPF to maintain its obligations and assurances to the claimants that it will protect their personal information. If there is then a data breach, the current and future claimants could lose faith in DCPF's ability to handle their data, which in turn could compel the DCPF Client Trusts (and any future similar trusts) to seek out other platforms to administer their claimant submissions.

### **Unnoticeable Claimants**

30. In the course of responding to the Subpoena, one of the other challenges DCPF faces is the inability, despite its best efforts, to notify counsel for some claimants that their clients' private information is subject to disclosure (unless counsel files a timely motion to quash). Generally, this problem arises with old or withdrawn claims and results from attorney's retiring, dying, or closing their firms without designating any successor counsel for their clients. These claimants with unnoticeable counsel are effectively *pro se*.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 25, 2022 at Wilmington, Delaware.



Richard Winner

**Exhibit A**

**FEDERAL-MOGUL**  
**ASBESTOS PERSONAL INJURY TRUST**  
**DISTRIBUTION PROCEDURES**

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## **FEDERAL-MOGUL**

### **ASBESTOS PERSONAL INJURY TRUST DISTRIBUTION PROCEDURES**

The Federal-Mogul Asbestos Personal Injury Trust Distribution Procedures (“U.S. TDP”) contained herein provide for resolving in accordance with the terms of the Federal-Mogul Fourth Amended Joint Plan of Reorganization, as such Plan may be amended, modified or supplemented from time to time (“Plan”) and the Federal-Mogul Asbestos Personal Injury Trust Agreement (“U.S. Asbestos Trust Agreement”) all Asbestos Personal Injury Claims (as defined in the Plan and hereinafter for all purposes of this U.S. TDP referred to as “Asbestos Trust Claims”) caused by exposure to asbestos-containing products for which Federal-Mogul and/or its wholly owned direct or indirect subsidiaries (Turner & Newell (“T&N”) and its direct or indirect U.S. subsidiaries, Gasket Holdings Inc. (“Flexitallic”) and Ferodo America Inc. (“Ferodo”) (collectively the “T&N Entities”); Federal-Mogul Products Inc. (“FMP”); Felt Products Mfg. Co. (“Fel-Pro”); and Federal-Mogul’s former division Vellumoid (“Vellumoid”); and their successors, and assigns (each a “Federal-Mogul Entity,” and collectively the “Federal-Mogul Entities”) have legal responsibility under applicable tort law, as provided in and by the Plan and the U.S. Asbestos Trust Agreement.

The Plan and U.S. Asbestos Trust Agreement establish the Federal-Mogul Asbestos Personal Injury Trust (the “U.S. Asbestos Trust”). The Trustees of the U.S. Asbestos Trust (“Trustees”) shall implement and administer this U.S. TDP in accordance with the U.S. Asbestos Trust Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan and the U.S. Asbestos Trust Agreement.

## SECTION I

### Introduction

**1.1. Purpose.** This U.S. TDP has been adopted pursuant to the U.S. Asbestos Trust Agreement and the Plan. It is designed to provide fair, equitable, and substantially similar treatment for all Asbestos Trust Claims that may presently exist or may arise in the future; provided, however, that the provisions of this U.S. TDP set forth below are in all respects subject to the following sections 1.1(a).

**1.1(a) Treatment of CVA Asbestos Claims.** As set forth in Sections 4.2 and 4.5 of the Plan, the U.S. Asbestos Trust shall assume liability for all Asbestos Personal Injury Claims, including, without limitation, CVA Asbestos Claims. The U.S. Asbestos Trust, however, shall direct all CVA Asbestos Claims to the U.K. Asbestos Trust for resolution in accordance with the Principal CVAs. The treatment of and payments to the holders of CVA Asbestos Claims by the U.K. Asbestos Trust in accordance with the Principal CVAs shall be the sole treatment and payments available to the holders of CVA Asbestos Claims. Such treatment and payments shall be deemed to be treatment and payments by the U.S. Asbestos Trust, and the holders of CVA Asbestos Claims shall have no other rights under this U.S. TDP or against the U.S. Asbestos Trust or entitlement to any direct payments from the U.S. Asbestos Trust in respect of such CVA Asbestos Claims.

**1.2. Interpretation.** Except as may otherwise be provided below, nothing in this U.S. TDP shall be deemed to create a substantive right for any claimant. The rights and benefits, if any, provided herein to holders of Asbestos Trust Claims shall vest in such holders as of the Effective Date.

## SECTION II

### Overview

#### **2.1. U.S. Asbestos Trust Goals and Subfunds.**

**2.1(a) Goals.** The goal of the U.S. Asbestos Trust is to treat all claimants equitably. To achieve this goal, the U.S. Asbestos Trust creates four (4) separate subfunds (each a “U.S. Asbestos Trust Subfund” and collectively the “U.S. Asbestos Trust Subfunds” or “Subfunds”), which are described below. This U.S. TDP furthers the goal of the U.S. Asbestos Trust by setting forth procedures for processing and paying all Asbestos Trust Claims (other than CVA Asbestos Claims) from four (4) of the respective Subfunds on an impartial, first-in-first-out (“FIFO”) basis, with the intention of paying all claimants over time as equivalent a share as possible of the value of their claims based on historical values for substantially similar claims in the relevant tort system.<sup>1</sup> To this end, the TDP establishes for U.S. TDP Valued Claims, as defined below, a schedule of eight asbestos-related diseases (“Disease Levels”), seven of which have presumptive medical and exposure requirements (“Medical/Exposure Criteria”), specific liquidated values (“Scheduled Values”), anticipated average values (“Average Values”) and caps on their liquidated values (“Maximum Values”). the Disease Levels, Medical/Exposure Criteria, Scheduled Values, Average Values, and Maximum Values, which are set forth in Section 5.3 below, have all been selected and derived with the intention of achieving a fair allocation of the U.S. Asbestos Trust's funds as among claimants suffering from different disease processed in light of the best available information considering the settlement history of the Federal-Mogul Entities and the rights claimants would have in the tort system absent the bankruptcy.

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<sup>1</sup> As used in this U.S. TDP, the phrase “in the tort system” shall not include claims asserted against a trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) and/or section 105 of the Bankruptcy Code or any other applicable law.

**2.1(b) U.S. Asbestos Trust Subfunds.** As provided above, the U.S. Asbestos Trust shall establish four U.S. Asbestos Trust Subfunds pursuant to the Plan and the U.S. Asbestos Trust Agreement to compensate holders of claims against the U.S. Asbestos Trust. One such subfund shall be the T&N Subfund, which shall process, liquidate and make payments pursuant to this U.S. TDP to holders of T&N Claims, Flexitallic Claims and Ferodo Claims (defined below) as provided in Article IV of the Plan (collectively “T&N Subfund Claims”). The other three U.S. Asbestos Trust Subfunds which are subject to the terms of this U.S. TDP shall be the FMP Subfund, the Fel-Pro Subfund and the Vellumoid Subfund. The FMP Subfund shall pay FMP Claims from proceeds of insurance available to pay FMP claims. Any payments in respect of Fel-Pro Claims and Vellumoid Claims shall be subject to the terms of the CIP Agreement.

A claimant may assert separate Asbestos Trust Claims against more than one U.S. Asbestos Trust Subfund based on exposure to asbestos or asbestos-containing products manufactured or distributed by more than one of the Federal-Mogul Entities identified above (“Multiple Exposure Claims”). A claimant may also assert separate Multiple Exposure Claims against the T&N Subfund based on exposure to asbestos or asbestos-containing products produced or manufactured by more than one T&N Entity; provided, however, that Multiple Exposure Claims against the T&N Subfund must be based on separate and distinct exposure to asbestos or asbestos-containing products produced, manufactured, marketed, distributed, sold or utilized by each individual T&N Entity against which an Asbestos Trust Claim is filed. To the extent any U.S. Asbestos Trust Subfund or Subfunds have separate liabilities to a single claimant based on Multiple Exposure Claims, each such Subfund shall pay the claimant the liquidated

value of the separate claim or claims for which it is liable, subject to the applicable Payment Percentage, Maximum Annual Payment, Maximum Available Payment and Claims Payment Ratio limitations, if any, set forth below.

**2.1(b)(1) T&N Subfund.**

As provided in the Plan and U.S. Asbestos Trust Agreement, the T&N Subfund shall be liable for all T&N Subfund Claims, which are all Asbestos Trust Claims for which T&N and/or its subsidiaries or affiliates have legal responsibility, other than CVA Asbestos Claims.

For T&N Subfund Claims based on exposure to asbestos or asbestos-containing products within the U.S. or Canada, this U.S. TDP establishes an Expedited Review Process involving eight (8) separate asbestos-related Disease Levels as well as three (3) separate matrices of liquidated values for T&N Claims, Flexitallic Claims and Ferodo Claims, respectively, based on these Disease Levels. These matrices are set forth in Section 5.3(a)(1)(C) and Section 5.3(a)(3) below. T&N Subfund Claims based on exposure to asbestos or asbestos-containing products anywhere in the rest of the world (i.e., outside the U.S. or Canada) shall be treated as “Foreign Claims,” and shall be liquidated and paid solely pursuant to the Individual Review Process as provided in Section 5.3(a)(2).

The U.S. Asbestos Trust shall liquidate and pay claimants holding T&N Subfund Claims the liquidated value of their Asbestos Trust Claims solely from the assets of the T&N Subfund pursuant to the provisions in this U.S. TDP including the applicable Payment Percentages described in Section 4.2 below (hence, such claims, together with FMP Claims, are referred to as “U.S. TDP Valued Claims”).

All provisions in this U.S. TDP and the Plan regarding treatment of T&N Subfund Claims shall be read in accordance with and subject to the provisions of this Section 2.1(b)(1), Section IX below and Article IV of the Plan.

**2.1(b)(2) Insured U.S. Asbestos Trust Subfunds.** The other three U.S. Asbestos Trust Subfunds that are subject to the terms of this U.S. TDP are the FMP Subfund, the Fel-Pro Subfund and the Vellumoid Subfund. The FMP Subfund shall be liable for Asbestos Trust Claims based on exposure within or outside the U.S. to asbestos-containing products produced, marketed, distributed, sold or utilized by FMP, including asbestos-containing products manufactured or distributed by its predecessors, the Wagner Electric Corporation and Moog Automotive Inc., Abex Corporation and Pneumo Abex LLC and their predecessors (collectively “FMP Claims”). The Fel-Pro Subfund shall be liable only for Fel-Pro Claims and the Vellumoid Subfund shall be liable only for Vellumoid Claims and such other Asbestos Trust Claims that are assertable directly against Federal-Mogul Corporation, if any. The Fel-Pro Subfund and the Vellumoid Subfund shall consist primarily of (i) rights under the CIP Agreement (ii) rights under Asbestos Insurance Policies other than those issued by the Insurer Parties (as that term is defined in the CIP Agreement), and subject to the terms and conditions of the CIP Agreement; and (iii) funds required to be held by the Trust pursuant to the terms and conditions of the CIP Agreement. Fel-Pro Claims and Vellumoid Claims shall be handled pursuant to Section 5.3(b) of this U.S. TDP and the CIP Agreement.

Claims payable from the FMP Subfund (other than Pneumo Asbestos Claims against FMP) shall also be treated as U.S. TDP Valued Claims inasmuch as they will be processed, liquidated and paid pursuant to the provisions of this U.S. TDP, including the provisions relating to the applicable Payment Percentage described in Section 4.2 below.

Accordingly, holders of such FMP Claims shall be eligible to elect to have their claims liquidated pursuant to the U.S. Asbestos Trust's Expedited Review Process, in which case the claims shall be eligible for the matrix values for FMP Claims set forth in Section 5.3(a)(3) below. Alternatively, holders of such FMP Claims may elect the U.S. Asbestos Trust's Individual Review Process as set forth below. Holders of Pneumo Asbestos Claims against FMP will not only be subject to the Individual Review Process but it is anticipated that the U.S. Asbestos Trust will contest its liability with respect to such claims on the ground that the Plan B Settlement has extinguished FMP's and the U.S. Asbestos Trust's liability for such claims.

Fel-Pro and Vellumoid Claims shall be liquidated in the tort system pursuant to Section 5.3(b) below, and the terms and conditions of the CIP Agreement. The provisions of this U.S. TDP concerning TDP Valued Claims shall not apply to Fel-Pro Claims, Vellumoid Claims, or Federal-Mogul Asbestos Claims (as defined in the CIP Agreement) except as specifically set forth herein. However, the U.S. Asbestos Trust may in appropriate circumstances, with the approval of the U.S. Asbestos Trust Advisory Committee (the "TAC") and the Legal Representative for Future Asbestos Claimants ("Future Claimants' Representative"), and with the prior express written consent of the Lead Insurer, as that term is defined in the CIP Agreement ("Lead Insurer"), as provided in the CIP Agreement, establish claim forms, claim processing and liquidating procedures, Disease Levels, Medical/Exposure Criteria, Payment Percentages and Scheduled, Average and/or Maximum Values for Fel-Pro Claims, Vellumoid Claims, or Federal-Mogul Asbestos Claims.

## **2.2. Claims Liquidation Procedures.**

**2.2(a) In General.** All claimants holding an Asbestos Trust Claim must file the claim with the U.S. Asbestos Trust in accordance with the proof of claim provisions of Section

6.1. As discussed above, a claimant may assert more than one Asbestos Trust Claim based on exposure to asbestos or asbestos-containing products produced, marketed, distributed, sold or utilized by more than one Federal-Mogul Entity. Upon filing of the Asbestos Trust Claim or Claims, the claimant will be placed in a FIFO Processing Queue to be established by the U.S. Asbestos Trust pursuant to Section 5.1(a)(1) below, and the claim or claims shall be processed, liquidated and paid as set forth below.

**2.2(b) U.S. TDP Valued Claims.**

The U.S. Asbestos Trust shall take all reasonable steps to resolve U.S. TDP Valued Claims payable from the limited resources of the T&N Subfund and/or the FMP Subfund as efficiently and expeditiously as possible at each stage of claims processing and arbitration. To this end, the U.S. Asbestos Trust, in its sole discretion, may conduct settlement discussions with claimants' representatives with respect to more than one claim at a time, provided that the claimants' respective positions in the relevant FIFO Processing and Payment Queues are maintained, and each claim is individually evaluated pursuant to the valuation factors set forth in Section 5.3(a)(2)(C) below. The U.S. Asbestos Trust shall also make every effort to resolve each year at least that number of U.S. TDP Valued Claims required to exhaust the Maximum Annual Payment and the Maximum Available Payment for "Category A Claims" and "Category B Claims" for the relevant Subfund, as those terms are defined below.

In general, to be eligible for payment, a U.S. TDP Valued Claim must involve one (1) of the eight (8) asbestos-related Disease Levels described in Section 5.3(a)(1)(C) below, seven (7) of which have presumptive Medical/Exposure Criteria and established liquidated values. Because U.S. TDP Valued Claims involve separate streams of asbestos-related liabilities,

separate matrices of liquidated values have been established for several of those separate streams of liabilities in Section 5.3(a)(3) below.

Because U.S. TDP Valued Claims of individuals exposed in Canada who were resident in Canada when such claims were filed were routinely litigated and resolved in the courts of the U.S., and because the resolution history of these claims has been included in developing the Expedited Review Process for such claims, such claims shall be eligible for liquidation under the Expedited Review Process and for the matrix values provided for T&N, Flexitallic, Ferodo and FMP Claims in Section 5.3(a)(3) below.

The Disease Levels, Medical/Exposure Criteria, Scheduled Values, Average Values and Maximum Values set forth in the matrices for U.S. TDP Valued Claims have all been selected and derived with the intention of achieving a fair allocation of the assets held by the T&N Subfund and the FMP Subfund as among their respective claimants suffering from different disease processes in light of the best information available, considering historical settlement data and the rights that each group of claimants would have in the relevant tort system absent the Debtors' bankruptcies.

If the claimant so elects, the U.S. Asbestos Trust shall liquidate U.S. TDP Valued Claims except Foreign Claims (as defined herein) that meet the presumptive Medical/Exposure Criteria of Disease Levels I – V, VII and VIII efficiently and expeditiously under the Expedited Review Process described in Section 5.3(a)(1) below. U.S. TDP Valued Claims involving Disease Levels I – V, VII and VIII that do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level, as well as all Disease Level VI – Lung Cancer 2 Claims, Foreign Claims, and Pneumo Asbestos Claims against FMP Claims shall undergo the U.S. Asbestos Trust's Individual Review Process described in Section 5.3(a)(2) below. In such a case, notwithstanding

that the claim does not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level, the U.S. Asbestos Trust can offer the claimant an amount up to the Scheduled Value of that Disease Level if the U.S. Asbestos Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the tort system.

In lieu of liquidating such claimant's claim under the Expedited Review Process, claimants holding U.S. TDP Valued Claims involving Disease Levels II – V and VII - VIII, may alternatively seek to establish liquidated values for their claims that are greater than their Scheduled Values by electing the U.S. Asbestos Trust's Individual Review Process. However, the liquidated values of U.S. TDP Valued Claims that undergo the Individual Review Process for valuation purposes may be determined to be less than the Scheduled Values for the applicable Disease Level. Further, the liquidated value of any U.S. TDP Valued Claims shall not exceed the Maximum Values for the Disease Levels set forth below, unless the claim qualifies as an Extraordinary Claim as defined in Section 5.4(a) below, in which case its liquidated value cannot exceed the maximum value for Extraordinary Claims specified in that provision.

The Scheduled Values and Maximum Values set forth below have been established for each of the Disease Levels that are eligible for Individual Review in light of applicable relevant tort law and current projections of present and future unliquidated claims. The Trustees shall use their reasonable best efforts to ensure that the U.S. Asbestos Trust processes claims such that other time the combination of settlements at the Scheduled Values and those resulting from the Individual Review Process approximate the Average Values also set forth below. In any event, all payments to a claimant from the T&N Subfund or the FMP Subfund shall be subject to the Payment Percentage, Maximum Annual Payment, Maximum Available Payment and Claim Payment Ratio limitations that are in effect at the time of payment.

If a claimant elects to process Multiple Exposure Claims against the T&N Subfund, the claimant shall be notified when each such claim comes up in the FIFO Processing Queue. If the Expedited Review Process is selected for any such claim, and the claim meets the presumptive Medical/Exposure Criteria for the T&N Entity for which exposure is asserted, the claimant shall be paid the Scheduled Value for the relevant Disease Level for each of the T&N Entities for which qualifying exposure is established. If the claimant seeks to process one or more Multiple Exposure Claims against the T&N Subfund under the U.S. Asbestos Trust's Individual Review Process, the claimant shall be paid the Subfund's separate liability for the liquidated value of the claim or claims determined under that process.

All unresolved disputes over a claimant's medical condition, exposure history and/or the liquidated value of a U.S. TDP Valued Claim shall be subject to Alternative Dispute Resolution ("ADR") Procedures to be adopted by the Trustees with the consent of the TAC and the Future Claimants' Representative. Any U.S. TDP Valued Claim that is the subject of a dispute with the U.S. Asbestos Trust that cannot be resolved by non-binding arbitration may enter the tort system as provided in Sections 5.11(a) and 7.6(a) below. However, if and when a holder of a U.S. TDP Valued Claim obtains a judgment in the tort system, the judgment will be payable (subject to the Payment Percentage, Maximum Available Payment, and Claims Payment Ratio provisions set forth below) only as provided in Section 7.7(a) below.

**2.2(c) Fel-Pro and Vellumoid Claims.** All Fel-Pro and Vellumoid Claims shall be handled pursuant to the procedures set forth in Section 5.3(b) of this U.S. TDP and the CIP Agreement.

**2.3. Application of Payment Percentages.** The assets of the T&N Subfund and the FMP Subfund over their lives are estimated to be substantially less than the aggregate liquidated

values of the Asbestos Trust Claims anticipated to be asserted against them. Accordingly, after the liquidated value of a U.S. TDP Valued Claim payable from the T&N Subfund and the FMP Subfund, other than claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment) as defined below, is determined pursuant to the procedures set forth herein for Expedited Review, Individual Review, arbitration, or litigation in the tort system, the holders of such U.S. TDP Valued Claims payable from the T&N Subfund and the FMP Subfund, other than claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment) as defined below, shall ultimately receive a pro-rata share of the value of their claim based on a Payment Percentage described in Section 4.2 below. Except as otherwise set forth herein, these Payment Percentages shall also apply to all Pre-Petition Liquidated Claims as provided in Section 5.2 below and to all sequencing adjustments paid pursuant to Section 7.5 below.

The Initial Payment Percentages for all U.S. TDP Valued Claims, including Pre-Petition Liquidated Claims as provided in Section 5.2 below, shall be set by the Trustees, the TAC and the Future Claimants' Representative after the U.S. Asbestos Trust is established pursuant to the Plan, and sufficient information is available concerning the assets and liabilities of the respective Subfunds. The Initial Payment Percentages shall be calculated on the assumption that the Average Values set forth in Section 5.3(a)(3) for T&N Subfund Claims and FMP Claims will be achieved with respect to existing present claims and projected future claims involving Disease Levels II – VIII. However, the Payment Percentage applicable to any U.S. Asbestos Trust Subfund may be adjusted upwards or downwards from time to time pursuant to Section 4.2 below by the U.S. Asbestos Trust with the consent of the TAC and the Future Claimants' Representative to reflect then-current estimates of the assets and liabilities allocable to the Subfund.

Except as otherwise set forth herein, the Initial Payment Percentages shall apply to all Asbestos Trust Voting Claims payable from the T&N Subfund and the FMP Subfund, unless adjusted by the U.S. Asbestos Trust with the consent of the TAC and the Future Claimants' Representative (who are described in Section 3.1 below) pursuant to Section 4.2 below, and except as provided in Section 4.2 below with respect to supplemental payments in the event the Initial Payment Percentage is changed.

The term "Asbestos Trust Voting Claims" includes: (i) all Pre-Petition Liquidated Claims as defined in Section 5.2(a) below payable from the T&N Subfund or the FMP Subfund; (ii) all U.S. TDP Valued Claims filed against any Federal-Mogul Entity in the tort system or actually submitted to a Federal-Mogul Entity pursuant to an administrative settlement agreement entered into prior to the Petition Date of October 6, 2001; and (iii) all U.S. TDP Valued Claims filed against another defendant in the tort system prior to the date the Plan was filed with the Bankruptcy Court (November 20, 2006, the "Plan Filing Date"), provided, however, that (1) the holder of a claim described in subsection (i), (ii) or (iii) above, or his or her authorized agent, actually voted to accept or reject the Plan pursuant to the voting procedures established by the U.S. Bankruptcy Court (unless such holder certifies to the satisfaction of the Trustees that he or she was prevented from voting in this proceeding as a result of circumstances resulting in a state of emergency affecting, as the case may be, the holder's residence, principal place of business or legal representative's principal place of business at which the holder or his or her legal representative receives notice and/or maintains material records relating to his or her Asbestos Trust Voting Claim), and (2), the claim was subsequently filed with the U.S. Asbestos Trust pursuant to Section 6.1 below by the Initial Claims Filing Date as defined in Section 5.1(a)(1) below.

Because neither the exact number nor severity of claims by people who will submit claims in the future, nor the ultimate amount of the U.S. Asbestos Trust's assets, can be calculated, no guarantee can be made of any Payment Percentage for any Asbestos Trust Claim. However, if the Payment Percentage is increased over time, claimants whose claims were liquidated and paid in prior periods under the U.S. TDP may receive additional payments as provided in Section 4.2.

With respect to the Fel-Pro and Vellumoid Subfunds, no Initial Payment Percentage(s) have been set. However, the U.S. Asbestos Trust, with the consent of the TAC and the Future Claimants' Representative and the prior express written consent of the Lead Insurer, as provided in the CIP Agreement, may subsequently adopt a Payment Percentage for one or both such Subfunds in appropriate circumstances pursuant to Section 4.2 below.

**2.4. Determination of the Maximum Annual Payment and Maximum Available Payment.** Because the assets in the T&N Subfund and the FMP Subfund are estimated to be insufficient to pay the full liquidated value of all the Asbestos Trust Claims that are expected to be asserted against them, the U.S. Asbestos Trust shall calculate the amount of cash flow anticipated to be necessary over the entire life of the Subfunds to ensure that amounts will be available to treat all holders of present and future T&N Subfund Claims and FMP Claims as similarly as possible, given the assets and liabilities allocable to each Subfund. In each year, for each Subfund, the U.S. Asbestos Trust will be empowered to pay out all of the income earned during the year by the respective Subfund, together with a portion of the Subfund's principal, calculated so that the application of the Subfund's assets over its life shall correspond with the needs created by the anticipated flow of claims to the Subfund (the "Maximum Annual Payment"), taking into account the Payment Percentage provisions set forth in Sections 2.3

above and 4.2 and 4.3 below. The U.S. Asbestos Trust's distributions from the T&N Subfund and the FMP Subfund to all holders of claims against such Subfunds for that year shall not exceed the Maximum Annual Payment determined for that year.

In distributing the Maximum Annual Payment from the T&N Subfund and FMP Subfund, the U.S. Asbestos Trust shall first allocate the amount in question to outstanding Pre-Petition Liquidated Claims payable from the respective Subfunds and to liquidated T&N Subfund Claims and FMP Claims involving Disease Level I (Cash Discount Payment), in proportion to the aggregate value of each group of claims. The remaining portion of the Maximum Annual Payment (the "Maximum Available Payment"), if any, shall then be allocated and used to satisfy all other previously liquidated T&N Subfund Claims and FMP Claims, respectively, subject to the Claims Payment Ratio for the particular Subfund set forth in Section 2.5 below. In the event there are insufficient amounts in the T&N Subfund or the FMP Subfund in any year to pay the total number of outstanding Pre-Petition Liquidated Claims and/or previously liquidated Disease Level I Claims, the available amounts allocated to that group of claims shall be paid to the maximum extent to claimants in the particular group based on their place in the respective Subfund's FIFO Payment Queue. Claims in either group for which there are insufficient amounts in the Subfund shall be carried over to the next year and placed at the head of the FIFO Payment Queue for that Subfund.

The U.S. Asbestos Trust does not anticipate setting a Maximum Annual Payment or Maximum Available Payment for the Fel-Pro and Vellumoid Subfunds. However, the U.S. Asbestos Trust with the consent of the TAC and the Future Claimants' Representative and the prior express written consent of the Lead Insurer, as provided in the CIP Agreement, may set such payment limitations for the Subfund or Subfunds in question in appropriate circumstances.

**2.5. Claims Payment Ratio.** Because the assets available to pay T&N Subfund and FMP Claims are limited, a Claims Payment Ratio has been determined for the T&N Subfund and the FMP Subfund based on the T&N Entities' and FMP's claims settlement history and an analysis of present and future T&N Subfund Claims and FMP Claims that were unliquidated as of the Petition Date. For Asbestos Trust Claims payable from the T&N Subfund, the Claims Payment Ratio as of the Effective Date has been set at 60% for Category A claims, which consist of T&N Subfund Claims involving severe asbestosis and malignancies (Disease Levels IV –VIII) that were unliquidated as of the Petition Date, and at 40% for Category B claims, which are T&N Subfund Claims involving non-malignant Asbestosis or Pleural Disease (Disease Levels II and III) that were similarly unliquidated as of the Petition Date. For Asbestos Trust Claims payable from the FMP Subfund, the Claims Payment Ratio as of the Effective Date has been set at 79% for Category A claims and 21 % for Category B Claims. The Claims Payment Ratios for the T&N Subfund and the FMP Subfund shall not apply to any Pre-Petition Liquidated Claims or to any claims for Other Asbestos Disease (Disease Level I - Cash Discount Payment).

In each year, after the determination of the Maximum Available Payment described in Section 2.4 above, 60% and 79% of that amount will be available to pay Category A claims payable from the T&N Subfund and the FMP Subfund, respectively, and 40% and 21% shall be available to pay Category B claims payable from the T&N Subfund and the FMP Subfund, respectively, that have been liquidated since the Petition Date. In the event there are insufficient funds in any year in the T&N Subfund and/or the FMP Subfund to pay the liquidated claims within either or both of the Categories, the available funds allocated to the particular Category shall be paid to the maximum extent to claimants in that Category based on their place in the Subfund's FIFO Payment Queue described in Section 5.1(c) below, which will be based upon the

date of claim liquidation. Claims for which there are insufficient funds allocated to the relevant Category shall be carried over to the next year where they will be placed at the head of the Subfund's FIFO Payment Queue. If there are excess amounts in either or both Categories, because there is an insufficient amount of liquidated claims to exhaust the Maximum Available Payment amount for that Category or Categories, the excess amounts for either or both Categories will be rolled over and remain dedicated to the respective Category to which they were originally allocated for the particular Subfund.

The 60%/40% Claims Payment Ratio for the T&N Subfund and the 79%/21% Claims Payment Ratio for the FMP Subfund, together with this rollover provision, shall apply to all PI Trust Voting Claims as defined in Section 2.3 above (except Pre-Petition Liquidated Claims and Other Asbestos Disease claims (Disease Level I – Cash Discount Payment)), and shall not be amended until the second anniversary of the date the U.S. Asbestos Trust first accepts for processing proof of claim forms and other materials required to file a claim with the U.S. Asbestos Trust. Thereafter, these Claims Payment Ratios and their rollover provision shall be continued absent circumstances, such as a significant change in law or medicine, necessitating amendment to avoid a manifest injustice. However, the accumulation, rollover and subsequent delay of claims against the T&N Subfund or the FMP Subfund resulting from the application of the Claims Payment Ratios, shall not, in and of itself, constitute such circumstances. In addition, an increase in the numbers of Category B claims against either Subfund beyond those predicted or expected shall not be considered as a factor in deciding whether to reduce the percentage allocated to Category A claims.

No Claims Payment Ratio has been set for the Fel-Pro and Vellumoid Subfunds. However, the U.S. Asbestos Trust with the consent of the TAC and the Future Claimants'

Representative and the prior express written consent of the Lead Insurer, as provided in the CIP Agreement, may establish a Claims Payment Ratio for one or both of those Trust Subfunds in appropriate circumstances.

In considering whether to make any amendments to the Claims Payment Ratio and/or its rollover provisions for any U.S. Asbestos Trust Subfund, the Trustees shall also consider the reasons for which the Claims Payment Ratio and its rollover provisions were adopted, the settlement histories that gave rise to its calculation, and the foreseeability or lack of foreseeability of the reasons why there would be any need to make an amendment. In that regard, the Trustees should keep in mind the interplay between the Payment Percentage and the Claims Payment Ratio as it affects the net cash actually paid to claimants from either Category.

In any event, no amendment to the Claims Payment Ratio for any Subfund may be made without the consent of at least eighty percent of the TAC members and the consent of the Future Claimants' Representative pursuant to the consent process set forth in Sections 5.7(b) and 6.6(b) of the U.S. Asbestos Trust Agreement. However, the Trustees, with the consent of the TAC and the Future Claimants' Representative, may offer the option of a reduced Payment Percentage to holders of claims in either Category A or Category B against a Subfund in return for prompter payment by the Subfund (the "Reduced Payment Option"). With respect to the Fel-Pro and Vellumoid Subfunds, Claims Payment Ratios may not be set or modified without the prior express written consent of the Lead Insurer, as provided in the CIP Agreement.

**2.6. Indemnity and Contribution Claims.** Subject to Section 5.6 below, Asbestos Trust Claims for indemnity and contribution ("Indirect Asbestos Trust Claims") against any U.S. Asbestos Trust Subfund, if any, shall be subject to the same categorization, evaluation, and

payment provisions under this U.S. TDP that the claim would have been subject to if it had been brought by the original claimant against the Subfund in question.

**2.7 Payments on an Installment Basis.** All Asbestos Trust Claims to be paid from the T&N Subfund that are subject to the application of the Payment Percentage and are liquidated by the U.S. Asbestos Trust prior to the conclusion of the first reconsideration of the Initial Payment Percentage described in Section 4.2 hereof shall be paid in two installments. The amount of the claimant's initial installment payment shall be fifty percent (50%) of the liquidated value of the claim times the Initial Payment Percentage, subject to any other applicable restrictions set forth herein. The U.S. Asbestos Trust shall make the initial installment payment on a claim when the claim reaches the top of the Payment Queue. The second installment payment shall be paid immediately following the conclusion of the first reconsideration of the Initial Payment Percentage in the order that the claim entered the Payment Queue and before the payment of any claim that is liquidated after the first consideration of the Initial Payment Percentage. The conclusion of the first reconsideration of the Initial Payment Percentage shall be deemed to have occurred when one of the following occurs: (a) the Trustees, the TAC and the Futures Claimants' Representative agree that such a reconsideration is not necessary; (b) the Trustees reconsider the Initial Payment Percentage and the Trustees, TAC, and Future Claimants' Representative agree that no change is warranted; (c) the Trustees propose a change to the Initial Payment Percentage and the TAC and the Futures Claimants' Representative agree to the change; or (d) the Trustees propose a change to the Initial Payment Percentage that the TAC and the Futures Claimants' Representative do not agree to and the matter is resolved through the alternative dispute resolution process described in Section 7.14 of the U.S. Asbestos Trust Agreement. The second installment payment shall be in an amount that will result in the total

payment to the claimant being equal to the liquidated value of the claim times the Payment Percentage in effect at the time of the second installment payment, subject to any other applicable restrictions set forth herein. Absent further agreement by the Trustees, the TAC and the Future Claimants' Representative, following the conclusion of the first reconsideration of the Initial Payment Percentage, the Trust shall cease paying claims to be paid from the T&N Subfund on an installment basis except as otherwise allowed under Section 7.3 hereof.

Further, Disease Level I T&N Claims that are liquidated by the U.S. Asbestos Trust prior to the conclusion of the first reconsideration of the Initial Payment Percentage described in Section 4.2 hereof shall be paid in two installments. The amount of the claimant's initial installment payment shall be the initial Scheduled Value of \$150. The second installment payment shall be paid immediately following the conclusion of the first reconsideration of the Initial Payment Percentage in the order that the claim entered the Payment Queue and before the payment of any claim that is liquidated after the first consideration of the Initial Payment Percentage. The second installment payment shall be in an amount that will result in the total payment to the claimant being equal to the Scheduled Value for Level I T&N Claims in effect at the conclusion of the first reconsideration period. If the Payment Percentage remains at six percent (6%) at the conclusion of the first reconsideration of the Initial Payment Percentage, the Schedule Value for Disease Level I T&N Claims shall be \$308.00. Any increase or decrease to the Schedule Value for Disease Level I T&N Claims at the conclusion of the first reconsideration of the Initial Payment Percentage shall be directly proportionate to any change in the Payment Percentage, but in no event shall the Scheduled Value for Disease Level I T&N Claims exceed \$400.00.

Payments made on an installment basis pursuant to this Section 2.7 shall be deemed supplemental payments for the purposes of Section 4.2 hereof.

### SECTION III

#### U.S. TDP Administration

##### **3.1. U.S. Asbestos Trust Advisory Committee and Future Claimants'**

**Representative.** Pursuant to the Plan and the U.S. Asbestos Trust Agreement, the U.S. Asbestos Trust and this U.S. TDP shall be administered by the Trustees in consultation with the TAC, which represents the interests of holders of present Asbestos Trust Claims against the U.S. Asbestos Trust, and the Future Claimants' Representative, who represents the interests of holders of Asbestos Trust Claims that will be asserted in the future against the U.S. Asbestos Trust. The Trustees shall obtain the consent of the TAC and the Future Claimants' Representative on any amendments to this U.S. TDP pursuant to Section 8.1 below, and on such other matters as are otherwise required below and in Section 2.2(f) of the U.S. Asbestos Trust Agreement. The Trustees shall also consult with the TAC and the Future Claimants' Representative on such matters as are provided below and in Section 2.2(e) of the U.S. Asbestos Trust Agreement. The initial members of the TAC and the initial Future Claimants' Representative are identified in the U.S. Asbestos Trust Agreement.

**3.2. Consent and Consultation Procedures.** In those circumstances in which consultation or consent of the TAC and Future Claimants' Representative is required, the Trustees will provide written notice to the TAC and the Future Claimants' Representative of the specific amendment or other action that is proposed. The Trustees will not implement such amendment nor take such action unless and until the parties have engaged in the Consultation Process described in Sections 5.7(a) and 6.6(a) of the U.S. Asbestos Trust Agreement, or the

Consent Process described in Sections 5.7(b) and 6.6(b) of the U.S. Asbestos Trust Agreement, respectively.

## SECTION IV

### Payment Percentage; Periodic Estimates

#### **4.1. Uncertainty of the T&N Entities' and FMP's Personal Injury Asbestos**

**Liabilities.** As discussed above, neither the exact amount of the T&N Entities' and FMP's total asbestos-related liabilities nor the total amount of assets that will be available to the U.S. Asbestos Trust to pay those liabilities can be calculated with certainty. Consequently, there is inherent uncertainty regarding the amounts that holders of claims payable from the T&N Subfund or from the FMP Subfund will receive. To seek to ensure substantially equivalent treatment of all present and future claims against the T&N Subfund and the FMP Subfund, the Trustees must determine from time to time the percentage of full liquidated value that holders of claims against the Subfunds will be likely to receive, i.e., the "Payment Percentages" described in Section 2.3 above and Section 4.2 below.

**4.2. Computation of Payment Percentage.** As described in Section 2.3 above, the Initial Payment Percentage for Asbestos Trust Claims to be paid from the FMP Subfund shall be set by the Trustees with the consent of the TAC and the Future Claimants' Representative after the U.S. Asbestos Trust is established and more information is available concerning the liabilities and assets of the Subfund. As described in Section 2.3 above, the Initial Payment Percentage for the Asbestos Trust Claims to be paid from the T&N Subfund shall be six percent (6%) payable in accordance with and subject to Section 2.7 hereof. The Initial Payment Percentages established for each of the T&N Subfund and the FMP Subfund shall apply respectively to all Asbestos Trust Voting Claims (except Other Asbestos Disease Claims (Disease Level I – Cash

Discount Payment) to be paid from such Subfunds, unless the Trustees, with the consent of the TAC and the Future Claimants' Representative, determine that the Initial Payment Percentage for the T&N Subfund and/or the FMP Subfund should be changed to ensure that the U.S. Asbestos Trust shall be in a position to pay holders of unliquidated and/or unpaid Asbestos Trust Voting Claims and present and future claims payable by the T&N Subfund and the FMP Subfund, respectively, in substantially the same manner.

The Payment Percentages for the T&N Subfund and the FMP Subfund shall be subject to change pursuant to the terms of this U.S. TDP and the U.S. Asbestos Trust Agreement if the Trustees, with the consent of the TAC and the Future Claimants' Representative, determine that an adjustment is required. In addition, the Trustees may adopt a Payment Percentage for any one or more of the other U.S. Asbestos Trust Subfunds, with the consent of the TAC and the Future Claimants' Representative, if circumstances so warrant. No less frequently than once every three years, commencing with the first day of January occurring after the Plan is consummated, the Trustees shall reconsider the then applicable Payment Percentage(s) to assure that each percentage is based on accurate, current information and may, after such reconsideration, change the percentage for any Subfund if necessary with the consent of the TAC and the Future Claimants' Representative.

The Trustees shall also reconsider the then applicable Payment Percentage for any U.S. Asbestos Trust Subfund at shorter intervals if they deem such reconsideration to be appropriate or if requested to do so by the TAC or the Future Claimants' Representative. The Trustees must base their determination of the Payment Percentage(s) on then-current estimates of the number, types, and values of present and future Asbestos Trust Claims against the various Subfunds, the value of the assets then available to the Subfunds for their payment, all anticipated administrative

and legal expenses of the Subfunds, and any other material matters that are reasonably likely to affect the sufficiency of a Subfund's assets to pay a comparable percentage of full liquidated value to all holders of claims against the Subfund.

When making these determinations, the Trustees shall exercise common sense and flexibly evaluate all relevant factors. The Payment Percentage(s) applicable to Category A or Category B claims asserted against any U.S. Asbestos Trust Subfund for which a Claims Payment Ratio has been adopted may not be reduced to alleviate delays in payments of claims in the other Category; both Categories will receive the same Payment Percentage, but the payment from any Subfund may be deferred as needed pursuant to Section 7.3 below, and a Reduced Payment Option may be instituted for any Subfund as described in Section 2.5 above.

There is uncertainty surrounding the amount of the U.S. Asbestos Trust's future assets. There is also uncertainty surrounding the totality of the Asbestos Trust Claims to be paid over time by the U.S. Asbestos Trust as well as the extent to which changes in existing federal and/or state law could affect the U.S. Asbestos Trust's liabilities under this U.S. TDP. If the value of the U.S. Asbestos Trust's future assets increases significantly and/or if the value or volume of Asbestos Trust Claims actually filed with the U.S. Asbestos Trust is significantly lower than originally estimated, the U.S. Asbestos Trust shall use those proceeds and/or claims savings, as the case may be, first to maintain the Payment Percentage or Percentages then in effect.

If the Trustees, with the consent of the TAC and the Future Claimants' Representative, make a determination to increase a Payment Percentage for either the T&N or FMP Subfunds due to a material change in the estimates of the respective Subfund's future assets and/or liabilities, the U.S. Asbestos Trust shall also make supplemental payments to all claimants who previously liquidated their claims against the respective Subfund and received payments based

on a lower Payment Percentage. The amount of any such supplemental payment shall be the liquidated value of the claim in question times the newly adjusted Payment Percentage, less all amounts previously paid to the claimant with respect to the claim (excluding the portion of such previously paid amounts that was attributable to a sequencing adjustment paid pursuant to Section 7.5 below).

The U.S. Asbestos Trust's obligation to make a supplemental payment to a claimant shall be suspended in the event the payment in question would be less than \$100.00, and the amount of the suspended payment shall be added to the amount of any prior supplemental payment/payments that was/were also suspended because it/they would have been less than \$100.00. However, the U.S. Asbestos Trust's obligation shall resume and the U.S. Asbestos Trust's shall pay any such aggregate supplemental payments due the claimant at such time that the total exceeds \$100.00.

No Initial Payment Percentages for the Fel-Pro and Vellumoid Subfunds have been set. However, the U.S. Asbestos Trust may subsequently, with the consent of the TAC and the Future Claimants' Representative, and the prior express written consent of the Lead Insurer, as provided in the CIP Agreement, adopt a Payment Percentage for one or both Subfunds in appropriate circumstances.

**4.3. Applicability of the Payment Percentages.** Except as set forth above in Section 4.2 with respect to supplemental payments, no holder of an Asbestos Trust Claim that qualifies as an Asbestos Trust Voting Claim, other than an Asbestos Trust Claim for Other Asbestos Disease (Disease Level I - Cash Discount Payment) as defined in Section 5.3(a)(1)(C)), below shall receive a payment that exceeds the applicable Payment Percentage, if any, times the liquidated value of the claim. Except as otherwise provided in Section 5.1(c) below for Asbestos

Trust Claims involving deceased or incompetent claimants for which approval of the U.S. Asbestos Trust's offer by a court or through a probate process is required, no holder of any other Asbestos Trust Claim, other than a claim for Other Asbestos Disease (Disease Level I – Cash Discount Payment), shall receive a payment that exceeds the liquidated value of the claim times the Payment Percentage in effect at the time the offer is made, if any. Subject to Section 2.7, U.S. TDP Valued Claims involving Other Asbestos Disease (Disease Level I - Cash Discount Payment) shall not be subject to a Payment Percentage, but shall instead be paid the full amount of their Scheduled Values as set forth in Section 5.3(a)(3) below.

If a redetermination of any U.S. Asbestos Trust Subfund's Payment Percentage has been proposed in writing by the Trustees to the TAC and the Future Claimants' Representative but has not yet been adopted, the claimant shall receive the lower of the U.S. Asbestos Trust Subfund's current Payment Percentage or the proposed Payment Percentage. However, if the proposed Payment Percentage for the U.S. Asbestos Trust Subfund was the lower amount but was not subsequently adopted, the claimant shall thereafter receive the difference between the lower proposed amount and the higher current amount. Conversely, if the proposed Payment Percentage for the Subfund was the higher amount and was subsequently adopted, the claimant shall thereafter receive the difference between the lower current amount and the higher adopted amount.

## SECTION V

### Resolution of Asbestos Trust Claims

#### **5.1. Ordering, Processing and Payment of Asbestos Trust Claims.**

##### **5.1(a) Ordering of Asbestos Trust Claims.**

**5.1(a)(1) Establishment of FIFO Processing Queue.** The U.S. Asbestos Trust will order separately all Asbestos Trust Claims sufficiently complete to be reviewed that are payable from any U.S. Asbestos Trust Subfund on a FIFO basis except as otherwise provided herein (the “FIFO Processing Queues”). For all such claims filed on or before the date six (6) months after the date the U.S. Asbestos Trust first makes available the materials required to file an Asbestos Trust Claim (the “Initial Claims Filing Date”), a claimant’s position in the relevant Subfund’s FIFO Processing Queue shall be determined as of the earliest of (i) the date prior to the Petition Date (if any) that the specific claim was either filed against any Federal-Mogul Entity in the relevant tort system or was actually submitted to any Federal-Mogul Entity or its agent pursuant to an administrative settlement agreement; (ii) the date before the Petition Date that the asbestos claim was filed against another defendant in the relevant tort system if at the time the claim was subject to a tolling agreement with any Federal-Mogul entity; (iii) the date after the Petition Date, if any, but before the date that the U.S. Asbestos Trust first makes available the proof of claim forms and other claims form materials required to file a claim against the applicable Subfund that the asbestos claim was filed against another defendant in the relevant tort system; (iv) the date after the Petition Date but before the Effective Date a proof of claim was filed against Federal-Mogul in its Chapter 11 case; or (v) the date a ballot was submitted by the claimant or his or her authorized agent in Federal-Mogul’s Chapter 11 case for purposes of voting on the Plan in accordance with the voting procedures adopted by the U.S. Bankruptcy Court.

Following the Initial Claims Filing Date, a claimant’s position in the Subfund’s FIFO Processing Queue shall be determined by the date the claim or claims were filed with the U.S. Asbestos Trust. If any claims are filed on the same date, the claimant’s position in the FIFO

Processing Queue shall be determined by date of the claimant's diagnosis of asbestos-related disease. If any claims are filed and diagnosed on the same date, the claimant's position in the relevant FIFO Processing Queue shall be determined by the date of the claimant's birth, with older claimants given priority over younger claimants.

Notwithstanding anything in the foregoing to the contrary, the U.S. Asbestos Trust may, in furtherance of its responsibility to seek recovery under the Hercules Policy, review Asbestos Trust Claims to the paid from the T&N Subfund on other than a FIFO basis.

**5.1(a)(2) Effect of Statutes of Limitation and Repose.** All unliquidated Asbestos Trust Claims must meet either (i) for claims first filed in the relevant tort system against any Federal-Mogul Entity prior to the Petition Date, the applicable federal, state or foreign statute of limitation or repose that was in effect at the time of the filing of the claim in the relevant tort system, or (ii) for claims that were not filed against any Federal-Mogul Entity in the relevant tort system prior to the Petition Date, the applicable statute of limitation that was in effect at the time of the filing with the U.S. Asbestos Trust.

However, the running of the relevant statute of limitation shall be tolled as of the earliest of (A) the actual filing of the claim against any Federal-Mogul Entity prior to the Petition Date, whether in the relevant tort system or by submission of a claim to a Federal-Mogul Entity or its agent pursuant to an administrative settlement agreement; (B) the tolling of the claim against any Federal-Mogul Entity prior to the Petition Date by an agreement or otherwise, provided such tolling is still in effect on the Petition Date; or (C) the Petition Date.

If an Asbestos Trust Claim meets any of the tolling provisions described in the preceding sentence and was not barred by the applicable statute of limitation at the time of the tolling event, it will be treated as timely filed if it is actually filed with the U.S. Asbestos Trust within three (3)

years after the Initial Claims Filing Date. Also, any claims that were first diagnosed after the Petition Date, irrespective of the application of any relevant statute of limitation or repose applicable in the United States, may be filed with the U.S. Asbestos Trust within three (3) years after the date of diagnosis, or within three (3) years after the Initial Claims Filing Date, whichever occurs later. However, the processing of any Asbestos Trust Claim by the U.S. Asbestos Trust may be deferred at the election of the claimant pursuant to Section 6.3 below.

**5.1(b) Processing of Asbestos Trust Claims.** As a general practice, the U.S. Asbestos Trust will review its claims files on a regular basis and notify all claimants whose Asbestos Trust Claims are likely to come up in the U.S. Asbestos Trust's applicable FIFO Processing Queue in the near future.

**5.1(c) Payment of Asbestos Trust Claims.** Asbestos Trust Claims that have been liquidated by the Expedited Review Process as provided in Section 5.3(a)(1) below, by the Individual Review Process as provided in Section 5.3(a)(2) below, by arbitration as provided in Section 5.10 below, or by litigation in the relevant tort system provided in Section 5.11(a) below, shall be paid in FIFO order from the relevant Subfund based on the date their liquidation became final (the "FIFO Payment Queue"), all such payments being subject to the applicable Payment Percentages, the Maximum Available Payment, the Claims Payment Ratio, and the sequencing adjustment provided for in Section 7.5 below, except as otherwise provided herein. Pre-Petition Liquidated Claims, as defined in Section 5.2 below, shall be subject to the Maximum Annual Payment and Payment Percentage limitations, but not to the Maximum Available Payment and Claims Payment Ratio provisions set forth above. Insured Asbestos Trust Claims that are to be liquidated in the tort system shall also be placed in FIFO Payment Queues to be established for each of the Insured U.S. Asbestos Trust Subfunds. The date of liquidation for such claims shall

be the date of the final judgment or settlement. This section 5.1(c) shall not apply to Fel-Pro Claims, Vellumoid Claims, or Federal-Mogul Asbestos Claims except with the consent of the TAC and the Future Claimants' Representative and the prior express written consent of the Lead Insurer, as provided in the CIP Agreement.

Where a holder of an Asbestos Trust Claim payable from the T&N Subfund or the FMP Subfund is deceased or incompetent, and the settlement and payment of his or her claim must be approved by a court of competent jurisdiction or through the probate process prior to acceptance of the claim by the claimant's representative, an offer made by the U.S. Asbestos Trust on the claim shall remain open so long as proceedings before that court or in that probate process remain pending, provided that the U.S. Asbestos Trust has been furnished with evidence that the settlement offer has been submitted to such court or probate process for approval. If the offer is ultimately approved by the court or through the probate process and is accepted by the claimant's representative, the U.S. Asbestos Trust shall pay the claim from the relevant Subfund in the amount so offered multiplied by the Payment Percentages in effect for the Subfund at the time the offer was first made, subject to the redetermination provisions set forth in Section 4.3 above. The date of liquidation for such claims shall be the date the claimant first accepted the offer by the U.S. Asbestos Trust that was approved by the court or in the probate process.

If any claims are liquidated on the same date, the claimant's position in a U.S. Asbestos Trust Subfund's FIFO Payment Queue shall be determined by the date of the diagnosis of the claimant's asbestos-related disease. If any claims are liquidated on the same date and the respective holders' asbestos-related diseases were diagnosed on the same date, those claimants' positions in a Subfund's FIFO Payment Queue shall be determined by the U.S. Asbestos Trust

based on the dates of the claimants' birth, with older claimants given priority over younger claimants.

**5.2. Resolution of Pre-Petition Liquidated Claims.**

**5.2(a) Processing and Payment – In General.** As soon as practicable after the Effective Date, the U.S. Asbestos Trust shall pay from the relevant U.S. Asbestos Trust Subfund, upon submission by the claimant of the applicable U.S. Asbestos Trust proof of claim form for claims, together with all documentation required thereunder, all Asbestos Trust Claims that were liquidated by (i) a binding settlement agreement for the particular claim entered into prior to the Petition Date with a Federal-Mogul Entity or its agent that is judicially enforceable by the claimant, (ii) a jury verdict or non-final judgment in the relevant tort system obtained against a Federal-Mogul Entity prior to the Petition Date, or (iii) by a judgment against a Federal-Mogul Entity that became final and non-appealable prior to the Petition Date (collectively “Pre-Petition Liquidated Claims”). In order to receive payment from the relevant Subfund, the holder of a Pre-Petition Liquidated Claim must submit all documentation necessary to demonstrate to the relevant Subfund that the claim was liquidated in the manner described in (i), (ii) or (iii), which documentation shall include (A) a court authenticated copy of the jury verdict (if applicable), a non-final judgment (if applicable) or a final judgment (if applicable) and (B) the name, social security number and date of birth of the claimant and the name and address of the claimant's lawyer, if any.

The liquidated value of a Pre-Petition Liquidated Claim shall be the unpaid portion of the amount agreed to in the binding settlement agreement, the unpaid portion of the amount awarded by the jury verdict or non-final judgment, or the unpaid portion of the amount of the final judgment, as the case may be, plus any sequencing adjustment, if any, that has

accrued on that amount in accordance with the terms of the agreement, if any, or under applicable state or foreign law for settlements or judgments as of the Petition Date. However, the liquidated value of a Pre-Petition Liquidated Claim shall not include any punitive or exemplary damages except as otherwise provided in Section 7.4 below. In addition, the amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Claims Payment Ratio and the Maximum Available Payment limitations, but shall be subject to the Maximum Annual Payment and Payment Percentage provisions. In the absence of a Final Order of the Bankruptcy Court determining whether a settlement agreement is binding and judicially enforceable, a dispute between the claimant and the US Asbestos Trust over this issue shall be resolved pursuant to the same procedures in this U.S. TDP that are provided for resolving the validity and/or liquidated value of an Asbestos Trust Claim (i.e., arbitration and litigation in the tort system as set forth in Sections 5.10 and 5.11 below).

In the absence of a Final Order of the Bankruptcy Court determining whether a settlement agreement is binding and judicially enforceable, a dispute between the claimant and the U.S. Asbestos Trust over this issue shall be resolved pursuant to the same procedures in this U.S. TDP that are provided for resolving the validity and/or liquidated value of an Asbestos Trust Claim (i.e., arbitration and litigation in the tort system as set forth in Sections 5.10 and 5.11 below).

If any Pre-Petition Liquidated Claims are filed with the U.S. Asbestos Trust on the same date, the claimant's position in the U.S. Asbestos Trust's FIFO Queue for such claims shall be determined by the date on which the claim was liquidated. If any Pre-Petition Liquidated Claims are filed and liquidated on the same date, the position of the claimants in the FIFO queue shall be based on the dates of the claimants' birth, with older claimants given priority over younger claimants.

**5.2(a)(1) Pre-Petition Liquidated T&N Subfund Claims and**

**FMP Claims.** Pre-Petition Liquidated T&N Subfund Claims and FMP Claims shall be processed and paid from the T&N Subfund or the FMP Subfund, respectively, in accordance with their order in separate FIFO queues to be established by the U.S. Asbestos Trust for each such Subfund based on the date the U.S. Asbestos Trust received a completed proof of claim form with all required documentation for the particular claim or claims. However, the amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Claims Payment Ratio, but shall be subject to the Maximum Annual Payment and Payment Percentage provisions set forth above.

**5.2(a)(2) Insured Pre-Petition Liquidated Claims.**

Pre-Petition Liquidated Claims payable from the Fel-Pro or Vellumoid Subfunds shall be tendered by the U.S. Asbestos Trust to the relevant insurer or insurers for handling as provided in the CIP Agreement or in the applicable policies.

**5.2(b) Marshalling of Security.** Holders of Pre-Petition Liquidated Claims that are secured by letters of credit, appeal bonds, or other security or sureties shall first exhaust their rights against any applicable security or surety before making a claim against the U.S. Asbestos Trust. Only in the event that such security or surety is insufficient to pay the Pre-Petition Liquidated Claim in full shall the deficiency be processed and paid as a Pre-Petition Liquidated Claim.

**5.3. Resolution of Unliquidated Asbestos Trust Claims.**

**5.3(a) U.S. TDP Valued Claims.** After the establishment of the U.S. Asbestos Trust, the Trustees, with the consent of the TAC and the Future Claimants' Representative, shall adopt procedures for reviewing and liquidating all unliquidated U.S. TDP Valued Claims, which

shall include deadlines for processing such claims. Such procedures shall also require that claimants seeking resolution of unliquidated U.S. TDP Valued Claims must first file a proof of claim form, together with the required supporting documentation, in accordance with the provisions of Sections 6.1 and 6.2 below.

The proof of claim form shall require the claimant to assert his or her claim for the highest Disease Level for which the claim qualifies at the time of filing. Irrespective of the Disease Level alleged on the proof of claim form, all claims filed with the U.S. Asbestos Trust shall be deemed to be a claim for the highest Disease Level for which the claim qualifies at the time of filing, and all lower Disease Levels for which the claim may also qualify at the time of filing or in the future shall be subsumed into the higher Disease Level for both processing and payment purposes.

Upon filing of a valid proof of claim form with the required supporting documentation, the claimant shall be placed in the FIFO Processing Queue in accordance with the ordering criteria described in Section 5.1(a) above. The U.S. Asbestos Trust shall provide the claimant with six (6) months notice of the date by which it expects to reach the claim in the FIFO Processing Queue, following which the claimant shall promptly (i) advise the U.S. Asbestos Trust whether the claim should be liquidated under the U.S. Asbestos Trust's Expedited Review Process described in Section 5.3(a)(1) below or, in certain circumstances, under the U.S. Asbestos Trust's Individual Review Process described in Section 5.3(a)(2) below; (ii) provide the U.S. Asbestos Trust with any additional medical and/or exposure evidence that was not provided with the original claim submission; and (iii) advise the U.S. Asbestos Trust of any change in the claimant's Disease Level. If a claimant fails to respond to the U.S. Asbestos Trust's notice prior to the reaching of the claim in the FIFO Processing Queue, the U.S. Asbestos

Trust will process and liquidate the claim under the Expedited Review Process based upon the medical/exposure evidence previously submitted by the claimant, although the claimant shall retain the right to request Individual Review as described in Section 5.3(a)(2) below.

**5.3(a)(1) Expedited Review Process.**

**5.3(a)(1)(A) In General.** The U.S. Asbestos Trust's Expedited Review Process is designed primarily to provide an expeditious, efficient and inexpensive method for liquidating all U.S. TDP Valued Claims, except those claims involving Disease Level VI – Lung Cancer 2 Claims, Foreign Claims, or Pneumo Asbestos Claims against FMP, in cases in which the claim can easily be verified by the U.S. Asbestos Trust as meeting the presumptive Medical/Exposure Criteria for the relevant Disease Level. Expedited Review thus provides qualifying claimants with a substantially less burdensome process for pursuing U.S. TDP Valued Claims than does the Individual Review Process described in Section 5.3(a)(2) below. Expedited Review is also intended to provide qualifying claimants a fixed and certain liquidated claim value.

All Disease Level VI - Lung Cancer 2, Foreign Claims and Pneumo Asbestos Claims against FMP, must be liquidated pursuant to the U.S. Asbestos Trust's Individual Review Process described in Section 5.3(a)(2) below. Because U.S. TDP Valued Claims of individuals exposed in Canada who were resident in Canada when such claims were filed were routinely litigated and resolved in the courts of the U.S., and because the resolution history of these claims has been included in developing the Expedited Review Process for T&N, Flexitallic, Ferodo and FMP Claims, Canadian claims shall not be treated as Foreign Claims, but instead shall be eligible for liquidation under the Expedited Review Process and for the matrix values provided such claims in Section 5.3(a)(3) below.

U.S. TDP Valued Claims, including Multiple Exposure Claims, that undergo Expedited Review and meet the presumptive Medical/Exposure Criteria for the relevant Disease Level shall be liquidated at the Scheduled Value for such Disease Level set forth in Section 5.3(a)(3) below for the particular Federal-Mogul Entity. However, except for U.S. TDP Valued Claims involving Other Asbestos Disease (Disease Level I), all claims liquidated by Expedited Review shall be subject to the applicable Payment Percentage, and the Maximum Annual Payment, the Maximum Available Payment, and the Claims Payment Ratio limitations. Claimants holding U.S. TDP Valued Claims that (i) cannot be liquidated by Expedited Review because they do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level or (ii) have otherwise failed to qualify for payment through the Expedited Review Process may elect the U.S. Asbestos Trust's Individual Review Process set forth in Section 5.3(a)(2) below. Claimants holding T&N Multiple Exposure Claims may also elect Expedited Review for one or more of those claims.

Subject to the provisions of Section 5.8, the claimant's eligibility to receive the Scheduled Value for his or her U.S. TDP Valued Claim pursuant to the Expedited Review Process shall be determined solely by reference to the Medical/Exposure Criteria set forth below for each of the Disease Levels eligible for Expedited Review.

**5.3(a)(1)(B) Claims Processing Under Expedited Review.** All claimants seeking liquidation of their U.S. TDP Valued Claims pursuant to Expedited Review shall file the U.S. Asbestos Trust's proof of claim forms. As the proof of claim form is reached in the FIFO Processing Queue, the U.S. Asbestos Trust shall determine whether the claim or claims described therein meets the Medical/Exposure Criteria for one (1) of the seven (7) Disease Levels eligible for Expedited Review, and shall advise the claimant of its determination. If a Disease Level is

determined, the U.S. Asbestos Trust shall tender to the claimant an offer of payment from the T&N and/or FMP Subfund of the Scheduled Value (or Values in the case of Multiple Exposure Claims) for the relevant Disease Level multiplied by the applicable Payment Percentage, together with a form of release approved by the U.S. Asbestos Trust. If the claimant accepts the Scheduled Value (as adjusted by the Payment Percentage) and returns the release properly executed, the claim shall be placed in the Subfund's FIFO Payment Queue, following which the U.S. Asbestos Trust shall disburse payment subject to the limitations of the Maximum Available Payment and the Claims Payment Ratio, if any.

**5.3(a)(1)(C) Disease Levels and Medical/Exposure Criteria.** The eight (8) Disease Levels covered by this U.S. TDP, together with the Medical/Exposure Criteria for each, are set forth below. The separate Scheduled Values for the seven (7) Disease Levels eligible for Expedited Review, together with the other matrix values for all Disease Levels, are set forth in Section 5.3(a)(3) below. Subject to Section 2.7, these Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all Asbestos Trust Voting Claims (except Pre-Petition Liquidated Claims) that are filed with the U.S. Asbestos Trust on or before the Initial Claims Filing Date provided in Section 5.1(a)(1) above.

Thereafter, for all Asbestos Trust Claims, with the consent of the TAC and the Future Claimants' Representative, the Trustees may add to, change or eliminate Disease Levels, Scheduled Values, or Medical/Exposure Criteria; develop subcategories of Disease Levels, Scheduled Values or Medical/Exposure Criteria; or determine that a novel or exceptional asbestos personal injury claim is compensable even though it does not meet the Medical/Exposure Criteria for any of the then current Disease Levels.

**Disease Levels and Presumptive Medical/Exposure Criteria**

<b><u>Disease Level</u></b>	<b><u>Presumptive Medical/Exposure Criteria</u></b>
Mesothelioma (Level VIII)	(1) Diagnosis <sup>2</sup> of mesothelioma; and (2) evidence of Federal-Mogul Exposure (as defined in Section 5.7(b)(3)).
Lung Cancer 1 (Level VII)	(1) Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease <sup>3</sup> , (2) six months Federal-Mogul Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos, <sup>4</sup> and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.
Lung Cancer 2 (Level VI)	(1) Diagnosis of a primary lung cancer; (2) Federal-Mogul Exposure prior to December 31, 1982, and (3) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question. Lung Cancer 2 (Level VI) claims are claims that do not meet the more stringent medical and/or

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<sup>2</sup> The requirements for a diagnosis of an asbestos-related disease that may be compensated under the provisions of this U.S. TDP are set forth in Section 5.7(a) below.

<sup>3</sup> Evidence of “Bilateral Asbestos-Related Nonmalignant Disease” for purposes of meeting the criteria for establishing Disease Levels I, II, III, V, and VII, means either (i) a chest X-ray read by a qualified B-reader of 1/0 or higher on the ILO scale or, (ii) (x) a chest X-ray read by a qualified B reader or Other Qualified Physician, (y) a CT scan read by a Qualified Physician, or (z) pathology, in each case showing bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification. Evidence submitted to demonstrate (i) or (ii) above must be in the form of a written report stating the results (*e.g.*, an ILO report or a pathology report). Solely for claims filed against Federal-Mogul or another defendant in the tort system prior to the Petition Date, if an ILO reading is not available, either (i) a chest x-ray or a CT scan read by a Qualified Physician, or (ii) pathology, in each case showing bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification consistent with, or compatible with, a diagnosis of asbestos-related disease shall be evidence of a Bilateral Asbestos-Related Nonmalignant Disease for purposes of meeting the presumptive medical requirements of Disease Levels I, II, III, V and VII. Proof of asbestosis may be based on the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, “Asbestos-associated Diseases,” Vol. 106, No. 11, App. 3 (October 8, 1982). For all purposes of this TDP, a “Qualified Physician” is a physician who is board certified (or in the case of Canadian claims or Foreign Claims, a physician who is certified or qualified under comparable medical standards or criteria of the jurisdiction in question) in one or more relevant specialized fields of medicine such as pulmonology, radiology, internal medicine or occupational medicine; provided, however, subject to the provisions of Section 5.8, that the requirement for board certification in this provision shall not apply to otherwise qualified physicians whose x-rays and/or CT scan readings are submitted for deceased holders of Asbestos Trust Claims.

<sup>4</sup> “Significant Occupational Exposure” is defined in Section 5.7(b)(2) below.

exposure requirements of Lung Cancer 1 (Level VII) claims. All claims in this Disease Level will be individually evaluated. Level VI claims that show no evidence of either an underlying Bilateral Asbestos-Related Nonmalignant Disease or Significant Occupational Exposure may be individually evaluated, although it is not expected that such claims will be treated as having any significant value, especially if the claimant is also a Smoker.<sup>5</sup> In any event, no presumption of validity will be available for any claims in this category.

Other Cancer (Level V)

(1) Diagnosis of a primary, colo-rectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, (2) six months Federal-Mogul Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.

Several Asbestosis (Level IV)

(1) Diagnosis of asbestosis with ILO of 2/1 or greater, or asbestosis determined by pathological evidence of asbestos, plus either (i) TLC less than 65%, or (ii) FVC less than 65% and FEV1/FVC ratio greater than 65%, (2) six months Federal-Mogul Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.

Asbestosis/Pleural Disease (Level III)

(1) Diagnosis of a Bilateral Asbestos-Related Non-malignant Disease, plus (a) TLC less than 80%, or (b) FVC less than 80% and FEV1/FVC

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<sup>5</sup> There is no distinction between Non-Smokers and Smokers for either Lung Cancer 1 (Level VII) or Lung Cancer 2 (Level VI), although a claimant who meets the more stringent requirements of Lung Cancer 1 (Level VII) (evidence of any underlying Bilateral Asbestos-Related Nonmalignant Disease plus Significant Occupational Exposure), and who is also a Non-Smoker, may wish to have his or her claim individually evaluated by the U.S. Asbestos Trust. In such a case, absent circumstances that would otherwise reduce the value of the claim, it is anticipated that the liquidated value of the claim might well exceed the Scheduled Value for Lung Cancer 1 (Level VII) claims shown in the matrix set forth in Section 5.3(a)(3) for the relevant subfund. "Non-Smoker" means a claimant who either (a) never smoked or (b) has not smoke during any portion of the twelve (12) years immediately prior to the diagnosis of the lung cancer.

	ratio greater than or equal to 65%, (2) six months Federal-Mogul Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Asbestosis/Pleural Disease (Level II)	(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease, (2) six months Federal-Mogul Exposure prior to December 31, 1982, and (3) five years cumulative occupational exposure to asbestos.
Other Asbestos Disease (Level I)	(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease or an asbestos-related malignancy other than mesothelioma, and (2) Federal-Mogul Exposure prior to December 31, 1982.

### **5.3(a)(2) Individual Review Process**

#### **5.3(a)(2)(A) Review of Medical/Exposure Criteria.** The U.S.

Asbestos Trust's Individual Review Process provides a claimant with an opportunity for individual consideration and evaluation of a U.S. TDP Valued Claim or Claims, that fail to meet the presumptive Medical/Exposure Criteria for Disease Levels I – V, and VII-VIII. In any such case, the U.S. Asbestos Trust shall either deny the claim, or, if the U.S. Asbestos Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the relevant tort system, the U.S. Asbestos Trust can offer the claimant a liquidated value amount up to the Scheduled Value for that Disease Level, unless the claim qualifies as an Extraordinary Claim as defined in Section 5.4(a) below, in which case its liquidated value cannot exceed the maximum value for such a claim.

For purposes of the Individual Review Process, the Trustees, with the consent of the TAC and the Future Claimants' Representative, may develop separate Medical/Exposure Criteria and standards, as well as separate requirements for physician and other professional qualifications,

which shall be applicable to Foreign Claims; however, that such criteria, standards or requirements shall not effectuate substantive changes to the claims eligibility requirements under this U.S. TDP, but rather shall be made only for the purpose of adapting those requirements to the particular licensing provisions and/or medical customs or practices of the foreign country in question.

**5.3(a)(2)(B) Review of Liquidated Value.** Claimants holding U.S. TDP Valued Claims involving Disease Levels II – VIII, as well as all claimants holding Foreign Claims, shall also be eligible to seek Individual Review of the liquidated value of their claims as well as Medical/Exposure Evidence. The Individual Review Process is intended to result in payments from the U.S. Asbestos Trust Subfunds equal to the full liquidated value for each claim multiplied by the applicable Payment Percentage; however, the liquidated value of any U.S. TDP Valued Claim that undergoes Individual Review may be determined to be less than the Scheduled Value the claimant would have received under Expedited Review.

Moreover, the liquidated value for a U.S. TDP Valued Claim involving Disease Levels II – VIII shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(a)(3) below, unless the claim meets the requirements of an Extraordinary Claim described in Section 5.4(a) below, in which case its liquidated value cannot exceed the maximum value set forth in that provision for such claims. Because the detailed examination and valuation process pursuant to Individual Review requires substantial time and effort, claimants electing to undergo the Individual Review Process may be paid the liquidated value of their U.S. TDP Valued Claims later than would have been the case had the claimant elected the Expedited Review Process. Subject to the provisions of Section 5.8, the U.S. Asbestos Trust shall devote

reasonable resources to the review of all claims to ensure that there is a reasonable balance maintained in reviewing all classes of claims.

**5.3(a)(2)(C) Valuation Factors to Be Considered in Individual Review.** The U.S. Asbestos Trust shall liquidate the value of each U.S. TDP Valued Claim that undergoes Individual Review based on the historic liquidated values of other similarly situated claims in the relevant tort system for the same Disease Level. The U.S. Asbestos Trust will thus take into consideration all the factors that affect the severity of damages and values within the relevant tort system including, but not limited to (i) the degree to which the characteristics of a claim differ from the presumptive Medical/Exposure Criteria for the Disease Level in question; (ii) factors such as the claimant's age, disability, employment status, disruption of household, family or recreational activities, dependencies, special damages, and pain and suffering; (iii) evidence that the claimant's damages were (or were not) caused by asbestos exposure, including exposure to one or more asbestos-containing products of any Federal-Mogul Entity prior to December 31, 1982 (for example, alternative causes, alternative sources of exposure, and the strength of documentation of injuries); (iv) the industry of exposure; and (v) settlements, verdicts, and the claimant's and other law firms' experience in the Claimant's Jurisdiction for similarly situated claims.

For these purposes, the "Claimant's Jurisdiction" is the jurisdiction in which the claim was filed (if at all) against a T&N or FMP Entity in the relevant tort system prior to the Petition Date. If the claim was not filed against a T&N or FMP Entity in the relevant tort system prior to the Petition Date, the claimant may elect as the Claimant's Jurisdiction either (i) the jurisdiction in which the claimant resides at the time of diagnosis; (ii) the jurisdiction in which the claimant resides at the time the claim is filed with the U.S. Asbestos Trust; or (iii) a jurisdiction in which

the claimant was exposed to asbestos or an asbestos-containing product manufactured or distributed by a T&N or FMP Entity.

With respect to the “Claimant’s Jurisdiction” in the event a personal representative or authorized agent makes a claim under this U.S. TDP for wrongful death with respect to which the governing law of the Claimant’s Jurisdiction could only be the Alabama Wrongful Death Statute, the Claimant’s Jurisdiction for such claim shall be the Commonwealth of Pennsylvania, and such claimant’s damages shall be determined pursuant to the statutory and common laws of the Commonwealth of Pennsylvania without regard to its choice of law principles. The choice of law provision in Section 7.4 below applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant’s Jurisdiction pursuant to Section 5.3(b)(2) is determined to be the Alabama Wrongful Death Statute, shall only govern the rights between the U.S. Asbestos Trust and the claimant, and, to the extent the U.S. Asbestos Trust seeks recovery from any entity that provided insurance coverage to a Federal Mogul Entity, the Alabama Wrongful Death Statute shall govern.

**5.3(a)(2)(D) Processing and Payment Limitations for U.S. TDP Valued Claims Involving Disease Levels III and II.** The U.S. Asbestos Trust shall administer Individual Review for Disease Levels III and II so that Individual Review does not reduce payments to claimants electing the Scheduled Value for U.S. TDP Valued Claims under Expedited Review. As one means of implementing this requirement, the following shall apply for Disease Levels III and II claims:

**5.3(a)(2)(D)(i) Disease Level III Claims.** No more than 9% of Disease Level III claims paid in any year from the T&N Subfund or 10% of such claims from the FMP Subfund shall be allowed under Individual Review, and the total payments to such Disease

Level III claims allowed under Individual Review shall be no more than 15% of payments to all Disease Level III claimants from the T&N Subfund and 15% of such payments from the FMP Subfund during any year. Disease Level III Claims that seek Individual Review but that cannot be processed or paid in a given year because of these limits shall be carried over to the next year and placed at the head of the appropriate processing or payment queue.

**5.3(a)(2)(D)(ii) Disease Level II Claims.** No more than 6% of Disease Level II claims paid in any year from the T&N Subfund or 20% of such claims from the FMP Subfund shall be allowed under Individual Review, and the total payments to such Disease Level II claims allowed under Individual Review shall be no more than 8% of payments to all Disease Level II claimants from the T&N Subfund and 17% of such payments from the FMP Subfund during any year. Disease Level II Claims that seek Individual Review but that cannot be processed or paid in a given year because of these limits shall be carried over to the next year and placed at the head of the appropriate processing or payment queue.

**5.3(a)(3) Scheduled, Average and Maximum Values.** Scheduled, Average and Maximum Values for all categories of U.S. TDP Valued Claims are set forth below.

**T&N CLAIMS**

<b><u>Scheduled Disease</u></b>	<b><u>Scheduled Value</u></b>	<b><u>Average Value</u></b>	<b><u>Maximum Value</u></b>
Mesothelioma (Level VIII)	\$200,000	\$250,000	\$600,000
Lung Cancer 1 (Level VII)	\$ 42,500	\$ 60,000	\$125,000
Lung Cancer 2 (Level VI)	None	\$ 12,000	\$ 40,000
Other Cancer (Level V)	\$ 14,750	\$ 19,500	\$ 90,000
Severe Asbestosis (Level IV)	\$ 42,500	\$ 54,500	\$125,000
Asbestosis/Pleural Disease	\$ 12,700	\$ 13,500	\$ 25,000

(Level III)

Asbestosis/Pleural Disease (Level II)	\$ 5,700	\$ 5,800	\$ 8,000
Other Asbestos Disease Cash Discount Payment (Level I)	\$ 150	None	None

**FLEXITALLIC CLAIMS/FERODO CLAIMS**

<b><u>Scheduled Disease</u></b>	<b><u>Scheduled Value</u></b>	<b><u>Average Value</u></b>	<b><u>Maximum Value</u></b>
Mesothelioma (Level VIII)	\$ 50,000	\$ 62,500	\$150,000
Lung Cancer 1 (Level VII)	\$ 10,625	\$ 15,000	\$ 31, 250
Lung Cancer 2 (Level VI)	None	\$ 3,000	\$ 10,000
Other Cancer (Level V)	\$ 3,700	\$ 4,900	\$ 22,500
Severe Asbestosis (Level IV)	\$ 10,625	\$ 13,625	\$ 31,250
Asbestosis/Pleural Disease (Level III)	\$ 3,175	\$ 3,375	\$ 6,250
Asbestosis/Pleural Disease (Level II)	\$ 1,425	\$ 1,450	\$ 2,000
Other Asbestos Disease Cash Discount Payment (Level I)	\$ 50	None	None

**FMP (OTHER THAN PNEUMO ASBESTOS CLAIMS) CLAIMS**

<b><u>Scheduled Disease</u></b>	<b><u>Scheduled Value</u></b>	<b><u>Average Value</u></b>	<b><u>Maximum Value</u></b>
Mesothelioma (Level VIII)	\$100,000	\$125,000	\$300,000
Lung Cancer 1 (Level VII)	\$ 21,250	\$ 30,000	\$ 62,500
Lung Cancer 2 (Level VI)	None	\$ 6,000	\$ 20,000
Other Cancer (Level V)	\$ 7,375	\$ 9,750	\$ 45,000
Severe Asbestosis (Level	\$ 21,250	\$ 27,250	\$ 62,500

IV)

Asbestosis/Pleural Disease (Level III)	\$ 4,000	\$ 4,250	\$ 7,000
Asbestosis/Pleural Disease (Level II)	\$ 2,000	\$ 2,100	\$ 2,500
Other Asbestos Disease Cash Discount Payment (Level I)	\$ 50	None	None

Except as otherwise provided in Section 2.7, these Scheduled Values, Average Values and Maximum Values shall apply to all the respective categories of Asbestos Trust Voting Claims that are U.S. TDP Valued Claims (other than Pre- Petition Liquidated Claims) filed with the U.S. Asbestos Trust on or before the Initial Claims Filing Date as provided in Section 5.1(a)(1) above. Thereafter, the U.S. Asbestos Trust, with the consent of the TAC and the Future Claimants' Representative pursuant to Sections 5.7(b) and 6.6(b) of the U.S. Asbestos Trust Agreement, may change these valuation amounts, create additional matrices (such as for the Fel-Pro or Vellumoid Claims), or eliminate existing matrices, for good cause and consistent with other restrictions on the U.S. Asbestos Trust's amendment powers.

**5.3(b) Handling, Litigation, and Payment of Fel-Pro and Vellumoid Claims.**

Notwithstanding anything to the contrary in this U.S. TDP or the U.S. Asbestos Personal Injury Trust Agreement, unless otherwise approved by the TAC and the Future Claimants' Representative with the prior express written consent of the Lead Insurer, as provided in the CIP Agreement, this paragraph 5.3(b), together with the following sections or paragraphs of this U.S. TDP, to the extent not inconsistent therewith, shall exclusively govern the handling of Fel-Pro Claims and Vellumoid Claims: Section I and paragraphs 2.1(a), 2.1(b), 2.1(b)(2), 2.2(c), 2.3, 2.4, 2.5, 2.6, 3.1, 3.2, 4.2, and 5.1(c).

Claimants holding Fel-Pro or Vellumoid Claims who wish to recover on such claims must sue the U.S. Asbestos Trust in the relevant tort system and may not sue any Insurer or Excess Insurer (as those terms are defined in the CIP Agreement) in respect of such Fel-Pro or Vellumoid Claims. If such claim is a Fel-Pro Claim, the lawsuit must name as the defendant the Federal-Mogul Asbestos Personal Injury Trust as successor to Fel-Pro. If such claim is a Vellumoid Claim, the lawsuit must name as the defendant the Federal-Mogul Asbestos Personal Injury Trust as successor to the former Vellumoid division of Federal-Mogul. All lawsuits brought against the U.S. Asbestos Trust involving Fel-Pro and/or Vellumoid Claims must be filed by the claimant in his or her own right and name and not as a member or representative of a class. Service of process on the U.S. Asbestos Trust may be made, pursuant to applicable federal or state law where the lawsuit is filed, upon the following:

Federal-Mogul Asbestos Personal Injury Trust  
As successor to Felt Products Manufacturing Co. and/or  
the former Vellumoid division of Federal-Mogul Corporation  
c/o Wilmington Trust SP Services, Inc.  
1105 N. Market Street, Suite 1300  
Wilmington, DE 19801

Any lawsuit involving a Fel-Pro Claim or a Vellumoid Claim may be brought by the claimant in the federal or state court of his or her choosing as permitted under applicable federal or state law. After the Effective Date, where no action against Fel-Pro or the former Vellumoid division of Federal-Mogul is already pending on behalf of the claimant, the claimant must institute a lawsuit asserting a Fel-Pro Claim or a Vellumoid Claim by filing an appropriate legal pleading in a venue permitted by applicable federal or state law, subject, however, to all defenses, including those based on venue, forum non conveniens, and jurisdiction.

Where a lawsuit that is still pending against Fel-Pro and/or the former Vellumoid division of Federal-Mogul was already pending prior to the Petition Date, the lawsuit may proceed, subject, however, to all defenses, including those based on venue, forum non conveniens, and jurisdiction; provided, however, that within 180 days of the Effective Date, the plaintiff in such lawsuit shall file and serve an amendment to the lawsuit substituting the Federal-Mogul Asbestos Personal Injury Trust as successor to Fel-Pro and/or the former Vellumoid division of Federal-Mogul as applicable, as a party defendant. Such lawsuit shall be deemed barred by the statute of limitations if (i) the plaintiff was on notice of the foregoing requirements concerning substitution of parties and re-filing of such lawsuit, (ii) compliance with the foregoing requirements concerning substitution of parties and re-filing of such lawsuit is not effected within one hundred eighty (180) days of the Effective Date, and (iii) the defense of such lawsuit has been materially prejudiced by such lack of compliance. In all other circumstances, claimants holding Fel-Pro or Vellumoid Claims who wish to recover on such claims from proceeds of insurance policies that provide or are alleged to provide coverage for such claims must bring a new lawsuit against the Federal-Mogul Asbestos Personal Injury Trust as successor to Fel-Pro and/or the former Vellumoid division of Federal-Mogul as applicable or amend any existing lawsuit to substitute in the Federal-Mogul Asbestos Personal Injury Trust as successor to Fel-Pro and/or the former Vellumoid division of Federal-Mogul as applicable.

All defenses and all contribution claims (including those with respect to the U.S. Asbestos Trust that could have been asserted by Fel-Pro and/or the former Vellumoid division of Federal-Mogul) shall be available as to any Fel-Pro or Vellumoid Claim.

No claim for punitive damages or exemplary damages or any claim based on the Debtors' or the Reorganized Debtors' spoliation of evidence may be asserted or recovered upon in such

lawsuit. In addition, prejudgment interest shall be subject to and calculated based on applicable federal or state law, including any applicable limitations thereunder, including without limitation Section 502 of the Bankruptcy Code. Any Fel-Pro Claim or Vellumoid Claim that is not a Covered Asbestos Claim pursuant to the CIP Agreement shall not be the responsibility of any Insurer or Excess Insurer (as those terms are defined in the CIP Agreement).

The applicability of statutes of limitations and repose in all such lawsuits shall be determined under applicable state or federal law without regard to Section 5.1(a)(2) above. If a lawsuit involving a Fel-Pro Claim and/or a Vellumoid Claim was filed prior to the Petition Date (even if the lawsuit was dismissed as a result of the filing of these bankruptcy cases), the filing date of such lawsuit shall be the operative date for purposes of the applicable statute of limitations.

The U.S. Asbestos Trust shall provide the Lead Insurer with such information related to any lawsuit involving a Fel-Pro Claim or a Vellumoid Claim as is required under the terms and conditions of the CIP Agreement. Once these materials are received by the Lead Insurer, the lawsuit will be handled in accordance with the CIP Agreement. The time within which the U.S. Asbestos Trust is required to answer or otherwise respond to any summons or complaint involving a Fel-Pro Claim or a Vellumoid Claim that is served upon the U.S. Asbestos Trust shall automatically be extended by twenty (20) days.

This Section shall not be amended without the approval of the TAC and the Future Claimants' Representative and the prior express written consent of the Lead Insurer, as provided in the CIP Agreement.

**5.3(c) Tender to CNA of Fel-Pro and Vellumoid Claims.** The U.S. Asbestos Trust shall provide Continental Casualty Company, and the Continental Insurance Company, both in

its individual capacity as well as the successor to certain policies issued by Harbor Insurance Company and as successor by merger to Fidelity and Casualty Company of New York (the "CNA Related Companies") with information related to any lawsuit involving a Fel-Pro Claim or a Vellumoid Claim contemporaneously with the provision of such information to the Lead Insurer under Section 5.3(b). The Trust may not withdraw such tender to either CNA or the Lead Insurer without withdrawal as to the other. The handling of such claims in accordance with the CIP Agreement shall be without prejudice to the CNA-Related Companies' right to participate in the defense and/or the resolution of such claims and shall further be without prejudice to the Trust's rights to pursue coverage from the CNA-Related Companies for such claims and/or to seek contribution or reimbursement from the CNA-Related Companies in its capacity as successor to the rights of the Debtors or as assignee of the contribution rights of the Insurers and the Excess Insurers (as the terms Insurers and Excess Insurers are defined in the CIP Agreement). This paragraph shall not be amended without the express written consent of CNA and the Lead Insurer.

**5.4. Categorizing U.S. TDP Valued Claims as Extraordinary and/or Exigent**

**5.4(a) Extraordinary Claims.** "Extraordinary Claim" means a U.S. TDP Valued Claim that otherwise satisfies the Medical Criteria for Disease Levels II - VIII, and that is held by a claimant whose exposure to asbestos (i) occurred predominately as the result of working in a manufacturing facility of a T&N or FMP Entity during a period in which the T&N or FMP Entity was manufacturing asbestos-containing products at that facility, or (ii) was at least 75% the result of exposure to asbestos or to an asbestos-containing product manufactured by a T&N or FMP Entity, and there is little likelihood of a substantial recovery elsewhere. All Extraordinary Claims shall be liquidated pursuant to the Individual Review Process and, if valid,

shall be entitled to an award of up to a maximum value of five (5) times the Scheduled Value set forth in Section 5.3(a)(3) for claims qualifying for Disease Levels II – V, VII and VIII, and five (5) times the Average Value for claims in Disease Level VI, multiplied by the applicable Payment Percentage.

Any dispute as to Extraordinary Claim status shall be submitted to a special Extraordinary Claims Panel to be established by the U.S. Asbestos Trust with the consent of the TAC and the Future Claimants' Representative. All decisions of the Extraordinary Claims Panel shall be final and not subject to any further administrative or judicial review. An Extraordinary Claim, following its liquidation, shall be placed in the T&N Subfund's or the FMP Subfund's FIFO Payment Queue, as appropriate, based on its date of liquidation ahead of all other liquidated claims payable from that Subfund except Pre-Petition Liquidated Claims, Disease Level I (Other Asbestos Disease) Claims, and Exigent Hardship Claims, which in that order shall be first in such queues and shall be subject to the Maximum Available Payment and Claims Payment Ratio described above.

**5.4(b) Exigent Hardship Claims.** At any time the U.S. Asbestos Trust may liquidate and pay U.S. TDP Valued Claims that qualify as Exigent Hardship Claims. Such claims may be considered separately no matter what the order of processing otherwise would have been under this U.S. TDP. An Exigent Hardship Claim, following its liquidation, shall be placed first in the FIFO Payment Queue for the T&N Subfund or the FMP Subfund ahead of all other liquidated claims payable from the Subfund except Pre-Petition Liquidated Claims and Disease Level I (Other Asbestos Disease Claims) which shall be paid first in that order, and shall be subject to the Maximum Available Payment and Claims Payment Ratio described above. A U.S. TDP Valued Claim qualifies for payment as an Exigent Hardship Claim if the claim meets

the Medical/Exposure Criteria for Severe Asbestosis (Disease Level IV) or an asbestos-related malignancy (Disease Levels V-VIII), and the U.S. Asbestos Trust, in its sole discretion, determines (i) that the claimant needs financial assistance on an immediate basis based on the claimant's expenses and all sources of available income, and (ii) that there is a causal connection between the claimant's dire financial condition and the claimant's asbestos-related disease.

**5.5. Secondary Exposure Claims.** If a claimant asserting a U.S. TDP Valued Claim alleges an asbestos-related disease resulting solely from exposure to an occupationally exposed person, such as a family member, the claimant must seek Individual Review of his or her claim pursuant to Section 5.3(a)(2) above. In such a case, the claimant must establish that the occupationally exposed person would have met the presumptive exposure requirements under this U.S. TDP that would have been applicable had that person filed a direct claim against the U.S. Asbestos Trust. In addition, the claimant with secondary exposure must establish that he or she is suffering from one (1) of the eight (8) Disease Levels described in the presumptive medical criteria set forth in Section 5.3(a)(1)(C) above or in the case of Individual Review, the claimant must satisfy the U.S. Asbestos Trust that his or her claim would be cognizable and valid in the relevant tort system pursuant to Section 5.3(a)(2) above. In all cases, the claimant must show that his or her own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person was exposed to asbestos products produced by the relevant Federal-Mogul Entity, and that such secondary exposure was a cause of the claimed disease. The U.S. Asbestos Trust's proof of claim form shall contain an additional section for Secondary Exposure Claims. All other liquidation and payment rights and limitations under this U.S. TDP shall be applicable to such Secondary Exposure Claims.

**5.6. Indirect Asbestos Trust Claims.** Indirect Asbestos Trust Claims asserted against the U.S. Asbestos Trust shall be treated as presumptively valid and paid by the U.S. Asbestos Trust subject to the applicable Payment Percentage if (a) such claim satisfied the requirements of the Bar Date for such claims established by the Bankruptcy Court, if applicable, and is not otherwise disallowed by Section 502(e) of the Bankruptcy Code or subordination under Section 509(c) of the Bankruptcy Code, and (b) the holder of such claim (the “Indirect Claimant”) establishes to the satisfaction of the Trustees that (i) the Indirect Claimant has paid in full the liability and obligation of the U.S. Asbestos Trust to the individual claimant to whom the U.S. Asbestos Trust would otherwise have had a liability or obligation under the U.S. TDP (the “Direct Claimant”), (ii) the Direct Claimant and the Indirect Claimant have forever and fully released the U.S. Asbestos Trust from all liability to the Direct Claimant with respect to the Asbestos Trust Claim satisfied by the Indirect Claimant, and (iii) the claim is not otherwise barred by a statute of limitation or repose or by other applicable law. In no event shall any Indirect Claimant have any rights against the U.S. Asbestos Trust superior to the rights of the related Direct Claimant against the U.S. Asbestos Trust, including any rights with respect to the timing, amount or manner of payment. In addition, no Indirect Claim may be liquidated and paid in an amount that exceeds what the Indirect Claimant has actually paid the related Direct Claimant.

To establish a presumptively valid Indirect Asbestos Trust Claim, the Indirect Claimant’s aggregate liability for the Direct Claimant’s claim must also have been fixed, liquidated and paid fully by the Indirect Claimant by settlement (with an appropriate full release in favor of the U.S. Asbestos Trust) or a Final Order provided that such claim is valid under the applicable state law. In any case where the Indirect Claimant has satisfied the claim of a Direct Claimant against the

U.S. Asbestos Trust under applicable law by way of a settlement, the Indirect Claimant shall obtain for the benefit of the U.S. Asbestos Trust a release in form and substance satisfactory to the Trustees.

If an Indirect Claimant cannot meet the presumptive requirements set forth above, including the requirement that the Indirect Claimant provide the U.S. Asbestos Trust with a full release of the Direct Claimant's claim, the Indirect Claimant may request that the U.S. Asbestos Trust review the Indirect Asbestos Trust Claim individually to determine whether the Indirect Claimant can establish under applicable federal, state or foreign law that the Indirect Claimant has paid all or a portion of a liability or obligation that the U.S. Asbestos Trust had to the Direct Claimant as of the Effective Date of the U.S. TDP. If the Indirect Claimant can show that it has paid such a liability or obligation, the U.S. Asbestos Trust shall reimburse the Indirect Claimant the amount of the liability or obligation so paid, times the then applicable Payment Percentage. However, in no event shall such reimbursement to the Indirect Claimant be greater than the amount to which the Direct Claimant would have otherwise been entitled. Further, the liquidated value of any Indirect Asbestos Trust Claim paid by the U.S. Asbestos Trust to an Indirect Claimant shall be treated as an offset to or reduction of the full-liquidated value of any Asbestos Trust Claim that might be subsequently asserted by the Direct Claimant against the U.S. Asbestos Trust.

Any dispute between the U.S. Asbestos Trust and an Indirect Claimant over whether the Indirect Claimant has a right to reimbursement for any amount paid to a Direct Claimant, or whether the claim is a valid Indirect Asbestos Trust Claim that has been channeled to the U.S. Asbestos Trust under the terms of the Plan, shall be subject to the ADR procedures provided in Section 5.10 below. If such dispute is not resolved by said ADR procedures, the Indirect

Claimant may litigate the dispute in the tort system pursuant to Sections 5.11 and 7.6 below. The Trustees may develop and approve a separate proof of claim form for Indirect Asbestos Trust Claims. Indirect Asbestos Trust Claims that have not been disallowed, discharged, or otherwise resolved by prior order of the Bankruptcy Court shall be processed in accordance with procedures to be developed and implemented by the Trustees consistent with the provisions of this Section 5.6, which procedures (a) shall determine the validity, allowability and enforceability of such claims; and (b) shall otherwise provide the same liquidation and payment procedures and rights to the holders of such claims as the U.S. Asbestos Trust would have afforded the holders of the underlying valid Asbestos Trust Claims. Nothing in this U.S. TDP is intended to preclude a trust to which asbestos-related liabilities are channeled from asserting an Indirect Asbestos Trust Claim against the U.S. Asbestos Trust subject to the requirements set forth herein.

**5.7. Evidentiary Requirements for U.S. TDP Valued Claims**

**5.7(a) Medical Evidence.**

**5.7(a)(1) In General.** For U.S. TDP Valued Claims, all diagnoses of a Disease Level shall be accompanied by either (i) a statement by the physician providing the diagnosis that at least ten (10) years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis, or (ii) a history of the claimant's exposure sufficient to establish a 10-year latency period. A finding by a physician after the Effective Date that a claimant's disease is "consistent with" or "compatible with" asbestosis will not alone be treated by the U.S. Asbestos Trust as a diagnosis.

**5.7(a)(1)(A). Disease Levels I-IV.** Except for asbestos claims filed against a T&N Entity, FMP or any other defendant in the tort system prior to the Petition

Date, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I-IV) shall be based in the case of a claimant who was living at the time the claim was filed, upon a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease. In addition, all living claimants must provide (i) for Disease Levels I-III, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 3 above); (ii) for Disease Level IV<sup>6</sup>, an ILO reading of 2/1 or greater or pathological evidence of asbestosis, and (iii) for Disease Levels III and IV, pulmonary function testing.<sup>7</sup>

In the case of a claimant who was deceased at the time the claim was filed, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I-IV) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease; or (ii) pathological evidence of the non-malignant asbestos-related disease; or (iii) in the case of Disease Levels I-III, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 3 above), and for Disease Level IV, either an ILO reading of 2/1 or greater or pathological evidence of asbestosis; and (iv) for either Disease Level III or IV, pulmonary function testing.

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<sup>6</sup> All diagnoses of Asbestos/Pleural Disease (Disease Levels II and III) not based on pathology shall be presumed to be based on findings of bilateral asbestosis or pleural disease, and all diagnoses of Mesothelioma (Disease Level VIII) shall be presumed to be based on findings that the disease involves a malignancy. However, the U.S. Asbestos Trust may rebut such presumptions.

<sup>7</sup> “Pulmonary Function Testing” or “PFT” shall mean testing that is in material compliance with the quality criteria established by the American Thoracic Society (“ATS”) and is performed on equipment which is in material compliance with ATS standards for technical quality and calibration. PFT performed in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (“JCAHO”), or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician shall be presumed to comply with ATS standards, and the claimant may submit a summary report of the testing. If the PFT was not performed in an JCAHO-accredited hospital, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician, the claimant must submit the full report of the testing (as opposed to a summary report); provided however that if the PFT was conducted prior to the Effective Date of the Plan, and the full PFT report is not available, the claimant must submit a declaration signed by a Qualified Physician or other party who is qualified to make a certification regarding the PFT in the form provided by the U.S. Asbestos Trust certifying that the PFT was conducted in material compliance with ATS standards.

**5.7(a)(1)(B). Disease Levels V – VIII.** All diagnoses of an asbestos-related malignancy (Disease Levels V – VIII) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease, or (ii) a diagnosis of such a malignant Disease Level by a board-certified pathologist or by a pathology report prepared at or on behalf of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO").

**5.7(a)(1)(C). Exception to the Exception for Certain Pre-Petition Claims.** If the holder of an Asbestos Trust Claim that was filed against a T&N Entity, FMP or any other defendant in the tort system prior to the Petition Date has available a report of a diagnosing physician engaged by the holder or his or her law firm who conducted a physical examination of the holder as described in Sections 5.7(a)(1)(A), or if the holder has filed such medical evidence and/or a diagnosis of the asbestos-related disease by a physician not engaged by the holder or his or her law firm who conducted a physical examination of the holder with another asbestos-related personal injury settlement trust that requires such evidence without regard to whether the claimant or the law firm engaged the diagnosing physician, the holder shall provide such medical evidence to the U.S. Asbestos Trust notwithstanding the exception in Section 5.7(a)(1)(A).

**5.7(a)(2) Credibility of Medical Evidence.** Before making any payment to a claimant on a U.S. TDP Valued Claim, the U.S. Asbestos Trust must have reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical standards. The U.S. Asbestos Trust may require the submission of X-rays, CT scans, detailed results of pulmonary function tests, laboratory tests,

tissue samples, results of medical examination or reviews of other medical evidence, and may require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods and procedure to assure that such evidence is reliable. Medical evidence (i) that is of a kind shown to have been received in evidence by a state or federal judge at a trial in the Claimant's Jurisdiction, (ii) that is consistent with evidence submitted to any Federal-Mogul Entity to settle for payment similar disease cases prior to Federal-Mogul's bankruptcy, or (iii) a diagnosis by a physician shown to have previously qualified as a medical expert with respect to the asbestos-related disease in question before a state, federal or foreign judge, is presumptively reliable, although the U.S. Asbestos Trust may seek to rebut the presumption.

In addition, claimants who otherwise meet the requirements of this U.S. TDP for payment of a U.S. TDP Valued Claim shall be paid irrespective of the results in any litigation at anytime between the claimant and any other defendant in the relevant tort system. However, any relevant evidence submitted in a proceeding in the relevant tort system involving another defendant, other than any findings of fact, a verdict, or a judgment, may be introduced by either the claimant or the U.S. Asbestos Trust in any Individual Review proceeding conducted pursuant to Section 5.3(a)(2) or any Extraordinary Claim proceeding conducted pursuant to Section 5.4(a).

#### **5.7(b) Exposure Evidence**

**5.7(b)(1) In General.** As set forth above in Section 5.3(a)(1)(C) to qualify for any Disease Level, holders of U.S. TDP Valued Claims, including Multiple Exposure Claims, must demonstrate a minimum exposure to an asbestos-containing product manufactured or distributed by the particular Federal-Mogul Entity to which the claim relates. Claims based on conspiracy theories that involve no exposure to an asbestos-containing product manufactured or

distributed by a Federal-Mogul Entity are not compensable under this U.S. TDP. To meet the presumptive exposure requirements of Expedited Review set forth in Section 5.3(a)(1)(C) above, the claimant must show (i) for all Disease Levels, Federal-Mogul Exposure as defined below prior to December 31, 1982; (ii) for Asbestos/Pleural Disease Level II, six (6) months Federal-Mogul Exposure prior to December 31, 1982, plus five (5) years cumulative occupational asbestos exposure; and (iii) for Asbestosis/Pleural Disease (Disease Level III), Severe Asbestosis (Disease Level IV), Other Cancer (Disease Level V) or Lung Cancer 1 (Disease Level VII), the claimant must show six (6) months Federal-Mogul Exposure prior to December 31, 1982, plus Significant Occupational Exposure to asbestos as defined below. If the claimant cannot meet the relevant presumptive exposure requirements for a Disease Level eligible for Expedited Review, the claimant may seek Individual Review of his or her exposure to an asbestos-containing product manufactured or distributed by the relevant Federal-Mogul Entity pursuant to Section 5.3(a)(2)above.

**5.7(b)(2) Significant Occupational Exposure.** "Significant Occupational Exposure" means employment for a cumulative period of at least five (5) years, with a minimum of two (2) years prior to December 31, 1982, in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b) and/or (c).

**5.7(b)(3) Federal-Mogul Exposure.** Claimants holding U.S. TDP Valued Claims must demonstrate meaningful and credible exposure, which occurred prior to December 31, 1982, to asbestos or asbestos-containing products supplied, specified, manufactured, installed, maintained, or repaired by the relevant T&N Entity or by FMP, and/or any entity, including any contracting unit, for which the particular Federal-Mogul Entity has legal responsibility (“Federal-Mogul Products”). That meaningful and credible exposure evidence may be established by an affidavit or sworn statement of a living claimant; by an affidavit or sworn statement of a co-worker or family member in the case of a deceased claimant (providing the U.S. Asbestos Trust finds such evidence reasonably reliable); by invoices, employment, construction or similar records; or by other credible evidence. The specific exposure information required by the U.S. Asbestos Trust to process a claim under either Expedited or Individual Review is set forth on the proof of claim form to be used by the U.S. Asbestos Trust. The U.S. Asbestos Trust can also require submission of other or additional evidence of exposure when it deems such to be necessary.

Evidence submitted to establish proof of exposure to Federal-Mogul Products is for the sole benefit of the U.S. Asbestos Trust, not third parties or defendants in the tort system. The U.S. Asbestos Trust has no need for, and therefore claimants are not required to furnish the U.S. Asbestos Trust with evidence of exposure to specific asbestos products other than those for which the particular Federal-Mogul Entity has legal responsibility, except to the extent such evidence is required elsewhere in this U.S. TDP. Similarly, failure to identify Federal-Mogul Products in the claimant’s underlying tort action, or to other bankruptcy trusts, does not preclude the claimant from recovering from the U.S. Asbestos Trust, provided the claimant otherwise satisfies the medical and exposure requirements of this U.S. TDP.

**5.8. Claims Audit Program.** The U.S. Asbestos Trust with the consent of the TAC and the Future Claimants' Representative may develop methods for auditing the reliability of medical evidence, including additional reading of x-rays and CT scans as well as verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including exposure to asbestos-containing products manufactured or distributed by any Federal-Mogul Entity prior to December 31, 1982. In the event that the U.S. Asbestos Trust reasonably determines that any individual or entity has engaged in a pattern or practice of providing unreliable medical evidence to the U.S. Asbestos Trust, it may decline to accept additional evidence from such provider in the future.

Further, in the event that an audit reveals that fraudulent information has been provided to the U.S. Asbestos Trust, the U.S. Asbestos Trust may penalize any claimant or claimant's attorney by disallowing the Asbestos Trust Claim or by other means including, but not limited to, requiring the source of the fraudulent information to pay the costs associated with the audit and any future audit or audits, reordering the priority of payment of all affected claimants' Asbestos Trust Claims, raising the level of scrutiny of additional information submitted from the same source or sources, refusing to accept additional evidence from the same source or sources, seeking the prosecution of the claimant or claimant's attorney for presenting a fraudulent claim in violation of [18 U.S.C. §152](#), and seeking sanctions from the Bankruptcy Court.

**5.9. Second Disease (Malignancy) Claims.** The holder of an Asbestos Trust Claim involving a non-malignant asbestos-related disease (Disease Levels I through IV) may assert a new Asbestos Trust Claim against the U.S. Asbestos Trust for a malignant disease (Disease Levels V – VIII) that is subsequently diagnosed. Any additional payments to which such claimant may be entitled with respect to such malignant asbestos-related disease shall not be

reduced by the amount paid for the nonmalignant asbestos-related disease, provided that the malignant disease had not been diagnosed by the time the claimant was paid with respect to his or her original claim involving the nonmalignant disease.

**5.10. Arbitration of U.S. TDP Valued Claims.**

**5.10(a) Establishment of ADR Procedures.** The U.S. Asbestos Trust, with the consent of the TAC and the Future Claimants' Representative, shall institute binding and non-binding arbitration procedures in accordance with ADR Procedures for U.S. TDP Valued Claims (i.e., T&N, Flexitallic, Ferodo and FMP Claims) for resolving disputes concerning whether a pre-petition settlement agreement with or on behalf of any T&N Entity or FMP is binding and judicially enforceable in the absence of a Final Order of the Bankruptcy Court determining the issue, whether the U.S. Asbestos Trust's outright rejection or denial of a U.S. TDP Valued Claim was proper, or whether the claimant's medical condition or exposure history meets the requirements of this U.S. TDP for purposes of categorizing a U.S. TDP Valued Claim involving Disease Levels II – VIII. Binding and non-binding arbitration shall also be available for resolving disputes over the liquidated value of a U.S. TDP Valued Claim involving Disease Levels II – VIII, as well as disputes over a Subfund's share of the unpaid portion of a Pre-Petition Liquidated Claim described in Section 5.2 above, and the validity of an Indirect Asbestos Trust Claim described in Section 5.6 above.

In all arbitrations where relevant, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in Section 5.7 above. In the case of an arbitration involving the liquidated value of a claim involving Disease Levels II – VIII, the arbitrator shall consider the same valuation factors that are set forth in Section 5.3(a)(2)(C) above. In order to facilitate the Individual Review Process with respect to such claims, the U.S.

Asbestos Trust may from time to time develop a valuation model that enables the U.S. Asbestos Trust to efficiently make initial liquidated value offers on these claims in the Individual Review setting. In an arbitration involving any such claim, the U.S. Asbestos Trust shall neither offer into evidence or describe any such model nor assert that any information generated by the model has any evidentiary relevance or should be used by the arbitrator in determining the presumed correct liquidated value in the arbitration. The underlying data that was used to create the model may be relevant and may be made available to the arbitrator but only if provided to the claimant or his/her counsel ten (10) days prior to the arbitration proceeding. With respect to all U.S. TDP Valued Claims eligible for arbitration, the claimant, but not the U.S. Asbestos Trust, may elect either non-binding or binding arbitration. The ADR Procedures for U.S. TDP Valued Claims may be modified by the U.S. Asbestos Trust with the consent of the TAC and the Future Claimants' Representative. Such amendments may include adoption of mediation procedures as well as establishment of an Extraordinary Claims Panel to review such claims pursuant to Section 5.4(a) above.

**5.10(b) U.S. TDP Valued Claims Eligible for Arbitration.** In order to be eligible for arbitration, claims must first complete the Individual Review Process set forth in Section 5.3(a)(2) above and must also complete either the Pro-Bono Evaluation or Mediation processes set forth in the ADR Procedures to be established by the U.S. Asbestos Trust with respect to the disputed issue. Individual Review will be treated as completed for these purposes when the U.S. TDP Valued Claim has been individually reviewed by the U.S. Asbestos Trust, the U.S. Asbestos Trust has made an offer on the claim, the claimant has rejected the liquidated value resulting from the Individual Review, and the claimant has notified the U.S. Asbestos

Trust of the rejection in writing. Individual Review shall also be treated as completed if the U.S. Asbestos Trust has rejected the claim.

**5.10(c) Limitations on and Payment of Arbitration Awards.** In the case of a non-Extraordinary U.S. TDP Valued Claim involving Disease Levels II – VIII, the arbitrator shall not return an award in excess of the Maximum Value for the appropriate Disease Level as set forth in Section 5.3(a)(3) above, and for an Extraordinary U.S. TDP Valued Claim involving one of those Disease Levels, the arbitrator shall not return an award greater than the maximum extraordinary value for such a claim as set forth in Section 5.4(a) above. A claimant who submits to arbitration and who accepts the arbitral award will receive payments in the same manner as one who accepts the U.S. Asbestos Trust's original valuation of the claim.

**5.11. Litigation.** Except as to claims described in Section 2.1(b)(1) hereof, holders of Asbestos Trust Claims may litigate their claims in the tort system only as provided below. In each such case, the claimant may seek to recover only the relevant U.S. Asbestos Trust Subfund's separate share of the liquidated value of the claim.

**5.11(a) Litigation of U.S. TDP Valued Claims.** Claimants holding U.S. TDP Valued Claims who elect non-binding arbitration and then reject their arbitral awards retain the right to institute a lawsuit against the U.S. Asbestos Trust in the Claimant's Jurisdiction pursuant to Section 7.6(a) below. However, all lawsuits brought against the U.S. Asbestos Trust involving U.S. TDP Valued Claims must be filed by the claimant in her or her own right and name and not as a member or representative of a class; no such lawsuit may be consolidated with any other lawsuit; and a claimant shall be eligible for payment of a judgment for monetary damages obtained in the tort system from the U.S. Asbestos Trust's available cash only as provided in Section 7.7(a) below.

## SECTION VI

### Claims Materials

**6.1. Claims Materials.** The U.S. Asbestos Trust shall prepare suitable and efficient claims materials (“Claims Materials”) for all Asbestos Trust Claims, and shall provide such Claims Materials upon a written request for such materials to the U.S. Asbestos Trust. The proof of claim form to be submitted to the U.S. Asbestos Trust shall require the claimant to assert the highest Disease Level for which the claim qualifies at the time of filing. The proof of claim form shall also include a certification by the claimant or his or her attorney sufficient to meet the requirements of Rule 11(b) of the Federal Rules of Civil Procedure. In developing its claim filing procedures, the U.S. Asbestos Trust shall make every effort to provide claimants with the opportunity to utilize currently available technology at their discretion, including filing claims and supporting documentation over the Internet and electronically by disk or CD-rom. The proof of claim forms may be changed by the Trustees with the consent of the TAC and the Future Claimants’ Representative.

**6.2. Content of Claims Materials for U.S. TDP Valued Claims.** The Claims Materials shall include a copy of this U.S. TDP, such instructions as the Trustees shall approve, and a detailed proof of claim form. If feasible, the form used by the U.S. Asbestos Trust to obtain claims information shall be the same or substantially similar to those used by other asbestos claims resolution organizations. If requested by the claimant, the U.S. Asbestos Trust shall accept information provided electronically. The claimant may, but will not be required to, provide the U.S. Asbestos Trust with evidence of a prior recovery from another asbestos defendant and/or claims resolution organization. However, the claimant shall be required to

provide the U.S. Asbestos Trust with evidence of any prior recovery from any Federal-Mogul Entity.

**6.3. Withdrawal or Deferral of Claims.** A claimant may withdraw an Asbestos Trust Claim at any time upon written notice to the U.S. Asbestos Trust and file another such claim subsequently without affecting the status of the claim for statute of limitations purposes, but any such claim filed after withdrawal shall be given a place in the FIFO Processing Queue based on the date of such subsequent filing. A claimant can also request that the processing of his or her Asbestos Trust Claim by the U.S. Asbestos Trust be deferred for a period not to exceed three (3) years without affecting the status of the claim for statute of limitation purposes, in which case the claimant shall also retain his or her original place in the FIFO Processing Queue. During the period of such deferral, any sequencing adjustment on such claimant's U.S. Asbestos Trust Claim as provided in Section 7.5 hereunder, if applicable, shall not accrue and payment thereof shall be deemed waived by the claimant.

Except for U.S. TDP Valued Claims held by representatives of deceased or incompetent claimants for which court or probate approval of the U.S. Asbestos Trust's offer is required, or a claim for which deferral status has been granted, a claim will be deemed to have been withdrawn if the claimant neither accepts, rejects, nor initiates arbitration within six (6) months of the U.S. Asbestos Trust's written offer of payment or rejection of the claim. Upon written request and good cause, the U.S. Asbestos Trust may extend either the deferral or withdrawal period for an additional six (6) month period.

**6.4. Filing Requirements and Fees.** The Trustees shall have the discretion to determine, with the consent of the TAC and the Future Claimants' Representative, (a) whether a claimant must have previously filed an asbestos personal injury claim in the relevant tort system

to be eligible to file the claim with the U.S. Asbestos Trust and (b) whether a filing fee should be required for any Asbestos Trust Claims.

**6.5. Confidentiality of Claimants' Submissions.** All submissions to the U.S. Asbestos Trust by a holder of an Asbestos Trust Claim or a proof of claim form and materials related thereto shall be treated as made in the course of settlement discussions between the holder and the U.S. Asbestos Trust and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including, but not limited to, those directly applicable to settlement discussions. The U.S. Asbestos Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only, with the permission of the holder, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) of the Bankruptcy Code or other applicable law, to such other persons as authorized by the holder, or in response to a valid subpoena of such materials issued by the Bankruptcy Court, a Delaware State Court or the United States District Court for the District of Delaware. Furthermore, the U.S. Asbestos Trust shall provide counsel for the holder a copy of any such subpoena immediately upon being served. The U.S. Asbestos Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privilege before the Bankruptcy Court, a Delaware State Court or the United States District Court for the District of Delaware and before those courts having appellate jurisdiction related thereto. Nothing in the TDP, the Plan, or the Trust Agreement expands, limits or impairs the obligation under applicable law of a claimant to respond fully to lawful discovery in an underlying civil action regarding his or her submission of factual information to the Trust for the purpose of obtaining compensation for asbestos-related injuries from the Trust. Notwithstanding anything in the foregoing to the contrary, with the consent of

the TAC and Future Claimants' Representative, the U.S. Asbestos Trust may, in specific limited circumstances, disclose information, documents or other materials reasonably necessary in the U.S. Asbestos Trust's judgment to preserve, litigate, resolve, or settle coverage, or to comply with an applicable obligation under an insurance policy or settlement agreement within the Asbestos Insurance Policies, Asbestos In-Place Insurance Coverage, or the Asbestos Insurance Settlement Agreements; provided, however, that the U.S. Asbestos Trust shall take any and all steps reasonably feasible in its judgment to preserve the further confidentiality of such information, documents or materials to a third party, the U.S. Asbestos Trust shall receive from such third party a written agreement of confidentiality that (a) ensures that the information, documents and materials provided by the U.S. Asbestos Trust shall be used solely by the receiving party for the purpose stated in the agreement and (b) prohibits any other use or further dissemination of the information, documents, and materials by the third party. Further, notwithstanding anything in the foregoing to the contrary, the U.S. Asbestos Trust may, in the furtherance of the responsibility to seek recovery under the Hercules Policy, disclose information, documents, or other materials reasonably necessary in the U.S. Asbestos Trust's judgment to obtain such recovery; provided, however, that the U.S. Asbestos Trust shall receive from such third party a written agreement of confidentiality that (a) ensures that the information, documents and materials provided by the U.S. Asbestos Trust shall be used solely by the receiving party for the purpose stated in the agreement and (b) prohibits any other use or further dissemination of the information, documents, and materials by the third party.

## SECTION VII

### **General Guidelines for Liquidating and Paying U.S. TDP Valued Claims**

**7.1. Showing Required.** To establish a valid U.S. TDP Valued Claim, a claimant must meet the requirements set forth in this U.S. TDP. The U.S. Asbestos Trust may require the submission of X-rays, CT scans, laboratory tests, medical examinations or reviews, other medical evidence, or any other evidence to support or verify the claim, and may further require that medical evidence submitted comply with recognized U.S. medical standards regarding equipment, testing methods, and procedures to assure that such evidence is reliable.

**7.2. Costs Considered.** Notwithstanding any provisions of this U.S. TDP to the contrary, the Trustees shall always give appropriate consideration to the cost of investigating and uncovering invalid Asbestos Trust Claims so that the payment of valid Asbestos Trust Claims is not further impaired by such processes with respect to issues related to the validity of the medical evidence supporting an Asbestos Trust Claim. The Trustees shall also have the latitude to make judgments regarding the amount of transaction costs to be expended by the U.S. Asbestos Trust so that valid Asbestos Trust Claims are not unduly further impaired by the costs of additional investigation. Nothing herein shall prevent the Trustees, in appropriate circumstances, from contesting the validity of any U.S. TDP Valued Claim against the U.S. Asbestos Trust whatever the costs, or to decline to accept medical evidence from sources that the Trustees have determined to be unreliable pursuant to the Claims Audit Program described in Section 5.8 above.

**7.3. Discretion to Vary the Order and Amounts of Payments in Event of Limited Liquidity.** Consistent with the provisions hereof and subject to the U.S. Asbestos Trust's FIFO Processing and Payment Queues, the Maximum Annual Payment, the Maximum Available Payment and the Claims Payment Ratio requirements for U.S. TDP Valued Claims set forth

above, the Trustees shall proceed as quickly as possible to liquidate and pay all Asbestos Trust Claims, and shall make payments to holders of such claims in accordance with this U.S. TDP as insurance proceeds and other monies become available to a particular Subfund and as claims are liquidated, while maintaining sufficient assets within the Subfund to pay future valid claims in substantially the same manner.

Because the U.S. Asbestos Trust's income over time remains uncertain, and decisions about payments must be based on estimates that cannot be done precisely, they may have to be revised in light of experiences over time, and there can be no guarantee of any specific level of payment for claims against any particular Subfund. However, the Trustees shall use their best efforts to treat similar claims in substantially the same manner, consistent with the objective of this U.S. TDP, their duties as Trustees, the purposes of the U.S. Asbestos Trust, the established allocation of monies to claims in Categories A and B for the Subfund or Subfunds for which a Claims Payment Ratio has been established, and the practical limitations imposed by the inability to predict the future with precision. In the event that any of the U.S. Asbestos Trust Subfunds face temporary periods of limited liquidity, the Trustees may, with the consent of the TAC and the Future Claimants' Representative, suspend the normal order of payment from such Subfund, may temporarily limit or suspend payments from such Subfund altogether, and may offer a Reduced Payment Option for the Subfund as described in Section 2.5 above.

**7.4. Punitive Damages.** Except as otherwise provided herein, in determining the value of any U.S. TDP Valued Claim, punitive or exemplary damages, *i.e.*, damages other than compensatory damages, shall not be considered or allowed, notwithstanding their availability in the tort system. Similarly, no punitive or exemplary damages will be payable with respect to any claim litigated against the U.S. Asbestos Trust in the tort system pursuant to Sections 5.11 above

and 7.6 below. The only damages that may be awarded pursuant to this U.S. TDP to Alabama Claimants who are deceased and whose personal representatives pursue their claims only under the Alabama Wrongful Death Statute shall be compensatory damages determined pursuant to the statutory and common law of the Commonwealth of Pennsylvania, without regard to its choice of law principles. The choice of law provision in Section 7.4 herein applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant's Jurisdiction pursuant to Section 5.3(a)(2)(C) is determined to be the Alabama Wrongful Death Statute, shall only govern the rights between the U.S. Asbestos Trust and the claimant including, but not limited to, suits in the tort system pursuant to Section 7.6, and to the extent the U.S. Asbestos Trust seeks recovery from any entity that provided insurance to any Federal Mogul Entity, the Alabama Wrongful Death Statute shall govern.

**7.5. Sequencing Adjustment.**

**7.5(a) In General.** Except for any U.S. Asbestos Trust Claim involving Other Asbestos Disease (Disease Level I – Cash Discount Payment) and subject to the limitations set forth below, a sequencing adjustment shall be paid on all Pre-Petition Liquidated Claims payable from the T&N Subfund and the FMP Subfund as well as on all U.S. TDP Valued Claims if the claimant has had to wait a year or more for payment, provided, however, that no claimant shall receive a sequencing adjustment for a period in excess of seven (7) years. The sequencing adjustment factor shall be six percent (6%) *per annum* for each of the first five (5) years after the Effective Date. Thereafter, the U.S. Asbestos Trust shall have the discretion to change the sequencing adjustment factor with the consent of the TAC and the Future Claimants' Representative.

**7.5(b) Liquidated Pre-Petition Claims.** A sequencing adjustment shall be payable on the liquidated value of all Pre-Petition Liquidated Claims described in Section 5.2(a) above that are payable from the T&N Subfund or the FMP Subfund. In the case of Pre-Petition Liquidated Claims liquidated by verdict or judgment, sequencing adjustment shall be measured from the date of payment back to the date that is one (1) year after the date that the verdict or judgment was entered. In the case of Pre-Petition Liquidated Claims liquidated by a binding, judicially enforceable settlement, the sequencing adjustment shall be measured from the date of payment back to the date that is one (1) year after the Petition Date.

**7.5(c) Unliquidated U.S. TDP Valued Claims.** A sequencing adjustment shall be payable on the Scheduled Value of any U.S. TDP Valued Claim that meets the requirements of Disease Levels II – V, VII and VIII, whether the claim is liquidated under Expedited or Individual Review, or by arbitration. A sequencing adjustment on a U.S. TDP Valued Claim that meets the requirements of Disease Level VI shall be based on the Average Value of such a claim. A sequencing adjustment on all such U.S. TDP Valued Claims shall be measured from the date of payment back to the earliest of the date that is one (1) year after the date on which (i) the claim was filed against a Federal-Mogul Entity prior to the Petition Date; (ii) the claim was filed against another defendant in the relevant tort system on or after the Petition Date but before the Effective Date; or (iii) the claim was filed with the U.S. Asbestos Trust after the Effective Date. No sequencing adjustment shall be paid on any Disease Level I claim, or on any claim liquidated in the tort system pursuant to Section 5.11 above and Section 7.6 below.

**7.6. Litigation in the Tort System.**

**7.6(a) Litigation Involving U.S. TDP Valued Claims.** If the holder of a disputed U.S. TDP Valued Claim disagrees with the U.S. Asbestos Trust's determination

regarding the Disease Level of the claim, the claimant's exposure history or the liquidated value of the claim, and if the holder has first submitted the claim to non-binding arbitration as provided in Section 5.10 above, the holder may file a lawsuit in the Claimant's Jurisdiction as defined in Section 5.3(a)(2)(C) above. As provided in Section 5.11(a) above, all lawsuits brought against the U.S. Asbestos Trust involving U.S. TDP Valued Claims must be filed by the claimant in his or her own right and name and not as a member or representative of a class, and no such lawsuit may be consolidated with any other lawsuit.

All defenses (including with respect to the U.S. Asbestos Trust all defenses that could have been asserted by the relevant Federal-Mogul Entity) shall be available to both sides at a trial involving any Asbestos Trust Claim; however, the U.S. Asbestos Trust may waive any defense and/or concede any issue of fact or law. If the claimant was alive at the time a Pre-Petition complaint was filed or on the date the proof of claim form was filed with the U.S. Asbestos Trust, the case will be treated as a personal injury case with personal injury damages to be considered even if the claimant has died during the pendency of the claim.

**7.7. Payment of Judgments for Money Damages.**

**7.7(a) Judgments Relating to U.S. TDP Valued Claims.** If and when a claimant obtains a judgment in the tort system relating to a U.S. TDP Valued Claim, the claim shall be placed in the FIFO Payment Queue established by the T&N Subfund or the FMP Subfund based on the date on which the judgment became final. Thereafter, the claimant shall receive from the relevant Subfund an initial payment (subject to the applicable Payment Percentage, the Maximum Available Payment, and the Claims Payment Ratio provisions set forth above) of an amount equal to one-hundred percent (100%) of the greater of (i) the U.S. Asbestos Trust's last offer to the claimant or (ii) the award that the claimant declined in non-

binding arbitration. The claimant shall receive the balance of the judgment, if any, in five (5) equal installments in years six (6) through ten (10) following the year of the initial payment (also subject to the applicable Payment Percentage, the Maximum Available Payment, and the Claims Payment Ratio provisions set forth above in effect on the date of payment of the subject installment).

In the case of non-Extraordinary U.S. TDP Valued Claims involving Disease Levels II - VIII, the total amounts paid with respect to such claims shall not exceed the Maximum Values for such Disease Levels set forth in Section 5.3(a)(3). In the case of Extraordinary U.S. TDP Valued Claims, the total amounts paid with respect to such claims shall not exceed the maximum value for such claims set forth in Section 5.4(a) above. Under no circumstances shall (a) sequencing adjustments be paid pursuant to Section 7.5 or (b) interest be paid under any statute on any judgments obtained in the tort system with respect to U.S. TDP Valued Claims, nor shall any punitive damages, i.e., damages that are not compensatory damages, be paid with respect to any claims liquidated in the tort system except as otherwise provided in Section 7.4 above. In the case of claims involving Disease Level I, the total amounts paid shall not exceed the Scheduled Value of such claims.

**7.8. Releases.** The Trustees shall have the discretion to determine the form and substance of the releases to be provided to the U.S. Asbestos Trust in order to maximize recovery for claimants against other tortfeasors without increasing the risk or amount of claims for indemnification or contribution from the U.S. Asbestos Trust. As a condition to making any payment to a claimant, the U.S. Asbestos Trust shall obtain a separate general, partial, or limited release as appropriate in accordance with the applicable state or other law with respect to each claim paid. If allowed by state law, the endorsing of a check or draft for payment by or on behalf

of a claimant shall constitute such a release. Nothing herein shall affect the rights and obligations set forth in the CIP Agreement.

**7.9. Third-Party Services.** Nothing in this U.S. TDP shall preclude the U.S. Asbestos Trust from contracting with another asbestos claims resolution organization to provide services to the U.S. Asbestos Trust so long as decisions about the categorization and liquidated value of U.S. TDP Valued Claims are based on the relevant provisions of this U.S. TDP, including the Disease Levels, Scheduled Values, Average Values, Maximum Values, and Medical/Exposure Criteria set forth above.

**7.10. U.S. Asbestos Trust Disclosure of Information.** Periodically, but not less often than once a year, the U.S. Asbestos Trust shall make available to claimants and other interested parties, the number of U.S. TDP Valued Claims by Disease Levels that have been resolved both by the Individual Review Process and by arbitration, as well as the number of all Asbestos Trust Claims that have been resolved by litigation in the relevant tort systems, indicating the amounts of the awards and the averages of the awards by jurisdiction.

## SECTION VIII

### Miscellaneous

**8.1. Amendments.** Except as otherwise provided herein and in the CIP Agreement, the Trustees may amend, modify, delete, or add to any provisions of this U.S. TDP (including, without limitation, amendments to conform this U.S. TDP to advances in scientific or medical knowledge or other changes in circumstances) for the purpose of insuring that all Asbestos Trust Claims are treated in accordance with the objective of this U.S. TDP, which is set forth above in Section 2.1(a) above, provided, however, that the right to amend the Claims Payment Ratio is governed by the restrictions in Section 2.5 above, and the right to adjust the Payment Percentage

is governed by Section 4.2 above. In making any amendments, modifications, deletions or additions to the provisions of this U.S. TDP, the Trustees shall first obtain the consent of the TAC and the Future Claimants' Representative (and with respect to amendments, modifications, deletions or additions concerning the Fel-Pro Subfund, the Vellumoid Subfund, Fel-Pro Claims, Vellumoid Claims, or Federal-Mogul Asbestos Claims (as that term is defined in the CIP Agreement) encompassed by the CIP Agreement, the prior express written consent of the Lead Insurer, as provided in the CIP Agreement, pursuant to the Consent Process set forth in Section 7.4 of the U.S. Asbestos Trust Agreement) pursuant to the Consent Process set forth in Sections 5.7(b) and 6.6(b) of the U.S. Asbestos Trust Agreement. Nothing herein is intended to preclude the TAC or the Future Claimants' Representative from proposing to the Trustees, in writing, amendments to this U.S. TDP. Any amendment proposed by the TAC or the Future Claimants' Representative shall remain subject to Section 7.3 of the U.S. Asbestos Trust Agreement.

**8.2. Severability.** Should any provision contained in this U.S. TDP be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this U.S. TDP. Should any provision contained in this U.S. TDP be determined to be inconsistent with or contrary to any Federal-Mogul Entity's or the U.S. Asbestos Trust's obligations to any insurance company providing insurance coverage to such Federal-Mogul Entity in respect of claims for personal injury based on exposure to asbestos-containing products manufactured or distributed by such Federal-Mogul Entity, the U.S. Asbestos Trust with the consent of the TAC and the Future Claimants' Representative and the prior express written consent of the Lead Insurer (and with respect to amendments, modifications, deletions or additions concerning the Fel-Pro Subfund, the Vellumoid Subfund, Fel-Pro Claims, Vellumoid Claims, or Federal-Mogul Asbestos Claims (as

that term is defined in the CIP Agreement) encompassed by the CIP Agreement, the prior express written consent of the Lead Insurer, as provided in the CIP Agreement, pursuant to the Consent Process set forth in Section 7.4 of the U.S. Asbestos Trust Agreement) may amend this U.S. TDP and/or the U.S. Asbestos Trust Agreement to make the provisions of either or both documents consistent with the duties and obligations of such Federal-Mogul Entity to said insurance company.

**8.3. Governing Law.** Except for purposes of determining the liquidated value of any Asbestos Trust Claim, administration of this U.S. TDP shall be governed by, and construed in accordance with, the laws of the State of Delaware. The law governing the liquidation of all U.S. TDP Valued Claims in the case of Individual Review, arbitration or litigation in the tort system shall be the law of the Claimant's Jurisdiction as described in Section 5.3(a)(2)(C) above. The law governing the liquidation in the tort system of Fel-Pro and Vellumoid Claims shall be determined based on applicable federal or state choice of law rules.

## SECTION IX

### Debtor HPE Asbestos Claims

**9.1. T&N Subfund Claims.** The Plan provides, in Article IV, a mechanism by which the U.S. Asbestos Trust can seek, for the benefit of all holders of T&N Subfund claims, to pursue Asbestos Personal Injury Claims (other than a CVA Claim) against the Reorganized Hercules Protected Entities ("Debtor HPE Asbestos Claims") and to access certain insurance coverage of the Reorganized Hercules Protected Entities. To facilitate the efforts of the U.S. Asbestos Trust to those ends, each holder of a T&N Subfund Claim, as a condition of the submission by such holder of such claim to the U.S. Asbestos Trust for the processing, liquidation, and payment of a Trust Claim in respect of such claim pursuant to Article 4.5 of the Plan --

(a) appoints the U.S. Asbestos Trust as his, her, or its agent, pursuant to Article 4.5.8 of the Plan, to assert against the relevant Reorganized Hercules Protected Entity, in the name of such holder or otherwise, any Debtor HPE Asbestos Claim that he, she, or it may have against such Reorganized Hercules Protected Entity;

(b) assigns to the U.S. Asbestos Trust, pursuant to Article 4.5.7 of the Plan, his, her or its rights to the proceeds of his, her or its Debtor HPE Asbestos Claim against any and all of the Reorganized Hercules-Protected Entities (including but not limited to the T&N Entities) as well as his, her or its 1930 Act Rights, and

(c) grants to the U.S. Asbestos Trust a power of attorney, in such form as the U.S. Asbestos Trust may require, to pursue such Debtor HPE Asbestos Claim on his, her, or its behalf or otherwise, *provided*, however, that to the extent any such appointment, assignment, or grant is determined by the U.S. Asbestos Trust to have the potential effect of either invalidating the Debtor HPE Asbestos Claim in question or rendering it unenforceable (or less likely to be enforceable) by the U.S. Asbestos Trust against the applicable Reorganized Hercules Protected Entity, or the U.S. Asbestos Trust determines that some other action by the holder is appropriate to facilitate the pursuit of the claim, the U.S. Asbestos Trust and the holder of the Debtor HPE Asbestos Claim shall mutually agree on an alternative means of prosecuting the claim, and/or additional or alternative action by the holder, so as to maximize the chances of successful recovery on such claim.

**9.2. Selection of Debtor HPE Asbestos Claims.** The U.S. Asbestos Trust is empowered to select for prosecution against one (1) or more Reorganized Hercules-Protected Entities those Debtor HPE Asbestos Claims whose prosecution the U.S. Asbestos Trust, in its discretion, determines will best serve the purposes of the U.S. Asbestos Trust. For purposes of

making such selection, the U.S. Asbestos Trust may depart from the provisions of Section 5.1(a)(1) of this U.S. TDP relating to the order in which Trust Claims are processed. Not all Debtor HPE Asbestos Claims will be selected by the U.S. Asbestos Trust for prosecution.

**9.3. Cooperation and Assistance.** It is anticipated that the U.S. Asbestos Trust will, and it is empowered to, require the cooperation and assistance of the holder of any Debtor HPE Asbestos Claim that the U.S. Asbestos Trust selects for possible prosecution against a Reorganized Hercules Protected Entity. Such assistance and cooperation may include, but is not limited to, the provision of evidence and testimony by such holder and his, her or its counsel. The holders of T&N Subfund Claims who submit such claims are obligated to provide such cooperation and assistance, on request of the U.S. Asbestos Trust, if their Debtor HPE Asbestos Claims are selected for possible prosecution. Recognizing that such cooperation and assistance may require significant effort and/or expense by the holder whose claim is selected and his, her, or its counsel, and that (i) only certain Debtor HPE Asbestos Claims will be selected by the U.S. Asbestos Trust for prosecution, (ii) the recoveries, at least initially, on T&N Subfund Claims from the U.S. Asbestos Trust are likely to be a relatively small percentage of their value, and (iii) it is in the interests of all holders of T&N Subfund Claims that the prosecution of such selected Debtor HPE Asbestos Claims succeed, the U.S. Asbestos Trust is authorized to enter into arrangements with such holders of selected claims, and with their personal counsel, to compensate them fairly for the effort and expense required of them to assist and cooperate with the U.S. Asbestos Trust in the prosecution of selected Debtor HPE Asbestos Claims as provided in the first sentence of this Section 9.3. Such arrangements will be on such terms as the U.S. Asbestos Trust reasonably determines, and need not be identical in all cases. No holder of a T&N Subfund Claim who unreasonably refuses to provide such fairly compensated assistance

and cooperation shall be entitled to receive any payment (including on a Trust Claim) from the U.S. Asbestos Trust on his, her or its T&N Subfund Claim.

**9.4. Applicable Law.** For the avoidance of doubt, none of the provisions of Sections I through VIII of this U.S. TDP governing the processing, valuation, or liquidation of T&N Subfund Claims or any other Asbestos Trust Claims shall apply to the processing, prosecution, or resolution of Debtor HPE Asbestos Claims against Reorganized Hercules Protected Entities. Instead, the resolution of Debtor HPE Asbestos Claims shall be governed by applicable law in whatever jurisdiction or jurisdictions in which such claims shall properly be asserted against any Reorganized Hercules Protected Entity and, to the extent applicable, by Article IV of the Plan.

**Exhibit B**

**EXHIBIT B TO PLAN – ASBESTOS PI TDP**

**THE BABCOCK & WILCOX COMPANY**

**ASBESTOS PI SETTLEMENT TRUST  
DISTRIBUTION PROCEDURES**

**Revised December 2, 2015**

**THE BABCOCK & WILCOX COMPANY**

**ASBESTOS PI SETTLEMENT  
TRUST DISTRIBUTION PROCEDURES**

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**THE BABCOCK & WILCOX COMPANY**

**ASBESTOS PERSONAL INJURY SETTLEMENT  
TRUST DISTRIBUTION PROCEDURES**

The Babcock & Wilcox Company First Amended Asbestos Personal Injury Settlement Trust Distribution Procedures (this “TDP”) contained herein provide for resolving all asbestos-related personal injury and death claims caused by conduct of, and/or exposure to products for which, The Babcock & Wilcox Company (“B&W”), and its predecessors, successors, and assigns, have legal responsibility (hereinafter for all purposes of this TDP defined as “PI Trust Claims”), as provided in and required by The Joint Plan of Reorganization as of September 28, 2005, filed on September 29, 2005 (“Plan”),<sup>1</sup> as such Plan may be amended, modified or supplemented from time to time, and The Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust Agreement (the “PI Trust Agreement”). The Plan and PI Trust Agreement establish The Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust (“PI Trust”). The Trustees of the PI Trust (“Trustees”) shall implement and administer this TDP in accordance with the PI Trust Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan and the PI Trust Agreement.

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<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan and the PI Trust Agreement; provided, however, that “Asbestos Personal Injury Claims” as defined in the Plan shall be referred to herein as “**PI Trust Claims**” and “Asbestos Personal Injury Indirect Claims” as defined in the Plan shall be referred to herein as “**Indirect PI Trust Claims.**”

## SECTION I

### Introduction

**1.1 Purpose.** This TDP has been adopted pursuant to the PI Trust Agreement. It is designed to provide fair, equitable and substantially similar treatment for all PI Trust Claims that may presently exist or may arise in the future in substantially the same manner.

**1.2 Interpretation.** Except as may otherwise be provided below, nothing in this TDP shall be deemed to create a substantive right for any claimant. The rights and benefits provided herein to holders of PI Trust Claims shall vest in such holders as of the Effective Date.

## SECTION II

### Overview

**2.1 PI Trust Goals.** The goal of the PI Trust is to treat all claimants equitably. This TDP furthers that goal by setting forth procedures for processing and paying B&W's several share of the unpaid portion of the liquidated value of PI Trust Claims generally on an impartial, first-in-first-out ("FIFO") basis, with the intention of paying all claimants over time as equivalent a share as possible of the value of their claims based on historical values for substantially similar claims in the applicable tort system.<sup>2</sup> To this end, the TDP establishes a schedule of eight asbestos-related diseases ("Disease Levels"), seven of which have presumptive medical and exposure requirements ("Medical/Exposure Criteria") and specific liquidated values ("Scheduled Values"), and five of which have both anticipated average values ("Average Values") and caps on their liquidated values ("Maximum Values"). The Disease Levels, Medical/Exposure Criteria, Scheduled Values, Average Values and Maximum Values, which are set forth in Sections 5.3 and 5.4 below, have all been selected and derived with the intention of achieving a fair allocation of the PI Trust funds as

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<sup>2</sup> As used in this TDP, the phrase "in the tort system" or "in the applicable tort system" shall not include claims asserted against a trust established pursuant to section 524(g) and/or section 105 of the Bankruptcy Code or any other applicable law. References to "tort system" shall include both domestic and foreign tort systems and other foreign claims resolution systems, where appropriate.

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among claimants suffering from different disease processes in light of the best available information considering the domestic settlement history of B&W and the rights claimants would have in the applicable tort system absent the bankruptcy.

**2.2 Claims Liquidation Procedures.** PI Trust Claims shall be processed based on their place in the FIFO Processing Queue to be established pursuant to Section 5.1(a) below. The PI Trust shall take all reasonable steps to resolve PI Trust Claims as efficiently and expeditiously as possible at each stage of claims processing and arbitration, which steps may include conducting settlement discussions with claimants' representatives with respect to more than one claim at a time, provided that the claimants' respective positions in the FIFO Processing Queue are maintained and each claim is individually evaluated pursuant to the valuation factors set forth in Section 5.3(b)(2) below. Whether or not to conduct settlement discussions with claimants' representatives with respect to more than one claim at a time is a decision within the PI Trust's sole discretion. The PI Trust shall also make every effort to resolve each year at least that number of PI Trust Claims required to exhaust the Maximum Annual Payment and the Maximum Available Payment for Category A and Category B claims, as those terms are defined below.

The PI Trust shall liquidate all PI Trust Claims except Foreign Claims (as defined in Section 5.3(b)(1) below)<sup>3</sup> that meet the presumptive Medical/Exposure Criteria of Disease Levels I – V, VII and VIII under the Expedited Review Process described in Section 5.3(a) below. Claims involving Disease Levels I – V, VII and VIII that do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level may undergo the PI Trust's Individual Review Process described in Section 5.3(b) below. In such a case, notwithstanding that the claim does not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level, the PI Trust can offer the

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<sup>3</sup> For all purposes hereunder, PI Trust Claims of individuals exposed in Canada who were residents in Canada when such claims were filed shall be considered and treated as "domestic claims" (*i.e.*, non-Foreign Claims) with domestic settlement history.

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claimant an amount up to the Scheduled Value of that Disease Level if the PI Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the applicable tort system.

PI Trust Claims involving Disease Levels IV - VIII tend to raise more complex valuation issues than the PI Trust Claims in Disease Levels I – III. Accordingly, in lieu of liquidating such claimants' claims under the Expedited Review Process, claimants holding claims involving these Disease Levels may alternatively seek to establish a liquidated value for the claim that is greater than its Scheduled Value by electing the PI Trust's Individual Review Process. However, the liquidated value of a more serious Disease Level IV, V, VII or VIII claim that undergoes the Individual Review Process for valuation purposes may be determined to be less than its Scheduled Value, and in any event shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(b)(3) below, unless the claim qualifies as an Extraordinary Claim as defined in Section 5.4(a) below, in which case its liquidated value cannot exceed the Maximum Value specified in that provision for such claims. Level VI (Lung Cancer 2) claims and all Foreign Claims may be liquidated<sup>4</sup> only pursuant to the PI Trust's Individual Review Process.

Based upon B&W's domestic claims settlement history in light of applicable tort law, and current projections of present and future unliquidated claims, the Scheduled Values and Maximum Values set forth in Section 5.3(b)(3) have been established for each of the five more serious Disease Levels that are eligible for Individual Review of their liquidated values. The Trustees shall use their reasonable best efforts to insure that the PI Trust processes claims such that over time the combination of domestic settlements at the Scheduled Values and those resulting from the Individual Review Process for the five more serious Disease Levels approximate the Average Value set forth in Section 5.3(b)(3) for each such Disease Level.

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<sup>4</sup> For purposes of this TDP, "liquidated" means approved and valued by the PI Trust.

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All unresolved disputes over a claimant's medical condition, exposure history and/or the validity or liquidated value of a claim shall be subject to binding or non-binding arbitration as set forth in Section 5.10 below, at the election of the claimant, under the ADR Procedures that are provided in Attachment A hereto. PI Trust Claims that are the subject of a dispute with the PI Trust that cannot be resolved by non-binding arbitration may enter the tort system as provided in Sections 5.11 and 7.6 below. However, if and when a claimant obtains a judgment in the tort system, the judgment shall be payable (subject to the Payment Percentage, Maximum Available Payment, and Claims Payment Ratio provisions set forth below) as provided in Section 7.7 below.

**2.3 Application of the Payment Percentage.** After the liquidated value of a PI Trust Claim other than a claim involving Other Asbestos Disease (Disease Level I – Cash Discount Payment), as defined in Section 5.3(a)(3) below, is determined pursuant to the procedures set forth herein for Expedited Review, Individual Review, arbitration, or litigation in the tort system, the claimant shall ultimately receive a pro-rata share of that value based on a Payment Percentage described in Section 4.2 below. The Payment Percentage shall also apply to all Pre-Petition Liquidated Claims as provided in Section 5.2 below and to all sequencing adjustments pursuant to Section 7.5 below.

The Initial Payment Percentage has been set at 34 percent (34%), and shall apply to all PI Trust Voting Claims accepted as valid by the PI Trust, unless adjusted by the PI Trust pursuant to the consent of the PI Trust Advisory Committee (“TAC”) and the Legal Representative for Future Asbestos-Related Claimants (“Future Claimants’ Representative”) (who are described in Section 3.1 below) pursuant to Section 4.2 below, and except as provided in Section 4.2 below with respect to supplemental payments in the event the Initial Payment Percentage is changed. The term “PI Trust Voting Claims” includes (i) Pre-Petition Liquidated Claims as defined in Section 5.2(a) below; (ii) claims filed against B&W in the tort system or actually submitted to B&W pursuant to an administrative settlement agreement prior to the Petition Date of February 22, 2000; and (iii) all

claims filed against another defendant in the tort system prior to the date the Plan was filed with the Bankruptcy Court (the “Plan Filing Date”); provided, however, that (1) the holder of a claim described in subsection (i), (ii) or (iii) above, or his or her authorized agent, actually voted to accept or reject the Plan pursuant to the voting procedures established by the Bankruptcy Court, unless such holder certifies to the satisfaction of the Trustees that he or she was prevented from voting in this proceeding as a result of circumstances related to Hurricanes Katrina, Rita, Wilma, or other event resulting in a state of emergency in the relevant jurisdiction that affected the claimant or his or her law firm; and provided further that (2) the claim was subsequently filed with the PI Trust pursuant to Section 6.1 below by the Initial Claims Filing Date defined in Section 5.1(a) below. The Initial Payment Percentage has been calculated on the assumption that the Average Values set forth in Section 5.3(b)(3) below shall be achieved with respect to existing present domestic claims and projected future domestic claims involving Disease Levels IV – VIII.

The Payment Percentage may thereafter be adjusted upwards or downwards from time to time by the PI Trust with the consent of the TAC and the Future Claimants’ Representative to reflect then-current estimates of the PI Trust’s assets and its liabilities, as well as then-estimated value of then-pending and future claims. However, any adjustment to the Initial Payment Percentage shall be made only pursuant to Section 4.2 below. If the Payment Percentage is increased over time, claimants whose claims were liquidated and paid in prior periods under the TDP shall receive additional payments only as provided in Section 4.2 below. Because there is uncertainty in the prediction of both the number and severity of future PI Trust Claims, and the amount of the PI Trust's assets, no guarantee can be made of any Payment Percentage of a PI Trust Claim's liquidated value.

**2.4 PI Trust’s Determination of the Maximum Annual Payment and Maximum Available Payment.** After calculating the Payment Percentage, the PI Trust shall model the cash flow, principal and income year-by-year to be paid over its entire life to ensure that all

present and future B&W claimants are compensated at the Payment Percentage. In each year, based upon that model of the cash flow, the PI Trust shall be empowered to pay out the portion of its funds payable for that year according to the model (the “Maximum Annual Payment”). The PI Trust’s distributions to all claimants for that year shall not exceed the Maximum Annual Payment. That Payment Percentage and the Maximum Annual Payment figures are based on projections over the lifetime of the PI Trust. As noted in Section 2.3 above, if such long-term projections are revised, the Payment Percentage may be adjusted accordingly, which would result in a new model of the PI Trust’s anticipated cash flow and a new calculation of the Maximum Annual Payment figures.

However, year-to-year variations in the PI Trust’s flow of claims or the value of its assets, including earnings thereon, will not mean necessarily that the long-term projections are inaccurate; they may simply reflect normal variations, both up and down, from the smooth curve created by the PI Trust’s long-term projections. If, in a given year, however, asset values, including earnings thereon, are below projections, the PI Trust may need to distribute less in that year than would otherwise be permitted based on the original Maximum Annual Payment derived from long-term projections. Accordingly, the original Maximum Annual Payment for a given year may be temporarily decreased if the present value of the assets of the PI Trust as measured on a specified date during the year is less than the present value of the assets of the PI Trust projected for that date by the cash flow model described in the foregoing paragraph. The PI Trust shall make such a comparison whenever the Trustees become aware of any information that suggests that such a comparison should be made and, in any event, no less frequently than once every six months. If the PI Trust determines that as of the date in question, the present value of the PI Trust’s assets is less than the projected present value of its assets for such date, then it will remodel the cash flow year-by-year to be paid over the life of the PI Trust based upon the reduced value of the total assets as so calculated and identify the reduced portion of its funds to be paid for that year, which will become the Temporary Maximum Annual Payment (additional reductions in the Maximum Annual Payment

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can occur during the course of that year based upon subsequent calculations). If in any year the Maximum Annual Payment was temporarily reduced as a result of an earlier calculation and, based upon a later calculation, the difference between the projected present value of the PI Trust's assets and the actual present value of its assets has decreased, the Temporary Maximum Annual Payment shall be increased to reflect the decrease in the differential. In no event, however, shall the Temporary Maximum Annual Payment exceed the original Maximum Annual Payment. As a further safeguard, the PI Trust's distribution to all claimants for the first nine months of a year shall not exceed 85% of the Maximum Annual Payment determined for that year. If on December 31 of a given year, the original Maximum Annual Payment for such year is not in effect, the original Maximum Annual Payment for the following year shall be reduced proportionately.

In distributing the Maximum Annual Payment, the PI Trust shall first allocate the amount in question to outstanding Pre-Petition Liquidated Claims and to liquidated PI Trust Claims involving Disease Level I (Cash Discount Payment), in proportion to the aggregate value of each group of claims. The remaining portion of the Maximum Annual Payment (the "Maximum Available Payment"), if any, shall then be allocated and used to satisfy all other liquidated PI Trust Claims, subject to the Claims Payment Ratio set forth in Section 2.5 below; provided, however that if the Maximum Annual Payment is reduced during a year pursuant to the provisions above, the Maximum Available Payment shall be adjusted accordingly. In the event there are insufficient funds in any year to pay the total number of outstanding Pre-Petition Liquidated Claims and/or previously liquidated Disease Level I Claims, the available funds allocated to that group of claims shall be paid to the maximum extent to claimants in the particular group based on their place in their respective FIFO Payment Queue. Claims in either group for which there are insufficient funds shall be carried over to the next year, and placed at the head of their FIFO Payment Queue. If there is a decrease in the Payment Percentage prior to the payment of such claims, any such Pre-Petition Liquidated

Claims shall nevertheless be entitled to be paid at the Payment Percentage that they would have been entitled to receive but for the application of the Maximum Annual Payment.

**2.5 Claims Payment Ratio.** Based upon B&W's domestic claims settlement history and analysis of present and future claims, a Claims Payment Ratio has been determined which, as of the Effective Date, has been set at 62% for Category A claims, which consist of PI Trust Claims involving severe asbestosis and malignancies (Disease Levels IV – VIII) that were unliquidated as of the Petition Date, and at 38% for Category B claims, which are PI Trust Claims involving non-malignant Asbestosis or Pleural Disease (Disease Levels II and III) that were similarly unliquidated as of the Petition Date. However, the Claims Payment Ratio shall not apply to any Pre-Petition Liquidated Claims or to any claims for Other Asbestos Disease (Disease Level I - Cash Discount Payment).

In each year, after the determination of the Maximum Available Payment described in Section 2.4 above, 62% of that amount shall be available to pay Category A claims and 38% shall be available to pay Category B claims that have been liquidated since the Petition Date; provided, however, that if the Maximum Annual Payment is reduced during the year pursuant to the provisions of Section 2.4 above, the amounts available to pay Category A claims and Category B claims shall be recalculated based on the adjusted Maximum Available Payment. In the event there are insufficient funds in any year to pay the liquidated claims within either or both of the Categories, the available funds allocated to the particular Category shall be paid to the maximum extent to claimants in that Category based on their place in the FIFO Payment Queue described in Section 5.1(c) below, which shall be based upon the date of claim liquidation. Claims for which there are insufficient funds allocated to the relevant Category shall be carried over to the next year where they shall be placed at the head of the FIFO Payment Queue. If there is a decrease in the Payment Percentage prior to the payment of such claims, any such Released Claims as defined in Section 4.3 below shall nevertheless be entitled to be paid at the Payment Percentage that they would have been entitled to

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receive but for the application of the Claims Payment Ratio. If there are excess funds in either or both Categories, because there is an insufficient amount of liquidated claims to exhaust the respective Maximum Available Payment amount for that Category, then the excess funds for either or both Categories shall be rolled over and remain dedicated to the respective Category to which they were originally allocated. During the first nine months of a given year, the PI Trust's payments to claimants in a Category shall not exceed the amount of any excess funds that were rolled over for such Category from the prior year plus 85% of the amount that would otherwise be available for payment to claimants in such Category.

The 62%/38% Claims Payment Ratio and its rollover provision shall apply to all PI Trust Voting Claims as defined in Section 2.3 above (except Pre-Petition Liquidated Claims and Other Asbestos Disease claims (Disease Level I – Cash Discount Payment)), and shall not be amended until the fifth anniversary of the Effective Date. Thereafter, both the Claims Payment Ratio and its rollover provision shall be continued absent circumstances, such as a significant change in law or medicine, necessitating amendment to avoid a manifest injustice. However, the accumulation, rollover and subsequent delay of claims resulting from the application of the Claims Payment Ratio shall not, in and of itself, constitute such circumstances. In addition, an increase in the numbers of Category B claims beyond those predicted or expected shall not be considered as a factor in deciding whether to reduce the percentage allocated to Category A claims.

In considering whether to make any amendments to the Claims Payment Ratio and/or its rollover provisions, the Trustees shall consider the reasons for which the Claims Payment Ratio and its rollover provisions were adopted, the domestic settlement history that gave rise to its calculation, and the foreseeability or lack of foreseeability of the reasons why there would be any need to make an amendment. In that regard, the Trustees should keep in mind the interplay between the Payment Percentage and the Claims Payment Ratio as it affects the net cash actually paid to claimants.

In any event, no amendment to the Claims Payment Ratio may be made without the consent of the TAC and the Future Claimants' Representative pursuant to the consent process set forth in Sections 5.7(b) and 6.6(b) of the PI Trust Agreement. However, the Trustees, with the consent of the TAC and the Future Claimants' Representative, may offer the option of a reduced Payment Percentage to holders of claims in either Category A or Category B in return for prompter payment (the "Reduced Payment Option").

Notwithstanding any other provision herein, if, at the end of a calendar year, there are excess funds in either Category A or Category B and insufficient funds in the other Category to pay such Category's claims, the Trustees may transfer up to a specified amount of excess funds (the "Permitted Transfer Amount" as defined below) to the Category with the shortfall; provided, however that the Trustees shall never transfer more than the amount of the receiving Category's shortfall. The "Permitted Transfer Amount" shall be determined as follows: (a) the Trustees shall first determine the cumulative amount allocated to the Category with excess funds based on the Claims Payment Ratio since the date the PI Trust last calculated its Payment Percentage; (b) the Trustees shall then determine the cumulative amount that the PI Trust estimated would be paid to the Category with excess funds since the date the PI Trust last calculated its Payment Percentage; (c) the Trustees shall then subtract the amount determined in (b) from the amount determined in (a), and the difference between the two shall be referred to as the "Permitted Transfer Amount." When deciding whether to make a transfer, the Trustees shall take into account any artificial failures of the processing queue that may have impacted the amount of funds expended from either Category. The Trustees shall provide the TAC and the Future Claimants' Representative with the Permitted Transfer Amount calculation thirty (30) days prior to making a transfer.

**2.6 Indirect PI Trust Claims.** As set forth in Section 5.6 below, PI Trust Claims for indemnity and contribution ("Indirect PI Trust Claims"), if any, shall be subject to the same categorization, evaluation, and payment provisions of this TDP as all other PI Trust Claims.

### SECTION III

#### TDP Administration

**3.1 Trust Advisory Committee and Future Claimants' Representative.** Pursuant to the Plan and the PI Trust Agreement, the PI Trust and this TDP shall be administered by the Trustees in consultation with the TAC, which represents the interests of holders of present PI Trust Claims, and the Future Claimants' Representative, who represents the interests of holders of PI Trust Claims that shall be asserted in the future. The Trustees shall obtain the consent of the TAC and the Future Claimants' Representative on any amendments to this TDP pursuant to Section 8.1 below, and on such other matters as are otherwise required below and in Section 2.2(f) of the PI Trust Agreement. The Trustees shall also consult with the TAC and the Future Claimants' Representative on such matters as are provided below and in Section 2.2(e) of the PI Trust Agreement. The initial members of the TAC and the initial Future Claimants' Representative are identified in the PI Trust Agreement.

**3.2 Consent and Consultation Procedures.** In those circumstances in which consultation or consent is required, the Trustees shall provide written notice to the TAC and the Future Claimants' Representative of the specific amendment or other action that is proposed. The Trustees shall not implement such amendment nor take such action unless and until the parties have engaged in the Consultation Process described in Sections 5.7(a) and 6.6(a), or the Consent Process described in Sections 5.7(b) and 6.6(b), of the PI Trust Agreement, respectively.

### SECTION IV

#### Payment Percentage; Periodic Estimates

**4.1 Uncertainty of B&W's Personal Injury Asbestos Liabilities.** As discussed above, there is inherent uncertainty regarding B&W's total asbestos-related tort liabilities, as well as the total value of the assets available to the PI Trust to pay PI Trust Claims. Consequently, there is inherent uncertainty regarding the amounts that holders of PI Trust Claims shall receive. To seek to

ensure substantially equivalent treatment of all present and future PI Trust Claims, the Trustees must determine from time to time the percentage of full liquidated value that holders of present and future PI Trust Claims shall be likely to receive, *i.e.*, the “Payment Percentage” described in Section 2.3 above and Section 4.2 below.

**4.2 Computation of Payment Percentage.** As provided in Section 2.3 above, the Initial Payment Percentage shall be 34 percent (34%), and shall apply to all PI Trust Voting Claims as defined in Section 2.3 above, unless the Trustees, with the consent of the TAC and the Future Claimants’ Representative, determine that the Initial Payment Percentage should be changed to assure that the PI Trust shall be in a financial position to pay holders of unliquidated and/or unpaid PI Trust Voting Claims and present and future PI Trust Claims in substantially the same manner.

In making any such adjustment, the Trustees, the TAC and the Future Claimants’ Representative shall take into account the fact that the holders of PI Trust Voting Claims voted on the Plan relying on the findings of experts that the Initial Payment Percentage represented a reasonably reliable estimate of the PI Trust’s total assets and liabilities over its life based on the best information available at the time, and shall thus give due consideration to the expectations of PI Trust Voting Claimants that the Initial Payment Percentage would be applied to their PI Trust Claims.

Except with respect to PI Trust Voting Claims to which the Initial Payment Percentage applies, the Payment Percentage shall be subject to change pursuant to the terms of this TDP and the PI Trust Agreement if the Trustees, with the consent of the TAC and the Future Claimants’ Representative, determine that an adjustment is required. No less frequently than once every three (3) years, commencing with the first day of January occurring after the Plan is consummated, the Trustees shall reconsider the then applicable Payment Percentage to assure that it is based on accurate, current information and may, after such reconsideration, change the Payment Percentage if necessary with the consent of the TAC and the Future Claimants’ Representative. The Trustees

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shall also reconsider the then applicable Payment Percentage at shorter intervals if they deem such reconsideration to be appropriate or if requested to do so by the TAC or the Future Claimants' Representative.

The Trustees must base their determination of the Payment Percentage on current estimates of the number, types, and values of present and future PI Trust Claims, the value of the assets then available to the PI Trust for their payment, all anticipated administrative and legal expenses, and any other material matters that are reasonably likely to affect the sufficiency of funds to pay a comparable percentage of full liquidated value to all holders of PI Trust Claims. When making these determinations, the Trustees shall exercise common sense and flexibly evaluate all relevant factors. The Payment Percentage applicable to Category A or Category B claims may not be reduced to alleviate delays in payments of claims in the other Category; both Categories of claims shall receive the same Payment Percentage, but the payment may be deferred as needed, and a Reduced Payment Option may be instituted as described in Section 2.5 above.

There is uncertainty surrounding the amount of the PI Trust's future assets. There is also uncertainty surrounding the totality of the PI Trust Claims to be paid over time, as well as the extent to which changes in existing foreign, federal and/or state law could affect the PI Trust's liabilities under this TDP. If the value of the PI Trust's future assets increases significantly and/or if the value or volume of PI Trust Claims actually filed with the PI Trust is significantly lower than originally estimated, the PI Trust shall use those proceeds and/or claims savings, as the case may be, to maintain the Payment Percentage then in effect.

If the Trustees, with the consent of the TAC and the Future Claimants' Representative, make a determination to increase the Payment Percentage due to a material change in the estimates of the PI Trust's future assets and/or liabilities, the Trustees shall also make supplemental payments to all claimants who previously liquidated their claims against the PI Trust and received payments based on a lower Payment Percentage. The amount of any such supplemental payment shall be the

liquidated value of the claim in question times the newly adjusted Payment Percentage, less all amounts previously paid to the claimant with respect to the claim (excluding the portion of such previously paid amounts that was attributable to any sequencing adjustment paid pursuant to Section 7.5 below).

The Trustees' obligation to make a supplemental payment to a claimant shall be suspended in the event the payment in question would be less than \$100.00, and the amount of the suspended payment shall be added to the amount of any prior supplemental payment/payments that was/were also suspended because it/they would have been less than \$100.00. However, the Trustees' obligation shall resume and the Trustees shall pay any such aggregate supplemental payments due the claimant at such time that the total exceeds \$100.00.

**4.3 Applicability of the Payment Percentage.** Except as set forth above in Section 4.2 with respect to supplemental payments, no holder of a PI Trust Voting Claim, other than a PI Trust Voting Claim for Other Asbestos Disease (Disease Level I - Cash Discount Payment) as defined in Section 5.3(a)(3) below, shall receive a payment that exceeds the Initial Payment Percentage times the liquidated value of the claim. Except as otherwise provided (a) in Section 5.1(c) below for PI Trust Claims involving deceased or incompetent claimants for which approval of the PI Trust's offer by a court or through a probate process is required and (b) in the paragraph below with respect to Released Claims, no holder of any other PI Trust Claim, other than a PI Trust Claim for Other Asbestos Disease (Disease Level I - Cash Discount Payment), shall receive a payment that exceeds the liquidated value of the claim times the Payment Percentage in effect at the time of payment; provided, however, that if there is a reduction in the Payment Percentage, the Trustees, in their sole discretion, may cause the PI Trust to pay a PI Trust Claim based on the Payment Percentage that was in effect prior to the reduction if such PI Trust Claim was filed and actionable with the PI Trust ninety (90) days or more prior to the date the Trustees proposed the new Payment Percentage in writing to the TAC and the Future Claimants' Representative (the "Proposal Date") and the

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processing of such claim was unreasonably delayed due to circumstances beyond the control of the claimant or the claimant's counsel, but only if such claim had no deficiencies for the ninety (90) days prior to the Proposal Date. PI Trust Claims involving Other Asbestos Disease (Disease Level I - Cash Discount Payment) shall not be subject to the Payment Percentage, but shall instead be paid the full amount of their Scheduled Value as set forth in Section 5.3(a)(3) below.

If a redetermination of the Payment Percentage has been proposed in writing by the Trustees to the TAC and the Future Claimants' Representative but has not yet been adopted, the claimant shall receive the lower of the current Payment Percentage or the proposed Payment Percentage. However, if the proposed Payment Percentage was the lower amount but was not subsequently adopted, the claimant shall thereafter receive the difference between the lower proposed amount and the higher current amount. Conversely, if the proposed Payment Percentage was the higher amount and was subsequently adopted, the claimant shall thereafter receive the difference between the lower current amount and the higher adopted amount.

Notwithstanding anything contained herein, if the proposed Payment Percentage is lower than the current Payment Percentage, a claimant whose PI Trust Claim was liquidated prior to the Proposal Date and who either (a) transmitted<sup>5</sup> an executed release to the PI Trust prior to the Proposal Date or (b) with respect to those claimants who had received releases fewer than thirty (30) days prior to the Proposal Date, transmitted an executed release to the PI Trust within thirty (30) days of the claimant's receipt of the release (the claims described in (a) and (b) are collectively referred to herein as the "Released Claims") shall be paid based on the current Payment Percentage (the "Released Claims Payment Percentage"). For purposes hereof, (a) a claimant represented by counsel shall be deemed to have received a release on the date that the claimant's counsel receives the release, (b) if the PI Trust transmits a release electronically, the release shall be deemed to have

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<sup>5</sup> For purposes of this sentence, "transmitted" is defined as the date/time postmarked if submitted by mail or the date/time uploaded if submitted electronically.

been received on the date the PI Trust transmits the offer notification, and (c) if the PI Trust places the release in the U.S. mail, postage prepaid, the release shall be deemed to have been received three (3) business days after such mailing date. A delay in the payment of the Released Claims for any reason, including delays resulting from limitations on payment amounts in a given year pursuant to Sections 2.4 and 2.5 hereof, shall not affect the rights of the holders of the Released Claims to be paid based on the Released Claims Payment Percentage.

At least thirty (30) days prior to proposing in writing to the TAC and the Future Claimants' Representative a change in the Payment Percentage, the Trustees shall issue a written notice to claimants or claimants' counsel indicating that the Trustees are reconsidering such Payment Percentage.

## SECTION V

### **Resolution of PI Trust Claims.**

#### **5.1 Ordering, Processing and Payment of Claims.**

##### **5.1(a) Ordering of Claims.**

**5.1(a)(1) Establishment of the FIFO Processing Queue.** The PI Trust shall order claims that are sufficiently complete to be reviewed for processing purposes on a FIFO basis except as otherwise provided herein (the "FIFO Processing Queue"). For all claims filed on or before the date six (6) months after the date that the PI Trust first makes available the Proof of Claim forms and other claims materials required to file a claim with the PI Trust (the "Initial Claims Filing Date"), a claimant's position in the FIFO Processing Queue shall be determined as of the earliest of (i) the date prior to February 22, 2000 (the "Petition Date") (if any) that the specific claim was either filed against B&W in the tort system or was actually submitted to B&W pursuant to an administrative settlement agreement; (ii) the date before the Petition Date that the asbestos claim was filed against another defendant in the tort system if at the time the claim was subject to a tolling agreement with B&W; (iii) the date after the Petition Date (if any) but before the Initial Claims

Filing Date that the asbestos claim was filed against another defendant in the tort system; (iv) the date the claim was filed in the Bankruptcy Court pursuant to the Court's bar date order in this Chapter 11 proceeding; or (v) the date a ballot was submitted on behalf of the claimant for purposes of voting to accept or reject the Plan pursuant to the voting procedures approved by the Bankruptcy Court.

Following the Initial Claims Filing Date, the claimant's position in the FIFO Processing Queue shall be determined by the date the claim is filed with the PI Trust. If any claims are filed on the same date, the claimant's position in the FIFO Processing Queue shall be determined by the date of the diagnosis of the asbestos-related disease. If any claims are filed and diagnosed on the same date, the claimant's position in the FIFO Processing Queue shall be determined by the claimant's date of birth, with older claimants given priority over younger claimants.

**5.1(a)(2) Effect of Statutes of Limitations and Repose.** All unliquidated PI Trust Claims must meet either (i) for claims first filed in the tort system against B&W prior to the Petition Date, the applicable federal, state and foreign statute of limitations and repose that was in effect at the time of the filing of the claim in the tort system, or (ii) for claims not filed against B&W in the tort system prior to the Petition Date, the applicable federal, state or foreign statute of limitations that was in effect at the time of the filing with the PI Trust. However, the running of the relevant statute of limitations shall be tolled as of the earliest of (A) the actual filing of the claim against B&W prior to the Petition Date, whether in the tort system or by submission of the claim to B&W pursuant to an administrative settlement agreement; (B) the tolling of the claim against B&W prior to the Petition Date by an agreement or otherwise, provided such tolling is still in effect on the Petition Date; or (C) the Petition Date.

If a PI Trust Claim meets any of the tolling provisions described in the preceding sentence and the claim was not barred by the applicable federal, state or foreign statute of limitations at the time of the tolling event, it shall be treated as timely filed if it is actually filed with the PI Trust

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within three (3) years after the Initial Claims Filing Date. In addition, any claims that were first diagnosed after the Petition Date, irrespective of the application of any relevant federal, state or foreign statute of limitations or repose, may be filed with the PI Trust within three (3) years after the date of diagnosis or within three (3) years after the Initial Claims Filing Date, whichever occurs later. However, the processing of any PI Trust Claim by the PI Trust may be deferred at the election of the claimant pursuant to Section 6.3 below.

**5.1(b) Processing of Claims.** As a general practice, the PI Trust shall review its claims files on a regular basis and notify all claimants whose claims are likely to come up in the FIFO Processing Queue in the near future.

**5.1(c) Payment of Claims.** PI Trust Claims that have been liquidated by the Expedited Review Process as provided in Section 5.3(a) below, by the Individual Review Process as provided in Section 5.3(b) below, by arbitration as provided in Section 5.10 below, or by litigation in the tort system provided in Section 5.11 below, shall be paid in FIFO order based on the date their liquidation became final (the “FIFO Payment Queue”), all such payments being subject to the applicable Payment Percentage, the Maximum Available Payment, the Claims Payment Ratio, and the sequencing adjustment provided for in Section 7.5 below, except as otherwise provided herein. Pre-Petition Liquidated Claims, as defined in Section 5.2 below, shall be subject to the Maximum Annual Payment and Payment Percentage limitations, but not to the Maximum Available Payment and Claims Payment Ratio provisions set forth above.

Where the claimant is deceased or incompetent, and the settlement and payment of his or her claim must be approved by a court of competent jurisdiction or through a probate process prior to acceptance of the claim by the claimant’s representative, an offer made by the PI Trust on the claim shall remain open so long as proceedings before that court or in that probate process remain pending, provided that the PI Trust has been furnished with evidence that the settlement offer has been submitted to such court or in the probate process for approval. If the offer is ultimately

approved by the court or through the probate process and accepted by the claimant's representative, the PI Trust shall pay the claim in the amount so offered, multiplied by the Payment Percentage in effect at the time the offer was first made.

If any claims are liquidated on the same date, the claimant's position in the FIFO Payment Queue shall be determined by the date of the diagnosis of the claimant's asbestos-related disease. If any claims are liquidated on the same date and the respective holders' asbestos-related diseases were diagnosed on the same date, the position of those claims in the FIFO Payment Queue shall be determined by the PI Trust based on the dates of the claimants' birth, with older claimants given priority over younger claimants.

## **5.2 Resolution of Pre-Petition Liquidated PI Trust Claims.**

**5.2(a) Processing and Payment.** As soon as practicable after the Effective Date, the PI Trust shall pay all PI Trust Claims based on pre-petition settlements that, during the bankruptcy case were determined by the Bankruptcy Court to be binding on B&W, upon submission to the PI Trust of a copy of the relevant Bankruptcy Court order (collectively "Bankruptcy Court Liquidated Claims"). With respect to any other claim where a claimant asserts that the claim has been liquidated pre-petition by (i) a binding settlement agreement for the particular claim entered into prior to the Petition Date that is judicially enforceable by the claimant; (ii) a jury verdict or non-final judgment in the tort system obtained prior to the Petition Date, or (iii) a judgment that became final and non-appealable prior to the Petition Date (collectively "Other Pre-Petition Liquidated Claims"), in order to receive payment from the PI Trust, the holder of an Other Pre-Petition Liquidated Claim must submit all documentation necessary to demonstrate to the PI Trust that the claim was liquidated in the manner described in (i), (ii) or (iii), which documentation shall include (A) a court authenticated copy of the jury verdict (if applicable), a non-final judgment (if applicable) or a final judgment (if applicable) and (B) the name, social security number and date of birth of the claimant and the name and address of the claimant's lawyer, if any.

The liquidated value of a Bankruptcy Court Liquidated Claim or Other Pre-Petition Liquidated Claim shall be the unpaid portion of the amount agreed to in the binding settlement agreement, the unpaid portion of the amount awarded by the jury verdict or non-final judgment, or the unpaid portion of the amount of the final judgment, as the case may be, plus interest, if any, that has accrued on that amount in accordance with the terms of the agreement, if any, or under applicable state law for settlements or judgments as of the Petition Date; however, except as otherwise provided in Section 7.4 below, the liquidated value of a Pre-Petition Liquidated Claim shall not include any punitive or exemplary damages. In addition, the amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Claims Payment Ratio and the Maximum Available Payment limitations, but shall be subject to the Maximum Annual Payment and Payment Percentage provisions. In the absence of a Final Order of the Bankruptcy Court determining whether a settlement agreement is binding and judicially enforceable, a dispute between the claimant and the PI Trust over this issue shall be resolved pursuant to the same procedures in this TDP that are provided for resolving the validity and/or liquidated value of a PI Trust Claim (*i.e.*, arbitration and litigation in the tort system as set forth in Sections 5.10 and 5.11 below).

Bankruptcy Court Liquidated Claims and Other Pre-Petition Liquidated Claims shall be processed and paid in accordance with their order in two separate FIFO queues to be established by the PI Trust based on the date the PI Trust received a copy of the relevant Bankruptcy Court order or all required documentation for the particular claim as the case may be; provided, however, the amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Claims Payment Ratio, but shall be subject to the Maximum Annual Payment and Payment Percentage provisions set forth above. If any Other Pre-Petition Liquidated Claims were filed on the same date, the claimants' position in the FIFO queue for such claims shall be determined by the date on which the claim was liquidated. If any Other Pre-Petition Liquidated

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Claims were both filed and liquidated on the same dates, the position of the claimants in the FIFO queue shall be determined by the dates of the claimants' birth, with older claimants given priority over younger claimants.

**5.2(b) Marshalling of Security.** Holders of Pre-Petition Liquidated Claims that are secured by letters of credit, appeal bonds, or other security or sureties shall first exhaust their rights against any applicable security or surety before making a claim against the PI Trust. Only in the event that such security or surety is insufficient to pay the Pre-Petition Liquidated Claim in full shall the deficiency be processed and paid as a Pre-Petition Liquidated Claim.

**5.3 Resolution of Unliquidated PI Trust Claims.** Within six (6) months after the establishment of the PI Trust, the Trustees, with the consent of the TAC and the Future Claimants' Representative, shall adopt procedures for reviewing and liquidating all unliquidated PI Trust Claims, which shall include deadlines for processing such claims. Such procedures shall also require that claimants seeking resolution of unliquidated PI Trust claims must first file a proof of claim form, together with the required supporting documentation, in accordance with the provisions of Sections 6.1 and 6.2 below. It is anticipated that the PI Trust shall provide an initial response to the claimant within six (6) months of receiving the proof of claim form.

The proof of claim form shall require the claimant to assert his or her claim for the highest Disease Level for which the claim qualifies at the time of filing. Irrespective of the Disease Level alleged on the proof of claim form, all claims shall be deemed to be a claim for the highest Disease Level for which the claim qualifies at the time of filing, and all lower Disease Levels for which the claim may also qualify at the time of filing or in the future shall be treated as subsumed into the higher Disease Level for both processing and payment purposes.

Upon filing of a valid proof of claim form with the required supporting documentation, the claimant shall be placed in the FIFO Processing Queue in accordance with the ordering criteria described in Section 5.1(a) above. The PI Trust shall provide the claimant with six- (6) months

notice of the date by which it expects to reach the claim in the FIFO Queue, following which the claimant shall promptly (i) advise the PI Trust whether the claim should be liquidated under the PI Trust's Expedited Review Process described in Section 5.3(a) below or, in certain circumstances, under the PI Trust's Individual Review Process described in Section 5.3(b) below; (ii) provide the PI Trust with any additional medical and/or exposure evidence that was not provided with the original claim submission; and (iii) advise the PI Trust of any change in the claimant's Disease Level. If a claimant fails to respond to the PI Trust's notice prior to the reaching of the claim in the FIFO Queue, the PI Trust shall process and liquidate the claim under the Expedited Review Process based upon the medical/exposure evidence previously submitted by the claimant, although the claimant shall retain the right to request Individual Review as described in Section 5.3(b) below.

**5.3(a) Expedited Review Process.**

**5.3(a)(1) In General.** The PI Trust's Expedited Review Process is designed primarily to provide an expeditious, efficient and inexpensive method for liquidating all PI Trust Claims (except those involving Lung Cancer 2 - Disease Level VI and all Foreign Claims (as defined below), which shall only be liquidated pursuant to the PI Trust's Individual Review Process), where the claim can easily be verified by the PI Trust as meeting the presumptive Medical/Exposure Criteria for the relevant Disease Level. Expedited Review thus provides claimants with a substantially less burdensome process for pursuing PI Trust Claims than does the Individual Review Process described in Section 5.3(b) below. Expedited Review is also intended to provide qualifying claimants a fixed and certain claims payment.

Thus, claims that undergo Expedited Review and meet the presumptive Medical/Exposure Criteria for the relevant Disease Level shall be paid the Scheduled Value for such Disease Level set forth in Section 5.3(a)(3) below. However, except for claims involving Other Asbestos Disease (Disease Level I), all claims liquidated by Expedited Review shall be subject to the applicable Payment Percentage, the Maximum Available Payment, and the Claims Payment Ratio limitations

set forth above. Claimants holding claims that (i) cannot be liquidated by Expedited Review because they do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level or (ii) have otherwise failed to qualify for payment through the Expedited Review Process may elect the PI Trust's Individual Review Process set forth in Section 5.3(b) below.

Further, the claimant's eligibility to receive the Scheduled Value for his or her PI Trust Claim pursuant to the Expedited Review Process shall be determined solely by reference to the Medical/Exposure Criteria set forth below for each of the Disease Levels eligible for Expedited Review.

**5.3(a)(2) Claims Processing Under Expedited Review.** All claimants seeking liquidation of their claims pursuant to Expedited Review shall file the PI Trust's proof of claim form. As a proof of claim form is reached in the FIFO Processing Queue, the PI Trust shall determine whether the claim described therein meets the Medical/Exposure Criteria for one of the seven (7) Disease Levels eligible for Expedited Review, and shall advise the claimant of its determination. If a Disease Level is determined, the PI Trust shall tender to the claimant an offer of payment of the Scheduled Value for the relevant Disease Level multiplied by the applicable Payment Percentage, together with a form of release approved by the PI Trust. If the claimant accepts the Scheduled Value and returns the release properly executed, the claim shall be placed in the FIFO Payment Queue, following which the PI Trust shall disburse payment subject to the limitations of the Maximum Available Payment and Claims Payment Ratio, if any.

**5.3(a)(3) Disease Levels, Scheduled Values and Medical/Exposure Criteria.** The eight (8) Disease Levels covered by this TDP, together with the Medical/Exposure Criteria for each and the Scheduled Values for the seven (7) Disease Levels eligible for Expedited Review, are set forth below. These Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all PI Trust Voting Claims filed with the PI Trust (except Pre-Petition Liquidated Claims) on or before the Initial Claims Filing Date provided in Section 5.1 above for

which the claimant elects the Expedited Review Process. Thereafter, for purposes of administering the Expedited Review Process and with the consent of the TAC and the Future Claimants' Representative, the Trustees may add to, change, or eliminate Disease Levels, Scheduled Values, or Medical/Exposure Criteria; develop subcategories of Disease Levels, Scheduled Values or Medical/Exposure Criteria; or determine that a novel or exceptional asbestos personal injury claim is compensable even though it does not meet the Medical/Exposure Criteria for any of the then current Disease Levels.

<u>Disease Level</u>	<u>Scheduled Value</u>	<u>Medical/Exposure Criteria</u>
Mesothelioma (Level VIII)	\$90,000	(1) Diagnosis <sup>6</sup> of mesothelioma; and (2) credible evidence of B&W Exposure as defined in Section 5.7(b)(3).
Lung Cancer 1 (Level VII)	\$35,000	(1) Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease <sup>7</sup> , (2) six months B&W

<sup>6</sup> The requirements for a diagnosis of an asbestos-related disease that may be compensated under the provisions of this TDP are set forth in Section 5.7 below.

<sup>7</sup> Evidence of "Bilateral Asbestos-Related Nonmalignant Disease," for purposes of meeting the criteria for establishing Disease Levels I, II, III, V, and VII, means either (i) a chest X-ray read by a qualified B reader of 1/0 or higher on the ILO scale or, (ii)(x) a chest X-ray read by a qualified B reader or other Qualified Physician, (y) a CT scan read by a Qualified Physician, or (z) pathology, in each case either showing bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification. Evidence submitted to demonstrate (i) or (ii) above must be in the form of a written report stating the results (e.g., an ILO report, written radiology report or a pathology report). Solely for asbestos claims filed against B&W or another defendant in the tort system prior to the Petition Date, if an ILO reading is not available, either (i) a chest X-ray or a CT scan read by a Qualified Physician or (ii) pathology, in each case showing bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification consistent with, or compatible with, a diagnosis of asbestos-related disease shall be evidence of-Bilateral Asbestos-Related Nonmalignant Disease for purposes of meeting the presumptive medical requirements of Disease Levels I, II, III, V and VII. Pathological proof of asbestosis may be based on the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, "Asbestos-associated Diseases," Vol. 106, No. 11, App. 3 (October 8, 1982). For all purposes of this TDP, a "Qualified Physician" is a physician who is board-certified (or in the case of Canadian claims or Foreign Claims, a physician who is certified or qualified under comparable medical standards or criteria of the jurisdiction in question) in one or more relevant specialized fields of medicine such as pulmonology, radiology, internal medicine or occupational medicine; provided, however, subject to the provisions of Section

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Exposure prior to December 31, 1982, (3) Significant Occupational Exposure<sup>8</sup> to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

Lung Cancer 2 (Level VI)                      None

(1) Diagnosis of a primary lung cancer; (2) B&W Exposure prior to December 31, 1982, and (3) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

Lung Cancer 2 (Level VI) claims are claims that do not meet the more stringent medical and/or exposure requirements of Lung Cancer 1 (Level VII) claims. All claims in this Disease Level shall be individually evaluated. The estimated likely average of the individual evaluation awards for this category is \$15,000, with such awards capped at \$50,000 unless the claim qualifies for Extraordinary Claim treatment.

Level VI claims that show no evidence of either an underlying Bilateral Asbestos-Related Non-malignant Disease or Significant Occupational Exposure may be individually evaluated, although it is not expected that such claims shall be treated as having any significant value, especially if the claimant is also a Smoker.<sup>9</sup> In any event, no presumption of validity shall be

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5.8, that the requirement for board certification in this provision shall not apply to otherwise qualified physicians whose X-ray and/or CT scan readings are submitted for deceased holders of PI Trust Claims.

<sup>8</sup> The term “Significant Occupational Exposure” is defined in Section 5.7(b)(2) below.

<sup>9</sup> There is no distinction between Non-Smokers and Smokers for either Lung Cancer 1 (Level VII) or Lung Cancer 2 (Level VI), although a claimant who meets the more stringent requirements of Lung Cancer 1 (Level VII) (evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease plus Significant Occupational Exposure), and who is also a Non-Smoker, may wish to have

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available for any claims in this category.

Other Cancer (Level V) \$18,500

(1) Diagnosis of a primary colo-rectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, (2) six months B&W Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.

Severe Asbestosis (Level IV) \$35,000

(1) Diagnosis of asbestosis with ILO of 2/1 or greater, or asbestosis determined by pathological evidence of asbestos, plus (a) TLC less than 65%, or (b) FVC less than 65% and FEV1/FVC ratio greater than 65%, (2) six months B&W Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.

Asbestosis/  
Pleural Disease (Level III) \$10,000

(1) Diagnosis of Bilateral Asbestos-Related Nonmalignant Disease, plus (a) TLC less than 80%, or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%, and (2) six months B&W Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in

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his or her claim individually evaluated by the PI Trust. In such a case, absent circumstances that would otherwise reduce the value of the claim, it is anticipated that the liquidated value of the claim might well exceed the \$35,000 Scheduled Value for Lung Cancer 1 (Level VII) shown above. "Non-Smoker" means a claimant who either (a) never smoked or (b) has not smoked during any portion of the twelve (12) years immediately prior to the diagnosis of the lung cancer.

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causing the pulmonary disease in question.

Asbestosis/ Pleural Disease (Level II)	\$5,000	(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease, and (2) six months B&W Exposure prior to December 31, 1982, and (3) five years cumulative occupational exposure to asbestos.
Other Asbestos Disease (Level I - Cash Discount Payment)	\$250	(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease or an asbestos-related malignancy other than mesothelioma, and (2) B&W Exposure prior to December 31, 1982.

### **5.3(b) Individual Review Process.**

**5.3(b)(1) In General.** Subject to the provisions set forth below, a B&W claimant may elect to have his or her PI Trust Claim reviewed for purposes of determining whether the claim would be cognizable and valid in the applicable tort system, even though it does not meet the presumptive Medical/Exposure Criteria for any of the Disease Levels set forth in Section 5.3(a)(3) above. In addition or alternatively, a B&W claimant may elect to have a claim undergo the Individual Review Process for purposes of determining whether the liquidated value of a claim involving Disease Levels IV, V, VII or VIII exceeds the Scheduled Value for the relevant Disease Level also set forth in said provision. However, except for claimants who allege Lung Cancer 2 – Disease Level VI and all claimants with Foreign Claims (as defined below), until such time as the PI Trust has made an offer on a claim pursuant to Individual Review, the claimant may change his or her Individual Review election and have the claim liquidated pursuant to the PI Trust’s Expedited Review Process. In the event of such a change in the processing election, the claimant shall nevertheless retain his or her place in the FIFO Processing Queue.

The liquidated value of all Foreign Claims payable under this TDP shall be established only under the PI Trust’s Individual Review Process. PI Trust Claims of individuals exposed in Canada

who were residents in Canada when such claims were filed shall not be considered Foreign Claims hereunder and shall be eligible for liquidation under the Expedited Review Process. Accordingly, a “Foreign Claim” is a PI Trust Claim with respect to which the claimant’s exposure to an asbestos-containing product for which B&W has legal responsibility occurred outside of the United States and its Territories and Possessions, and outside of the Provinces and Territories of Canada.

In reviewing such Foreign Claims, the PI Trust shall take into account all relevant procedural and substantive legal rules to which the claims would be subject in the Claimant’s Jurisdiction as defined in Section 5.3(b)(2)(B) below (including by reference to appropriate written expert or other evidence from the Claimant’s Jurisdiction). The PI Trust shall determine the validity and/or value of a Foreign Claim, including whether the claim has been paid, satisfied, settled, released, waived or otherwise discharged. The PI Trust shall determine the liquidated value of valid Foreign Claims based on historical settlements and verdicts in the Claimant’s Jurisdiction, the other valuation factors set forth in Section 5.3(b)(2)(B) below and any matrices and methodologies developed pursuant to the provisions of this Section 5.3(b)(1).

For purposes of the Individual Review process for Foreign Claims, the Trustees, with the consent of the TAC and the Future Claimants’ Representative, may develop separate Medical/Exposure Criteria and standards, as well as separate requirements for physician and other professional qualifications, which shall be applicable to all Foreign Claims channeled to the PI Trust; provided however, that such criteria, standards or requirements shall not effectuate substantive changes to the claims eligibility requirements under this TDP, but rather shall be made only for the purpose of adapting those requirements to the particular licensing provisions and/or medical customs or practices of the foreign country in question.

In taking into account the relevant procedural and substantive legal rules of a foreign jurisdiction, the PI Trust may use reliable sources and data to develop methodologies for the PI Trust’s use in evaluating the validity of and valuing the Foreign Claims with respect to such foreign

jurisdiction. The Trustees, with the consent of the TAC and the Future Claimants' Representative, may also establish a separate valuation matrix for any such Foreign Claims based on such sources and data. Any such Foreign Claims valuation matrix shall contain the "Scheduled Value," "Average Value" and "Maximum Value" amounts for the subject foreign country, and those amounts shall be the relevant amounts for any application of provisions in this TDP relating to caps or sequencing adjustment calculations for claims with respect to such country (e.g., Sections 5.4(a), 5.10(a), 7.5(b) and 7.7).

**5.3(b)(1)(A) Review of Medical/Exposure Criteria.** The PI Trust's Individual Review Process provides a claimant with an opportunity for individual consideration and evaluation of a PI Trust Claim that fails to meet the presumptive Medical/Exposure Criteria for Disease Levels I – V, VII or VIII. In such a case, the PI Trust shall either deny the claim or, if the PI Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the applicable tort system, the PI Trust can offer the claimant a liquidated value amount up to the Scheduled Value for that Disease Level.

**5.3(b)(1)(B) Review of Liquidated Value.** Claimants holding claims in the five more serious Disease Levels IV – VIII shall also be eligible to seek Individual Review of the liquidated value of their claims, as well as of their medical/exposure evidence. The Individual Review Process is intended to result in payments equal to the full liquidated value for each claim multiplied by the applicable Payment Percentage; however, the liquidated value of any PI Trust Claim that undergoes Individual Review may be determined to be less than the Scheduled Value the claimant would have received under Expedited Review. Moreover, the liquidated value for a claim involving Disease Levels IV – VIII shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(b)(3) below, unless the claim meets the requirements of an Extraordinary Claim described in Section 5.4(a) below, in which case its liquidated value cannot exceed the Maximum Value set forth in that provision for such claims. Because the detailed

examination and valuation process pursuant to Individual Review requires substantial time and effort, claimants electing to undergo the Individual Review Process may be paid the liquidated value of their PI Trust Claims later than would have been the case had the claimant elected the Expedited Review Process. Subject to the provisions of Section 5.8, the PI Trust shall devote reasonable resources to the review of all claims to ensure that there is a reasonable balance maintained in reviewing all classes of claims.

**5.3(b)(2) Valuation Factors to Be Considered in Individual Review.** The PI Trust shall liquidate the value of each PI Trust Claim that undergoes Individual Review based on the historic liquidated values of other similarly situated claims in the applicable tort system for the same Disease Level. The PI Trust shall thus take into consideration all of the factors that affect the severity of damages and values within the applicable tort system, including, but not limited to, (i) the degree to which the characteristics of a claim differ from the presumptive Medical/Exposure Criteria for the Disease Level in question; (ii) factors such as the claimant's age, disability, employment status, disruption of household, family or recreational activities, dependencies, special damages, and pain and suffering; (iii) evidence that the claimant's damages were (or were not) caused by asbestos exposure, including exposure to an asbestos-containing product or to conduct for which B&W has legal responsibility prior to December 31, 1982 (for example, alternative causes, and the strength of documentation of injuries); (iv) the industry of exposure; and (v) settlements, verdicts and the claimant's and other law firms' experience in the Claimant's Jurisdiction for similarly situated claims. Where the claimant's law firm submits clear and convincing evidence to the PI Trust, and the Trustees determine, in their sole discretion, that the claimant's law firm, prior to the Petition Date, played a substantial role in the prosecution, trial and resolution of asbestos personal injury claims against B&W in the Claimant's Jurisdiction, such as actively participating in court appearances, discovery and trial of the subject cases (evidence will be required of all three phases: prosecution, trial and resolution for each law firm involved; necessary evidence will include

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evidence of active participation in the cases; and the mere referral of a case, without further involvement, will not be viewed as having played a substantial role in the prosecution and resolution of a case), irrespective of whether a second law firm also was involved, the PI Trust shall include such cases in the settlement and verdict histories for the claimant's law firm in the Claimant's Jurisdiction. If this occurs, the claimant's law firm shall certify, as required by the PI Trust, that it has provided all settlement and verdict history information for asbestos cases against B&W in which claimant's law firm, prior to the Petition Date, played a substantial role in the prosecution, trial and resolution of the asbestos personal injury claims against B&W in the Claimant's Jurisdiction, as described above.

For these purposes, the "Claimant's Jurisdiction" is the jurisdiction in which the claim was filed (if at all) against B&W in the tort system prior to the Petition Date. If the claim was not filed against B&W in the tort system prior to the Petition Date, the claimant may elect as the Claimant's Jurisdiction either (i) the jurisdiction in which the claimant resides at the time of diagnosis or when the claim is filed with the PI Trust or (ii) a jurisdiction in which the claimant experienced exposure to an asbestos-containing product or to conduct for which B&W has legal responsibility.

With respect to the "Claimant's Jurisdiction" in the event a personal representative or authorized agent makes a claim under this TDP for wrongful death with respect to which the governing law of the Claimant's Jurisdiction could only be the Alabama Wrongful Death Statute, the Claimant's Jurisdiction for such claim shall be the Commonwealth of Pennsylvania, and such claimant's damages shall be determined pursuant to the statutory and common laws of the Commonwealth of Pennsylvania without regard to its choice of law principles. The choice of law provision in Section 7.4 below applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant's Jurisdiction pursuant to Section 5.3(b)(2) is determined to be the Alabama Wrongful Death Statute, shall only govern the rights between the PI

Trust and the claimant, and, to the extent the PI Trust seeks recovery from any entity that provided insurance coverage to B&W, the Alabama Wrongful Death Statute shall govern.

**5.3(b)(3) Scheduled, Average and Maximum Values.** The Scheduled, Average and Maximum Values for domestic claims involving Disease Levels I – VIII are the following:

<u>Scheduled Disease</u>	<u>Scheduled Value</u>	<u>Average Value</u>	<u>Maximum Value</u>
Mesothelioma (Level VIII)	\$90,000	\$120,000	\$400,000
Lung Cancer 1 (Level VII)	\$35,000	\$ 45,000	\$150,000
Lung Cancer 2 (Level VI)	None	\$ 15,000	\$ 50,000
Other Cancer (Level V)	\$18,500	\$ 22,500	\$ 75,000
Severe Asbestosis (Level IV)	\$35,000	\$ 37,000	\$150,000
Asbestosis/Pleural Disease (Level III)	\$10,000	None	None
Asbestosis/Pleural Disease (Level II)	\$ 5,000	None	None
Other Asbestos Disease – Cash Discount Payment (Level I)	\$ 250	None	None

These Scheduled Values, Average Values and Maximum Values shall apply to all domestic PI Trust Voting Claims other than Pre-Petition Liquidated Claims filed with the PI Trust on or before the Initial Claims Filing Date as provided in Section 5.1 above. Thereafter, the PI Trust, with the consent of the TAC and the Future Claimants’ Representative pursuant to Sections 5.7(b) and 6.6(b) of the PI Trust Agreement, may change these valuation amounts for good cause and consistent with other restrictions on the amendment power.

Commencing in 2016, and annually thereafter, the PI Trust shall adjust the Scheduled Values, Average Values and Maximum Values by the amount of any upward change over the prior year in the Consumer Price Index for All Urban Consumers (“CPI-U”) published by the United

States Department of Labor, Bureau of Labor Statistics. Each time such Scheduled Values, Average Values and Maximum Values are increased in accordance herewith, such values shall be deemed to be the Scheduled Values, Average Values and Maximum Values for all purposes of the TDP. The annual CPI-U adjustment may not exceed 3%. The first adjustment in 2016 shall not be cumulative. The increased values and adjusted liquidated payment amounts shall be applied by the PI Trust at the time of payment and shall not require a revision to the TDP language and matrix values as set forth in the TDP.

#### **5.4 Categorizing Claims as Extraordinary and/or Exigent Hardship**

**5.4(a) Extraordinary Claims.** “Extraordinary Claim” means a PI Trust Claim that otherwise satisfies the Medical Criteria for Disease Levels IV - VIII, and that is held by a claimant whose exposure to asbestos was at least 75% the result of exposure to an asbestos-containing product or to conduct for which B&W has legal responsibility, and in either case there is little likelihood of a substantial recovery elsewhere. All such Extraordinary Claims shall be presented for Individual Review and, if valid, shall be entitled to an award of up to a maximum value of five (5) times the Scheduled Value set forth in Section 5.3(b)(3) for claims qualifying for Disease Levels IV -V, VII and VIII, and five (5) times the Average Value for claims in Disease Level VI, multiplied by the applicable Payment Percentage.

Any dispute as to Extraordinary Claim status shall be submitted to a special Extraordinary Claims Panel established by the PI Trust with the consent of the TAC and the Future Claimants’ Representative. All decisions of the Extraordinary Claims Panel shall be final and not subject to any further administrative or judicial review. An Extraordinary Claim, following its liquidation, shall be placed in the FIFO Queue ahead of all other PI Trust Claims except Pre-Petition Liquidated Claims, Disease Level I Claims and Exigent Hardship Claims, which shall be paid first in that order in said Queue, based on its date of liquidation, subject to the Maximum Available Payment and Claims Payment Ratio described above.

**5.4(b) Exigent Hardship Claims.** At any time the PI Trust may liquidate and pay PI Trust Claims that qualify as Exigent Hardship Claims as defined below. Such claims may be considered separately no matter what the order of processing otherwise would have been under this TDP. An Exigent Hardship Claim, following its liquidation, shall be placed first in the FIFO Payment Queue ahead of all other liquidated PI Trust Claims except Pre-Petition Liquidated Claims, and Disease Level I Claims, subject to the Maximum Available Payment and Claims Payment Ratio described above. A PI Trust Claim qualifies for payment as an Exigent Hardship Claim if the claim meets the Medical/Exposure Criteria for Severe Asbestosis (Disease Level IV) or an asbestos-related malignancy (Disease Levels V-VIII), and the PI Trust, in its sole discretion, determines (i) that the claimant needs financial assistance on an immediate basis based on the claimant's expenses and all sources of available income, and (ii) that there is a causal connection between the claimant's dire financial condition and the claimant's asbestos-related disease.

**5.5 Secondary Exposure Claims.** If a claimant alleges an asbestos-related disease resulting solely from exposure to an occupationally exposed person, such as a family member, the claimant must seek Individual Review of his or her claim pursuant to Section 5.3(b) above. In such a case, the claimant must establish that the occupationally exposed person would have met the exposure requirements under this TDP that would have been applicable had that person filed a direct claim against the PI Trust. In addition, the claimant with secondary exposure must establish that he or she is suffering from one of the eight Disease Levels described in Section 5.3(a)(3) above or an asbestos-related disease otherwise compensable under this TDP, that his or her own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person was exposed to an asbestos-containing product or to conduct for which B&W has legal responsibility, and that such secondary exposure was a cause of the claimed disease. All other liquidation and payment rights and limitations under this TDP shall be applicable to such claims.

**5.6 Indirect PI Trust Claims.** Indirect PI Trust Claims asserted against the PI Trust shall be treated as presumptively valid and paid by the PI Trust subject to the applicable Payment Percentage if (a) such claim satisfied the requirements of the Bar Date for such claims established by the Bankruptcy Court, if applicable, and is not otherwise disallowed by Section 502(e) of the Code or subordinated under Section 509(c) of the Code, and (b) the holder of such claim (the “Indirect Claimant”) establishes to the satisfaction of the Trustees that (i) the Indirect Claimant has paid in full the liability and obligation of the PI Trust to the individual claimant to whom the PI Trust would otherwise have had a liability or obligation under these Procedures (the “Direct Claimant”), (ii) the Direct Claimant and the Indirect Claimant have forever and fully released the PI Trust from all liability to the Direct Claimant, and (iii) the claim is not otherwise barred by a statute of limitations or repose or by other applicable law. In no event shall any Indirect Claimant have any rights against the PI Trust superior to the rights of the related Direct Claimant against the PI Trust, including any rights with respect to the timing, amount or manner of payment. In addition, no Indirect Claim may be liquidated and paid in an amount that exceeds what the Indirect Claimant has actually paid the related Direct Claimant.

To establish a presumptively valid Indirect PI Trust Claim, the Indirect Claimant’s aggregate liability for the Direct Claimant’s claim must also have been fixed, liquidated and paid fully by the Indirect Claimant by settlement (with an appropriate full release in favor of the PI Trust) or a Final Order (as defined in the Plan) provided that such claim is valid under the applicable state, federal or foreign law. In any case where the Indirect Claimant has satisfied the claim of a Direct Claimant against the PI Trust under applicable law by way of a settlement, the Indirect Claimant shall obtain for the benefit of the PI Trust a release in form and substance satisfactory to the Trustees.

If an Indirect Claimant cannot meet the presumptive requirements set forth above, including the requirement that the Indirect Claimant provide the PI Trust with a full release of the Direct Claimant’s claim, the Indirect Claimant may request that the PI Trust review the Indirect PI Trust

Claim individually to determine whether the Indirect Claimant can establish under applicable state, federal or foreign law that the Indirect Claimant has paid all or a portion of a liability or obligation that the PI Trust had to the Direct Claimant as of the Effective Date of this TDP. If the Indirect Claimant can show that it has paid all or a portion of such a liability or obligation, the PI Trust shall reimburse the Indirect Claimant the amount of the liability or obligation so paid, times the then applicable Payment Percentage. However, in no event shall such reimbursement to the Indirect Claimant be greater than the amount to which the Direct Claimant would have otherwise been entitled. Further, the liquidated value of any Indirect PI Trust Claim paid by the PI Trust to an Indirect Claimant shall be treated as an offset to or reduction of the full liquidated value of any PI Trust Claim that might be subsequently asserted by the Direct Claimant against the PI Trust.

Any dispute between the PI Trust and an Indirect Claimant over whether the Indirect Claimant has a right to reimbursement for any amount paid to a Direct Claimant shall be subject to the ADR procedures provided in Section 5.10 below and set forth in Attachment A hereto. If such dispute is not resolved by said ADR procedures, the Indirect Claimant may litigate the dispute in the tort system pursuant to Sections 5.11 and 7.6 below.

The Trustees may develop and approve a separate proof of claim form for Indirect PI Trust Claims. Indirect PI Trust Claims that have not been disallowed, discharged, or otherwise resolved by prior order of the Bankruptcy Court shall be processed in accordance with procedures to be developed and implemented by the Trustees consistent with the provisions of this Section 5.6, which procedures (a) shall determine the validity, allowability and enforceability of such claims; and (b) shall otherwise provide the same liquidation and payment procedures and rights to the holders of such claims as the PI Trust would have afforded the holders of the underlying valid PI Trust Claims. Nothing in this TDP is intended to preclude a trust to which asbestos-related liabilities are channeled from asserting an Indirect Asbestos Trust Claim against the PI Trust subject to the requirements set forth herein.

## 5.7 Evidentiary Requirements

### 5.7(a) Medical Evidence.

**5.7(a)(1) In General.** All diagnoses of a Disease Level shall be accompanied by either (i) a statement by the physician providing the diagnosis that at least ten (10) years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis, or (ii) a history of the claimant's exposure sufficient to establish a 10-year latency period. A finding by a physician after the Effective Date that a claimant's disease is "consistent with" or "compatible with" asbestosis shall not alone be treated by the PI Trust as a diagnosis. For all PI Trust Claims, including Foreign Claims, all evidence submitted to the PI Trust must be in English.

**5.7(a)(1)(A) Disease Levels I-IV.** Except for asbestos claims filed against B&W or any other defendant in the tort system prior to the Petition Date, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I-IV) shall be based in the case of a claimant who was living at the time the claim was filed, upon a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease. All living claimants must also provide (i) for Disease Levels I-III, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 3 above); (ii) for Disease Level IV,<sup>10</sup> an ILO reading of 2/1 or greater or pathological evidence of asbestosis, and (iii) for Disease Levels III and IV, pulmonary function testing.<sup>11</sup>

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<sup>10</sup> All diagnoses of Asbestos/Pleural Disease (Disease Levels II and III) not based on pathology shall be presumed to be based on findings of bilateral asbestosis or pleural disease, and all diagnoses of Mesothelioma (Disease Level VIII) shall be presumed to be based on findings that the disease involves a malignancy. However, the PI Trust may rebut such presumptions.

<sup>11</sup> "Pulmonary Function Testing" or "PFT" shall mean testing that is in material compliance with the quality criteria established by the American Thoracic Society ("ATS") and is performed on equipment which is in material compliance with ATS standards for technical quality and calibration. PFT performed in a hospital accredited by the JCAHO, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician shall be presumed to comply with ATS

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In the case of a claimant who was deceased at the time the claim was filed, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I-IV) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease; or (ii) pathological evidence of the non-malignant asbestos-related disease; or (iii) in the case of Disease Levels I-III, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 3 above), and for Disease Level IV, either an ILO reading of 2/1 or greater or pathological evidence of asbestosis; and (iv) for either Disease Level III or IV, pulmonary function testing.

**5.7(a)(1)(B). Disease Levels V – VIII.** All diagnoses of an asbestos-related malignancy (Disease Levels V – VIII) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease, or (ii) a diagnosis of such a malignant Disease Level by a board-certified pathologist or by a pathology report prepared at or on behalf of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (“JCAHO”).

**5.7(a)(1)(C). Exception to the Exception for Certain Pre-Petition Claims.** If the holder of a PI Trust Claim that was filed against B&W or any other defendant in the tort system prior to the Petition Date has available a report of a diagnosing physician engaged by the holder or his or her law firm who conducted a physical examination of the holder as described in Sections 5.7(a)(1)(A), or if the holder has filed such medical evidence and/or a diagnosis of the asbestos-related disease by a physician not engaged by the holder or his or her law

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standards, and the claimant may submit a summary report of the testing. If the PFT was not performed in an JCAHO-accredited hospital, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician, the claimant must submit the full report of the testing (as opposed to a summary report); provided however that if the PFT was conducted prior to the Effective Date of the Plan, and the full PFT report is not available, the claimant must submit a declaration signed by a Qualified Physician or other party who is qualified to make a certification regarding the PFT in the form provided by the PI Trust certifying that the PFT was conducted in material compliance with ATS standards.

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firm who conducted a physical examination of the holder with another asbestos-related personal injury settlement trust that requires such evidence without regard to whether the claimant or the law firm engaged the diagnosing physician, the holder shall provide such medical evidence to the PI Trust notwithstanding the exception in Section 5.7(a)(1)(A).

**5.7(a)(2) Credibility of Medical Evidence.** Before making any payment to a claimant, the PI Trust must have reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical standards. The PI Trust may require the submission of X-rays, CT scans, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examination or reviews of other medical evidence, and may require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods and procedures to assure that such evidence is reliable. Medical evidence (i) that is of a kind shown to have been received in evidence by a state or federal judge at trial, (ii) that is consistent with evidence submitted to B&W to settle for payment similar disease cases prior to B&W's bankruptcy, or (iii) that is a diagnosis by a physician shown to have previously qualified as a medical expert with respect to the asbestos-related disease in question before a state or federal judge, is presumptively reliable, although the PI Trust may seek to rebut the presumption. In addition, except for Foreign Claims, claimants who otherwise meet the requirements of this TDP for payment of a PI Trust Claim shall be paid irrespective of the results in any litigation at anytime between the claimant and any other defendant in the applicable tort system. However, any relevant evidence submitted in a proceeding in the tort system, other than any findings of fact, a verdict, or a judgment, involving another defendant may be introduced by either the claimant or the PI Trust in any Individual Review proceeding conducted pursuant to 5.3(b) or any Extraordinary Claim proceeding conducted pursuant to 5.4(a).

**5.7(b) Exposure Evidence.**

**5.7(b)(1) In General.** As set forth above in Section 5.3(a)(3), to qualify

for any Disease Level, the claimant must demonstrate a minimum exposure to an asbestos-containing product or to conduct for which B&W has legal responsibility. Claims based on conspiracy theories that involve no such B&W exposure or conduct are not compensable under this TDP. To meet the presumptive exposure requirements of Expedited Review set forth in Section 5.3(a)(3) above, the claimant must show (i) for all Disease Levels, B&W Exposure as defined in Section 5.7(b)(3) below prior to December 31, 1982; (ii) for Asbestos/Pleural Disease Level II, six (6) months B&W Exposure prior to December 31, 1982, plus five (5) years cumulative occupational asbestos exposure; and (iii) for Asbestosis/Pleural Disease (Disease Level III), Severe Asbestosis (Disease Level IV), Other Cancer (Disease Level V) or Lung Cancer 1 (Disease Level VII), the claimant must show six (6) months B&W Exposure prior to December 31, 1982, plus Significant Occupational Exposure to asbestos. If the claimant cannot meet the relevant presumptive exposure requirements for a Disease Level eligible for Expedited Review, the claimant may seek Individual Review pursuant to Section 5.3(b) of his or her claim based on exposure to an asbestos-containing product or to conduct for which B&W has legal responsibility.

**5.7(b)(2) Significant Occupational Exposure.** "Significant Occupational Exposure" means employment for a cumulative period of at least five (5) years with a minimum of two (2) years prior to December 31, 1982, in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b) and/or (c).

**5.7(b)(3) B&W Exposure.** The claimant must demonstrate meaningful and credible exposure, which occurred prior to December 31, 1982, to asbestos or asbestos-

containing products (including boilers) supplied, specified, manufactured, installed, maintained, or repaired by B&W and/or any entity, including a B&W contracting unit, for which B&W has legal responsibility. Working at a site prior to December 31, 1982, in the proximity of a B&W boiler during a time period in which the PI Trust has established the presence of a B&W boiler, or in the proximity of the performance of services by a B&W entity, including a B&W contracting unit, shall constitute presumptive evidence of exposure. For other sites, the PI Trust shall consider meaningful and credible evidence, including an affidavit or sworn statement of the claimant, an affidavit or sworn statement of a co-worker or the affidavit or sworn statement of a family member in the case of a deceased claimant (providing the PI Trust finds such evidence reasonably reliable), invoices, employment, construction or similar records, interrogatory answers, sworn work histories, and depositions, or other credible evidence. The PI Trust can also require submission of other or additional evidence of exposure when it deems such to be necessary. The specific exposure information required by the PI Trust to process a claim under either Expedited or Individual Review shall be set forth on the proof of claim form to be used by the PI Trust. The PI Trust can also require submission of other or additional evidence of exposure when it deems such to be necessary.

Evidence submitted to establish proof of exposure to B&W products is for the sole benefit of the PI Trust, not third parties or defendants in the tort system. The PI Trust has no need for, and therefore claimants are not required to furnish the PI Trust with evidence of, exposure to specific asbestos products other than those for which B&W has legal responsibility, except to the extent such evidence is required elsewhere in this TDP. Similarly, failure to identify B&W products in the claimant's underlying tort action, or to other bankruptcy trusts, does not preclude the claimant from recovering from the PI Trust, provided the claimant otherwise satisfies the medical and exposure requirements of this TDP.

**5.8 Claims Audit Program.** The PI Trust, with the consent of the TAC and the Futures Claimants Representative, may develop methods for auditing the reliability of medical evidence,

including additional reading of X-rays, CT scans and verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including exposure to asbestos-containing products manufactured or distributed by B&W prior to December 31, 1982. In the event that the PI Trust reasonably determines that any individual or entity has engaged in a pattern or practice of providing unreliable medical evidence to the PI Trust, it may decline to accept additional evidence from such provider in the future.

Further, in the event that an audit reveals that fraudulent information has been provided to the PI Trust, the PI Trust may penalize any claimant or claimant's attorney by disallowing the PI Trust Claim or by other means including, but not limited to, requiring the source of the fraudulent information to pay the costs associated with the audit and any future audit or audits, reordering the priority of payment of all affected claimants' PI Trust Claims, raising the level of scrutiny of additional information submitted from the same source or sources, refusing to accept additional evidence from the same source or sources, seeking the prosecution of the claimant or claimant's attorney for presenting a fraudulent claim in violation of [18 U.S.C. §152](#), and seeking sanctions from the Bankruptcy Court.

**5.9 Second Disease (Malignancy) Claims.** The holder of a PI Trust Claim involving a non-malignant asbestos-related disease (Disease Levels I through IV) may assert a new PI Trust Claim against the PI Trust for a malignant disease (Disease Levels V – VIII) that is subsequently diagnosed. Any additional payments to which such claimant may be entitled with respect to such malignant asbestos-related disease shall not be reduced by the amount paid for the non-malignant asbestos-related disease, provided that the malignant disease had not been diagnosed by the time the claimant was paid with respect to the original claim involving the non-malignant disease.

**5.10 Arbitration.**

**5.10(a) Establishment of ADR Procedures.** The PI Trust, with the consent of the TAC and the Future Claimants' Representative, shall institute binding and non-binding arbitration

procedures in accordance with the Alternative Dispute Resolution (“ADR”) Procedures included in Attachment A hereto<sup>12</sup> for resolving disputes concerning whether a Pre-Petition settlement agreement with B&W is binding and judicially enforceable in the absence of a Final Order of the Bankruptcy Court determining the issue, whether the PI Trust’s outright rejection or denial of a claim was proper, or whether the claimant’s medical condition or exposure history meets the requirements of this TDP for purposes of categorizing a claim involving Disease Levels I – VIII. Binding and non-binding arbitration shall also be available for resolving disputes over the liquidated value of a claim involving Disease Levels IV – VIII, as well as disputes over B&W’s share of the unpaid portion of a Pre-Petition Liquidated PI Trust Claim described in Section 5.2 above and disputes over the validity of an Indirect PI Trust Claim.

In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in Section 5.7 above. In the case of an arbitration involving the liquidated value of a claim involving Disease Levels IV – VIII, the arbitrator shall consider the same valuation factors that are set forth in Section 5.3(b)(2) above. In order to facilitate the Individual Review Process with respect to such claims, the PI Trust may from time to time develop valuation methodologies and/or matrices taking account of the valuation factors that are set forth in Section 5.3(b)(2) above that enable the PI Trust to efficiently make initial liquidated value offers on these claims in the Individual Review setting. With respect to all claims, except Foreign Claims, these valuation methodologies and/or matrices are often referred to as the Individual Review model. Except as provided below for arbitrations involving Foreign Claims, the PI Trust shall neither offer into evidence or describe any such methodologies and/or matrices nor assert that any information generated by the methodologies and/or matrices has any evidentiary relevance or should be used by the arbitrator in determining the presumed correct liquidated value in the arbitration. The underlying

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<sup>12</sup> To the extent there is any ambiguity or conflict between any provision of this TDP and the ADR Procedures, the provisions of this TDP shall control.

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data that was used to create the methodologies and/or matrices may be relevant and may be made available to the arbitrator but only if provided to the claimant or his/her counsel at least ten (10) days prior to the arbitration proceeding.

In arbitrations involving Foreign Claims, the PI Trust may introduce into evidence its matrices and/or methodologies developed pursuant to Section 5.3(b)(1) above for evaluating and valuing such Foreign Claims. The arbitrator is to assign a value to a valid Foreign Claim that is consistent with the value such claim would receive in the tort system in the Claimant's Jurisdiction.

In all arbitrations, the arbitrator shall consider evidence presented by the PI Trust, including written expert or other evidence regarding the validity of a Foreign Claim, including evidence regarding whether the claim has been paid, satisfied, settled, released, waived, or otherwise discharged under the law and procedure of the Claimant's Jurisdiction, but only if provided to the claimant or his or her counsel at least ten (10) days prior to the arbitration hearing.

With respect to all claims eligible for arbitration, the claimant, but not the PI Trust, may elect either non-binding or binding arbitration. The ADR Procedures set forth in Attachment A hereto may be modified by the PI Trust with the consent of the TAC and the Future Claimants' Representative.

**5.10(b) Claims Eligible for Arbitration.** In order to be eligible for arbitration, the claimant must first complete the Individual Review Process with respect to the disputed issue as well as either the *Pro Bono* Evaluation or the Mediation processes set forth in to the ADR Procedures. Individual Review shall be treated as completed for these purposes when the claim has been individually reviewed by the PI Trust, the PI Trust has made an offer on the claim, the claimant has rejected the liquidated value resulting from the Individual Review, and the claimant has notified the PI Trust of the rejection in writing. Individual Review shall also be treated as completed if the PI Trust has rejected the claim.

**5.10(c) Limitations on and Payment of Arbitration Awards.** In the case of a non-Extraordinary claim involving Disease Levels I - III, the arbitrator shall not return an award in excess

of the Scheduled Value for such claim. In the case of a non-Extraordinary Claim involving Disease Levels IV – VIII, the arbitrator shall not return an award in excess of the Maximum Value for the appropriate Disease Level as set forth in Section 5.3(a)(3) above, and for an Extraordinary Claim involving one of those Disease Levels, the arbitrator shall not return an award greater than the maximum value for such a claim as set forth in Section 5.4(a) above. A claimant who submits to arbitration and who accepts the arbitral award shall receive payments in the same manner as one who accepts the PI Trust's original valuation of the claim.

**5.11 Litigation.** Claimants who elect non-binding arbitration and then reject their arbitral awards retain the right to institute a lawsuit in the tort system against the PI Trust pursuant to Section 7.6 below. However, a claimant shall be eligible for payment of a judgment for monetary damages obtained in the tort system from the PI Trust's available cash only as provided in Section 7.7 below.

## SECTION VI

### Claims Materials

**6.1 Claims Materials.** The PI Trust shall prepare suitable and efficient claims materials (“Claims Materials”) for all PI Trust Claims, and shall provide such Claims Materials upon a written request for such materials to the PI Trust. The proof of claim form to be submitted to the PI Trust shall require the claimant to assert the highest Disease Level for which the claim qualifies at the time of filing. The proof of claim form shall also include a certification by the claimant or his or her attorney sufficient to meet the requirements of Rule 11(b) of the Federal Rules of Civil Procedure. In developing its claim filing procedures, the PI Trust shall make every effort to provide claimants with the opportunity to utilize currently available technology at their discretion, including filing claims and supporting documentation over the Internet and electronically by disk or CD-rom. The proof of claim form may be changed by the PI Trust with the consent of the TAC and the Future Claimants’ Representative.

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**6.2 Content of Claims Materials.** The Claims Materials shall include a copy of this TDP, such instructions as the Trustees shall approve, and a detailed proof of claim form. If feasible, the forms used by the PI Trust to obtain claims information shall be the same or substantially similar to those used by other asbestos claims resolution organizations. If requested by the claimant, the PI Trust shall accept information provided electronically. The claimant may, but shall not be required to, provide the PI Trust with evidence of recovery from other defendants and claims resolution organizations, except that the PI Trust may require a claimant holding a Foreign Claim to provide it with such evidence of recovery or other information that such claimant would be required to provide pursuant to the substantive law, rules of procedure or practices in the tort system in the Claimant's Jurisdiction, including pre- and post-verdict rules, so as to enable the PI Trust to (1) determine whether the claim would be valid and cognizable in the tort system in the Claimant's Jurisdiction, (2) comply with the provisions of Section 5.3(b)(1) hereof, and (3) determine B&W's several share of liability for the claimant's unpaid damages.

**6.3 Withdrawal or Deferral of Claims.** A claimant can withdraw a PI Trust Claim at any time upon written notice to the PI Trust and file another claim subsequently without affecting the status of the claim for statute of limitations purposes, but any such claim filed after withdrawal shall be given a place in the FIFO Processing Queue based on the date of such subsequent filing. A claimant can also request that the processing of his or her PI Trust Claim by the PI Trust be deferred for a period not to exceed three (3) years without affecting the status of the claim for statute of limitations purposes, in which case the claimant shall also retain his or her original place in the FIFO Processing Queue. During the period of such deferral, a sequencing adjustment on such claimant's PI Trust Claim as provided in Section 7.5 hereunder shall not accrue and payment thereof shall be deemed waived by the claimant. Except for PI Trust Claims held by representatives of deceased or incompetent claimants for which court or probate approval of the PI Trust's offer is required, or a PI Trust Claim for which deferral status has been granted, a claim shall be deemed to have been

withdrawn if the claimant neither accepts, rejects, nor initiates arbitration within six (6) months of the PI Trust's written offer of payment or rejection of the claim. Upon written request and good cause, the PI Trust may extend the withdrawal or deferral period for an additional six (6) months.

**6.4 Filing Requirements and Fees.** The Trustees shall have the discretion to determine, with the consent of the TAC and the Futures Representative, (a) whether a claimant must have previously filed an asbestos-related personal injury claim in the tort system to be eligible to file the claim with the PI Trust and (b) whether a filing fee should be required for any PI Trust claims.

**6.5 Confidentiality of Claimants' Submissions.** All submissions to the PI Trust by a holder of a PI Trust Claim of a proof of claim form and materials related thereto shall be treated as made in the course of settlement discussions between the holder and the PI Trust, and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including but not limited to those directly applicable to settlement discussions. The PI Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only with the permission of the holder, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) and/or section 105 of the Bankruptcy Code or other applicable law, to such other persons as authorized by the holder, or in response to a valid subpoena of such materials issued by the Bankruptcy Court. Furthermore, the PI Trust shall provide counsel for the holder a copy of any such subpoena immediately upon being served. The PI Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privileges before the Bankruptcy Court and before those courts having appellate jurisdiction related thereto. Notwithstanding anything in the foregoing to the contrary, with the consent of the TAC and the Future Claimants' Representative, the PI Trust may, in specific limited instances, disclose information, documents, or other materials reasonably necessary in the PI Trust's judgment to preserve, litigate, resolve, or settle coverage, or to comply with an applicable obligation under an insurance policy or settlement agreement within the Asbestos

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PI Liability Insurance Rights; provided, however, that the PI Trust shall take any and all steps reasonably feasible in its judgment to preserve the further confidentiality of such information, documents and materials, and prior to the disclosure of such information, documents or materials to a third party, the PI Trust shall receive from such third party a written agreement of confidentiality that (a) ensures that the information, documents and materials provided by the PI Trust shall be used solely by the receiving party for the purpose stated in the agreement and (b) prohibits any other use or further dissemination of the information, documents and materials by the third party.

## SECTION VII

### General Guidelines for Liquidating and Paying Claims

**7.1 Showing Required.** To establish a valid PI Trust Claim, a claimant must meet the requirements set forth in this TDP. The PI Trust may require the submission of X-rays, CT scans, laboratory tests, medical examinations or reviews, other medical evidence, or any other evidence to support or verify the claim, and may further require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods, and procedures to assure that such evidence is reliable.

Nothing in this TDP shall prohibit the PI Trust at any time from challenging the validity of a claim under the provisions of this TDP and/or whether a claim has been paid, satisfied, settled, released, waived, or otherwise discharged.

**7.2 Costs Considered.** Notwithstanding any provisions of this TDP to the contrary, the Trustees shall always give appropriate consideration to the cost of investigating and uncovering invalid PI Trust Claims so that the payment of valid PI Trust Claims is not further impaired by such processes with respect to issues related to the validity of the medical evidence supporting a PI Trust Claim. The Trustees shall also have the latitude to make judgments regarding the amount of transaction costs to be expended by the PI Trust so that valid PI Trust Claims are not unduly further impaired by the costs of additional investigation. Nothing herein shall prevent the Trustees, in

appropriate circumstances, from contesting the validity of any claim against the PI Trust whatever the costs, or to decline to accept medical evidence from sources that the Trustees have determined to be unreliable pursuant to the Claims Audit Program described in Section 5.8 above.

**7.3 Discretion to Vary the Order and Amounts of Payments in Event of Limited Liquidity.** Consistent with the provisions hereof and subject to the FIFO Processing and Liquidation Queues, the Maximum Annual Payment, the Maximum Available Payment and the Claims Payment Ratio requirements set forth above, the Trustees shall proceed as quickly as possible to liquidate valid PI Trust Claims, and shall make payments to holders of such claims in accordance with this TDP promptly as funds become available and as claims are liquidated, while maintaining sufficient resources to pay future valid claims in substantially the same manner.

Because the PI Trust's income over time remains uncertain, and decisions about payments must be based on estimates that cannot be done precisely, they may have to be revised in light of experiences over time, and there can be no guarantee of any specific level of payment to claimants. However, the Trustees shall use their best efforts to treat similar claims in substantially the same manner, consistent with their duties as Trustees, the purposes of the PI Trust, the established allocation of funds to claims in Categories A and B, and the practical limitations imposed by the inability to predict the future with precision.

In the event that the PI Trust faces temporary periods of limited liquidity, the Trustees may, with the consent of the TAC and the Future Claimants' Representative, suspend the normal order of payment and may temporarily limit or suspend payments altogether, and may offer a Reduced Payment Option as described in Section 2.5 above.

**7.4 Punitive Damages.** Except as provided below for claims asserted under the Alabama Wrongful Death Statute, in determining the value of any liquidated or unliquidated PI Trust Claim, punitive or exemplary damages, *i.e.*, damages other than compensatory damages, shall not be considered or allowed, notwithstanding their availability in the tort system.

Similarly, no punitive or exemplary damages shall be payable with respect to any claim litigated against the PI Trust in the tort system pursuant to Sections 5.11 above and 7.6 below. The only damages that may be awarded pursuant to this TDP to Alabama Claimants who are deceased and whose personal representatives pursue their claims only under the Alabama Wrongful Death Statute shall be compensatory damages determined pursuant to the statutory and common law of the Commonwealth of Pennsylvania, without regard to its choice of law principles. The choice of law provision in Section 7.4 herein applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant's Jurisdiction pursuant to Section 5.3(b)(2) is determined to be the Alabama Wrongful Death Statute, shall only govern the rights between the PI Trust and the claimant including, but not limited to, suits in the tort system pursuant to Section 7.6, and to the extent the PI Trust seeks recovery from any entity that provided insurance to B&W, the Alabama Wrongful Death Statute shall govern.

**7.5 Sequencing Adjustment.**

**7.5(a) In General.** Except for any PI Trust Claim involving Other Asbestos Disease (Disease Level I – Cash Discount Payment) and subject to the limitations set forth below, a sequencing adjustment shall be paid on all PI Trust Claims with respect to which the claimant has had to wait a year or more for payment, provided, however, that no claimant shall receive a sequencing adjustment for a period in excess of seven (7) years. The sequencing adjustment factor for each year shall be the one-year Treasury bill interest rate in effect on January 1 of the year in which the accrual commences, with the factor being adjusted each January 1 to correspond to the one-year Treasury bill interest rate then in effect. The PI Trust shall have the discretion to change the sequencing adjustment factor with the consent of the TAC and the Future Claimants' Representative.

**7.5(b) Unliquidated PI Trust Claims.** A sequencing adjustment shall be payable on the Scheduled Value of any unliquidated PI Trust Claim that meets the requirements of

Disease Levels II –V, VII and VIII, whether the claim is liquidated under Expedited Review, Individual Review, or by arbitration. No sequencing adjustment shall be paid on any claim involving Disease Level I or on any claim liquidated in the tort system pursuant to Section 5.11 above and Section 7.6 below. The sequencing adjustment on an unliquidated PI Trust Claim that meets the requirements of Disease Level VI shall be based on the Average Value of such a claim. Sequencing adjustments on all such unliquidated claims shall be measured from the date of payment back to the earliest of the date that is one (1) year after the date on which (a) the claim was filed against B&W prior to the Petition Date; (b) the claim was filed against another defendant in the tort system on or after the Petition Date but before the Effective Date; (c) the claim was filed with the Bankruptcy Court during the pendency of the Chapter 11 proceeding; or (d) the claim was filed with the PI Trust after the Effective Date.

**7.5(c) Liquidated Pre-Petition Claims.** A sequencing adjustment shall also be payable on the liquidated value of all Pre-Petition Liquidated Claims described in Section 5.2(a) above. In the case of Pre-Petition Liquidated Claims liquidated by verdict or judgment, the sequencing adjustment shall be measured from the date of payment back to the date that is one (1) year after the date that the verdict or judgment was entered. In the case of Pre-Petition Liquidated Claims liquidated by a binding, judicially enforceable settlement, the sequencing adjustment shall be measured from the date of payment back to the date that is one year after the Petition Date.

**7.6 Suits in the Tort System.** If the holder of a disputed claim disagrees with the PI Trust's determination regarding the Disease Level of the claim, the claimant's exposure or medical history, the validity of the claim under the provisions of this TDP or the liquidated value of the claim, and if the holder has first submitted the claim to non-binding arbitration as provided in Section 5.10 above, the holder may file a lawsuit in the Claimant's Jurisdiction as defined in Section 5.3(b)(2) above. Any such lawsuit must be filed by the claimant in his or her own right and name and not as a member or representative of a class, and no such lawsuit may be consolidated with any

other lawsuit. All defenses (including, with respect to the PI Trust, all defenses which could have been asserted by B&W) shall be available to both sides at trial; however, the PI Trust may waive any defense and/or concede any issue of fact or law. If the claimant was alive at the time the initial pre-petition complaint was filed or on the date the proof of claim form was filed with the PI Trust, the case shall be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim.

**7.7 Payment of Judgments for Money Damages.** If and when a claimant obtains a judgment in the tort system, the claim shall be placed in the FIFO Payment Queue based on the date on which the judgment became final. Thereafter, the claimant shall receive from the PI Trust an initial payment (subject to the applicable Payment Percentage, the Maximum Available Payment, the Claims Payment Ratio, and the sequencing adjustment provisions set forth above) of an amount equal to one-hundred percent (100%) of the greater of (i) the PI Trust's last offer to the claimant or (ii) the award that the claimant declined in non-binding arbitration. The claimant shall receive the balance of the judgment, if any, in five (5) equal installments in years six (6) through ten (10) following the year of the initial payment (also subject to the applicable Payment Percentage, the Maximum Available Payment, the Claims Payment Ratio, and the sequencing adjustment provisions above in effect on the date of the payment of the subject installment).

In the case of non-Extraordinary claims involving Disease Levels I, II and III, the total amounts paid with respect to such claims shall not exceed the relevant Scheduled Value for such Disease Levels as set forth in Section 5.3(b)(3) above. In the case of claims involving a non-malignant asbestos-related disease that does not attain classification under Disease Levels I, II or III, the amount payable shall not exceed the Scheduled Value for the Disease Level most comparable to the disease proven. In the case of non-Extraordinary claims involving severe asbestosis and malignancies (Disease Levels IV – VIII), the total amounts paid with respect to such claims shall not exceed the Maximum Values for such Disease Levels set forth in Section 5.3(b)(3). In the case of Extraordinary

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Claims, the total amounts paid with respect to such claims shall not exceed the Maximum Value for such claims set forth in Section 5.4(a) above. Under no circumstances shall either a sequencing adjustment be paid pursuant to Section 7.5 or interest be paid under any statute on any judgments obtained in the tort system.

**7.8 Releases.** The Trustees shall have the discretion to determine the form and substance of the releases to be provided to the PI Trust in order to maximize recovery for claimants against other tortfeasors without increasing the risk or amount of claims for indemnification or contribution from the PI Trust. As a condition to making any payment to a claimant, the PI Trust shall obtain a general, partial, or limited release as appropriate in accordance with the applicable state, federal, foreign or other law. If allowed by applicable law, the endorsing of a check or draft for payment by or on behalf of a claimant shall constitute such a release.

**7.9 Third-Party Services.** Nothing in this TDP shall preclude the PI Trust from contracting with another asbestos claims resolution organization to provide services to the PI Trust so long as decisions about the categorization and liquidated value of PI Trust Claims are based on the relevant provisions of this TDP, including the Disease Levels, Scheduled Values, Average Values, Maximum Values, and Medical/Exposure Criteria set forth above.

**7.10 PI Trust Disclosure of Information.** Periodically, but not less often than once a year, the PI Trust shall make available to claimants and other interested parties, the number of claims by Disease Levels that have been resolved both by the Individual Review Process and by arbitration as well as by litigation in the tort system indicating the amounts of the awards and the averages of the awards by jurisdiction.

## SECTION VIII

### Miscellaneous

**8.1 Amendments.** Except as otherwise provided herein, the Trustees may amend, modify, delete, or add to any provisions of this TDP (including, without limitation, amendments to

conform this TDP to advances in scientific or medical knowledge or other changes in circumstances), provided they first obtain the consent of the TAC and the Future Claimants' Representative pursuant to the Consent Process set forth in Sections 5.7(b) and 6.6(b) of the PI Trust Agreement, except that the right to amend the Claims Payment Ratio is governed by the restrictions in Section 2.5 above, and the right to adjust the Payment Percentage is governed by Section 4.2 above. Nothing herein is intended to preclude the TAC or the Future Claimants' Representative from proposing to the Trustees, in writing, amendments to this TDP. Any amendment proposed by the TAC or the Future Claimants' Representative shall remain subject to Section 7.3 of the PI Trust Agreement.

**8.2 Severability.** Should any provision contained in this TDP be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this TDP. Should any provision contained in this TDP be determined to be inconsistent with or contrary to B&W's obligations to any insurance company providing insurance coverage to B&W in respect of claims for personal injury based on exposure to an asbestos-containing product or to conduct for which B&W has legal responsibility, the PI Trust with the consent of the TAC and the Future Claimants' Representative may amend this TDP and/or the PI Trust Agreement to make the provisions of either or both documents consistent with the duties and obligations of B&W to said insurance company.

**8.3 Governing Law.** Except for purposes of determining the liquidated value of any PI Trust Claim, administration of this TDP shall be governed by, and construed in accordance with, the laws of the State of Delaware. The law governing the liquidation of PI Trust Claims in the case of Individual Review, arbitration or litigation in the tort system shall be the law of the Claimant's Jurisdiction as described in Section 5.3(b)(2) above.

**Exhibit C**

**THE FLINTKOTE COMPANY AND  
FLINTKOTE MINES LIMITED  
AMENDED AND RESTATED ASBESTOS PERSONAL INJURY  
TRUST DISTRIBUTION PROCEDURES**

The Flintkote Company and Flintkote Mines Limited Amended and Restated Asbestos Personal Injury Trust Distribution Procedures (“TDP”) contained herein provide for resolving all Asbestos Personal Injury Claims for which the Flintkote Company and Flintkote Mines Limited and their predecessors, successors, and assigns have legal responsibility, which terms are defined in the Amended Joint Plan of Reorganization in respect of The Flintkote Company and Flintkote Mines Limited (As Modified) (“Plan”)<sup>1</sup> filed on June 22, 2009 (hereinafter referred to collectively for all purposes of this TDP as “Trust Claims”), caused by exposure to asbestos-containing products for which The Flintkote Company and Flintkote Mines Limited (collectively, “Flintkote”) and their predecessors, successors, and assigns have legal responsibility, as provided in and required by the Plan and by the Asbestos Personal Injury Trust Agreement (“Trust Agreement”). The Plan and Trust Agreement establish The Flintkote Asbestos Trust (“Trust”). The Trustees of the Trust (“Trustees”) shall implement and administer this TDP in accordance with the Trust Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan and the Trust Agreement.

**SECTION I**

**Introduction**

**1.1 Purpose.** This TDP has been adopted pursuant to the Trust Agreement. It is designed to provide fair, equitable, and substantially similar treatment for all Trust Claims that may presently exist or may arise in the future.

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<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan.

**1.2 Interpretation.** Except as may otherwise be provided below, nothing in this TDP shall be deemed to create a substantive right for any claimant. The rights and benefits, if any, provided herein to holders of Trust Claims shall vest in such holders as of the Effective Date.

## SECTION II

### Overview

**2.1 Trust Goals.** The goal of the Trust is to treat all holders of Trust Claims equitably and in accordance with the requirements of Section 524(g) of the Bankruptcy Code. Based on the historic claims experience of The Flintkote Company and Flintkote Mines Limited, this TDP provides for a single valuation and payment process for all Trust Claims regardless of whether holders of such claims assert liability against only The Flintkote Company, only Flintkote Mines Limited, or both The Flintkote Company and Flintkote Mines Limited.

This TDP sets forth procedures for processing and paying Flintkote's several share of the unpaid portion of the liquidated value of all Trust Claims generally on an impartial, first-in-first-out ("FIFO") basis, with the intention of paying all claimants over time as equivalent a share as possible of the value of their claims based on historical values for substantially similar claims in the applicable tort system.<sup>2</sup> To this end, this TDP establishes a schedule of seven asbestos-related diseases ("Disease Levels"), all of which have presumptive medical and exposure requirements ("Medical/Exposure Criteria"), six of which have specific liquidated values ("Scheduled Values"), and five of which (Disease Levels III–VII) have anticipated average values ("Average Values") and caps on their liquidated values ("Maximum Values").

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<sup>2</sup> As used in this TDP, the phrase "in the tort system" or "in the applicable tort system" shall not include claims asserted against a trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) and/or section 105 of the Bankruptcy Code or any other applicable law. References to "tort system" shall include both domestic and foreign tort systems and other foreign claims resolution systems, where appropriate.

These Disease Levels, Medical/Exposure Criteria, Scheduled Values, Average Values, and Maximum Values, which are set forth in Sections 5.3 and 5.4 below, have all been selected and derived with the intention of achieving a fair allocation of the Trust funds as among claimants suffering from different disease processes in light of the best available information considering the domestic settlement history of Flintkote and the rights that claimants would have in the applicable tort system absent the bankruptcy. Except as set forth in Section 5.9 below, a claimant may not assert more than one Trust Claim with respect to a specific injured party.

**2.2 Claims Liquidation Procedures.** Trust Claims shall be processed based on their place in the FIFO Processing Queue to be established pursuant to Section 5.1(a)(l) below. The Trust shall take all reasonable steps to resolve Trust Claims as efficiently and expeditiously as possible at each stage of claims processing and arbitration, which steps may include conducting settlement discussions with claimants' representatives with respect to more than one claim at a time, provided that the claimants' respective positions in the FIFO Processing Queue are maintained, and each claim is individually evaluated pursuant to the valuation factors set forth in Section 5.3(b)(2) below. Whether or not to conduct settlement discussions with claimants' representatives with respect to more than one claim at a time is a decision within the Trust's sole discretion. The Trust shall also make every effort to resolve each year at least that number of Trust Claims required to exhaust the Maximum Annual Payment and the Maximum Available Payment for Category A and Category B claims, as those terms are defined below.

The Trust may, except as provided below, liquidate all Trust Claims except Foreign Claims (as defined in Section 5.3(b)(1) below)<sup>3</sup> that meet the presumptive Medical/Exposure Criteria of Disease Levels I-IV, VI, and VII under the Expedited Review Process described in

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<sup>3</sup> For all purposes hereunder, Trust Claims of individuals exposed in Canada who were residents in Canada when such claims were filed shall be considered and treated as "domestic claims" (i.e., non-Foreign Claims) with domestic settlement history.

Section 5.3(a) below. Except as set forth below, Trust Claims involving Disease Levels I–IV, VI, and VII that do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level may undergo the Trust’s Individual Review Process described in Section 5.3(b) below. In such a case, notwithstanding that the claim does not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level, the Trust can offer the claimant an amount up to the Scheduled Value of that Disease Level if the Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the applicable tort system.

Holders of Trust Claims involving Disease Levels III–VII may alternatively seek to establish a liquidated value for the claim that is greater than its Scheduled Value by electing the Trust’s Individual Review Process. However, the liquidated value of a Trust Claim that undergoes the Individual Review Process for valuation purposes may be determined to be less than its Scheduled Value, and in any event shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(b)(3) below, unless the claim qualifies as an Extraordinary Claim, as defined in Section 5.4(a) below, in which case its liquidated value cannot exceed the extraordinary maximum value specified in that provision for such claims. Disease Level V (Lung Cancer 2) claims, Secondary Exposure Claims for Disease Levels I–VI, and all Foreign Claims may be liquidated<sup>4</sup> only pursuant to the Trust’s Individual Review Process.

Based upon Flintkote’s domestic claims settlement history in light of applicable tort law, and current projections of present and future unliquidated claims, the Scheduled Values and Maximum Values set forth in Section 5.3(b)(3) have been established for each of the Disease Levels that are eligible for Individual Review of their liquidated values. The Trustees shall use their reasonable best efforts to ensure that the Trust processes claims such that over time the combination of domestic settlements at the Scheduled Values and those resulting from the

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<sup>4</sup> For purposes of this TDP, “liquidated” means approved and valued by the Trust.

Individual Review Process for the five applicable Disease Levels approximate the Average Values set forth in Section 5.3(b)(3) for each such Disease Level.

All unresolved disputes over a claimant's medical condition, exposure history, and/or the validity or liquidated value of a claim shall be subject to binding or non-binding arbitration, at the election of the claimant, under the Alternative Dispute Resolution Procedures ("ADR Procedures") described in Section 5.10 below. Trust Claims that are the subject of a dispute with the Trust that cannot be resolved by non-binding arbitration may enter the tort system as provided in Sections 5.11 and 7.6 below. However, if and when a claimant obtains a judgment in the tort system, the judgment will be payable (subject to the Payment Percentage, Maximum Annual Payment, Maximum Available Payment, and Claims Payment Ratio provisions set forth below) as provided in Section 7.7 below.

**2.3 Application of the Payment Percentage.** After the liquidated value of a Trust Claim is determined pursuant to the procedures set forth herein for Expedited Review, Individual Review, arbitration, or litigation in the tort system, the claimant will ultimately receive a pro-rata share of that value based on a Payment Percentage described in Section 4.2 below. The Payment Percentage shall also apply to all Pre-Petition Liquidated Trust Claims as provided in Section 5.2 below and to all sequencing adjustments pursuant to Section 7.5 below.

The Initial Payment Percentage shall be set pursuant to Section 4.2 below after the Trust is established by the Trustees, the Trust Advisory Committee ("TAC") and the Legal Representative for Future Asbestos Claimants ("Future Claimants' Representative") (who are described in Section 3.1 below). The Initial Payment Percentage will be calculated on the assumption that the Average Values set forth in Section 5.3(b)(3) below will be achieved with respect to existing present domestic claims and projected future domestic claims involving

Disease Levels III–VII. The Payment Percentage may thereafter be adjusted upwards or downwards from time to time pursuant to Section 4.2 below by the Trust, with the consent of the TAC and the Future Claimants’ Representative to reflect then-current estimates of the Trust’s assets and liabilities, as well as the then-estimated value of pending and future claims. However, any adjustment to the Initial Payment Percentage shall be made only pursuant to Section 4.2 below. If the Payment Percentage is increased over time, claimants whose claims were liquidated and paid in prior periods under the TDP may receive additional payments, only as provided in Section 4.2 below. Because there is uncertainty in the prediction of both the number and severity of future claims, and the amount of the Trust’s assets over time, no guarantee can be made of any particular Payment Percentage that will be applicable to a Trust Claim’s liquidated value.

**2.4 Determination of the Maximum Annual Payment and Maximum Available Payment.** After calculating the Payment Percentage, the Trust shall model the cash flow, principal and income year by year anticipated to be paid over its entire life to ensure that funds will available to treat all present and future claimants as similarly as possible. In each year, based upon that model of cash flow, the Trust will be empowered to pay out the portion of its funds payable for that year according to the model (the “Maximum Annual Payment”). The Trust’s distributions to all claimants for that year shall not exceed the Maximum Annual Payment determined for that year. The Payment Percentage and the Maximum Annual Payment figures are based on projections over the lifetime of the Trust. As noted in Section 2.3 above, if such long-term projections are revised, the Payment Percentage may be adjusted accordingly, which would result in a new model of the Trust’s anticipated cash flow and a new calculation of the Maximum Annual Payment.

However, year-to-year variations in the Trust's flow of claims or the value of its assets, including earnings thereon, will not mean necessarily that the long-term projections are inaccurate; they may simply reflect normal variations, both up and down, from the smooth curve created by the Trust's long-term projections. If, in a given year, however, asset values, including earnings thereon, are below projections, the Trust may need to distribute less in that year than would otherwise be permitted based on the original Maximum Annual Payment derived from long-term projections. Accordingly, the original Maximum Annual Payment for a given year may be temporarily decreased if the present value of the assets of the Trust as measured on a specified date during the year is less than the present value of the assets of the Trust projected for that date by the cash flow model described in the foregoing paragraph. The Trust shall make such a comparison whenever the Trustees become aware of any information that suggests that such a comparison should be made and, in any event, no less frequently than once every six (6) months. If the Trust determines that as of the date in question, the present value of the Trust's assets is less than the projected present value of its assets for such date, then it will remodel the cash flow year by year to be paid over the life of the Trust based upon the reduced value of the total assets as so calculated and identify the reduced portion of its funds to be paid for that year, which will become the "Temporary Maximum Annual Payment" (additional reductions in the Maximum Annual Payment can occur during the course of that year based upon subsequent calculations). If in any year the Maximum Annual Payment was temporarily reduced as a result of an earlier calculation and, based upon a later calculation, the difference between the projected present value of the Trust's assets and the actual present value of its assets has decreased, the Temporary Maximum Annual Payment shall be increased to reflect the decrease in the differential. In no event, however, shall the Temporary Maximum Annual Payment exceed the

original Maximum Annual Payment. As a further safeguard, the Trust's distribution to all claimants for the first nine (9) months of a year shall not exceed 85% of the Maximum Annual Payment determined for that year. If on December 31 of a given year, the original Maximum Annual Payment for such year is not in effect, the original Maximum Annual Payment for the following year shall be reduced proportionately.

In distributing the Maximum Annual Payment, the Trust shall first allocate the amount in question to outstanding Pre-Petition Liquidated Trust Claims (as defined in Section 5.2(a) below). The remaining portion of the Maximum Annual Payment (the "Maximum Available Payment"), if any, shall then be allocated and used to satisfy all other previously liquidated Trust Claims subject to the Claims Payment Ratio set forth in Section 2.5 below; provided, however that if the Maximum Annual Payment is reduced during a year pursuant to the provisions above, the Maximum Available Payment shall be adjusted accordingly.

In the event there are insufficient funds in any year to pay the total number of outstanding Pre-Petition Liquidated Trust Claims, the available funds allocated to that group of claims shall be paid to the maximum extent to claimants in that group based on their place in their respective FIFO Payment Queue (as defined in Section 5.1(c) below). Pre-Petition Liquidated Trust Claims for which there are insufficient funds shall be carried over to the next year and placed at the head of the FIFO Payment Queue. If there is a decrease in the Payment Percentage prior to the payment of such claims, any such Pre-Petition Liquidated Trust Claims shall nevertheless be entitled to be paid at the Payment Percentage that they would have been entitled to receive but for the application of the Maximum Annual Payment.

**2.5 Claims Payment Ratio.** Based upon Flintkote's domestic claims settlement history and analysis of present and future claims, a Claims Payment Ratio has been determined

which, as of the Effective Date, has been set at 80% for Category A claims, which consist of Trust Claims involving severe asbestosis and malignancies (Disease Levels III–VII) that were unliquidated as of the Petition Date, and at 20% for Category B claims, which are Trust Claims involving non-malignant Asbestosis or Pleural Disease (Disease Levels I–II) that were similarly unliquidated as of the Petition Date. However, the Claims Payment Ratio shall not apply to any Pre-Petition Liquidated Trust Claims. In each year, after the determination of the Maximum Available Payment described in Section 2.4 above, 80% of that amount shall be available to pay Category A claims and 20% shall be available to pay Category B claims that have been liquidated since the Petition Date; provided, however, that if the Maximum Annual Payment is reduced during the year pursuant to the provisions of Section 2.4 above, the amounts available to pay Category A claims and Category B claims shall be recalculated based on the adjusted Maximum Available Payment.

In the event there are insufficient funds in any year to pay the liquidated claims within either or both of the Categories, the available funds allocated to the particular Category shall be paid to the maximum extent to claimants in that Category based on their place in the FIFO Payment Queue described in Section 5.1(c) below, which shall be based upon the date of claim liquidation. Claims for which there are insufficient funds allocated to the relevant Category shall be carried over to the next year where they will be placed at the head of the FIFO Payment Queue. If there is a decrease in the Payment Percentage prior to the payment of such claims, such claims shall nevertheless be entitled to be paid at the Payment Percentage that they would have been entitled to receive but for the application of the Claims Payment Ratio. If there are excess funds in either or both Categories, because there is an insufficient amount of liquidated claims to exhaust the respective Maximum Available Payment amount for that Category, then

the excess funds for either or both Categories will be rolled over and remain dedicated to the respective Category to which they were originally allocated. During the first nine (9) months of a given year, the Trust's payments to claimants in a Category shall not exceed the amount of any excess funds that were rolled over for such Category from the prior year plus 85% of the amount that would otherwise be available for payment to claimants in such Category.

The 80%/20% Claims Payment Ratio and its rollover provision shall apply to all Asbestos Trust Voting Claims, except Pre-Petition Liquidated Trust Claims. The term "Asbestos Trust Voting Claims" includes (i) Pre-Petition Liquidated Trust Claims as defined in Section 5.2(a) below; (ii) claims filed against Flintkote in the tort system or actually submitted to Flintkote pursuant to an administrative settlement agreement prior to the Petition Date of May 1, 2004 in the case of The Flintkote Company and August 25, 2004 in the case of Flintkote Mines Limited; and (iii) all claims filed against another defendant in the tort system prior to the date the Plan was filed with the Bankruptcy Court on June 22, 2009 ("Plan Filing Date"), provided, however, that the holder of a claim described in subsection (i), (ii), or (iii) above or his or her authorized agent, actually voted to accept or reject the Plan pursuant to the voting procedures established by the Bankruptcy Court, unless such holder certifies to the satisfaction of the Trustees that he or she was prevented from voting in this proceeding as the result of circumstances resulting in a state of emergency affecting, as the case may be, the holder's residence, principal place of business or legal representative's principle place of business at which the holder or his or her legal representative receives notice and/or maintains material records relating to his or her Asbestos Trust Voting Claim, and provided further that the claim was subsequently filed with the Trust by the Initial Claims Filing Date defined in Section 5.1(a)(1). The initial 80%/20% Claims Payment Ratio shall not be amended until the second

anniversary of the date the Trust first accepts for processing proof of claim forms and other materials required to file a claim with the Trust. Thereafter, both the Claims Payment Ratio and its rollover provision shall be continued absent circumstances, such as a significant change in law or medicine, necessitating amendment to avoid a manifest injustice. However, the accumulation, rollover and subsequent delay of claims resulting from the application of the Claims Payment Ratio, shall not, in and of itself, constitute such circumstances. In addition, an increase in the numbers of Category B claims beyond those predicted or expected shall not be considered as a factor in deciding whether to reduce the percentage allocated to Category A claims.

In considering whether to make any amendments to the Claims Payment Ratio and/or its rollover provisions, the Trustees shall consider the reasons for which the Claims Payment Ratio and its rollover provisions were adopted, the domestic settlement history that gave rise to its calculation, and the foreseeability or lack of foreseeability of the reasons why there would be any need to make an amendment. In that regard, the Trustees should keep in mind the interplay between the Payment Percentage and the Claims Payment Ratio as it affects the net cash actually paid to claimants.

In any event, no amendment to the Claims Payment Ratio to reduce the percentage allocated to Category A claims may be made without the consent of at least 80 percent of the TAC members and the consent of the Future Claimant's Representative, and the percentage allocated to Category A claims may not be increased without the consent of the TAC and the Future Claimants' Representative. In case of any amendments to the Claims Payment Ratio, consents shall be governed by the consent process set forth in Sections 6.7(b) and 7.7(b) of the Trust Agreement. However, the Trustees, with the consent of the TAC and the Future

Claimants' Representative, may offer the option of a reduced Payment Percentage to holders of claims in either Category A or Category B in return for prompter payment (the "Reduced Payment Option").

Notwithstanding any other provision herein, if, at the end of a calendar year following the third anniversary of the date the Trust begins accepting Trust Claims, there are excess funds in either Category A or Category B and insufficient funds in the other Category to pay such Category's claims, the Trustees may transfer up to a specified amount of excess funds (the "Permitted Transfer Amount" as defined below) to the Category with the shortfall; provided, however, that the Trustees shall never transfer more than the amount of the receiving Category's shortfall. The "Permitted Transfer Amount" shall be determined as follows: (a) the Trustees shall first determine the cumulative amount allocated to the Category with excess funds based on the Claims Payment Ratio since the date the Trust last calculated its Payment Percentage; (b) the Trustees shall then determine the cumulative amount that the Trust estimated would be paid to the Category with excess funds since the date the Trust last calculated its Payment Percentage; (c) the Trustees shall then subtract the amount determined in (b) from the amount determined in (a), and the difference between the two shall be referred to as the "Permitted Transfer Amount." When deciding whether to make a transfer, the Trustees shall take into account any artificial failures of the processing queue that may have impacted the amount of funds expended from either Category. The Trustees shall provide the TAC and the Future Claimants' Representative with the Permitted Transfer Amount calculation thirty (30) days prior to making a transfer.

**2.6 Indemnity and Contribution Claims.** As set forth in Section 5.6 below, Trust Claims for indemnity and contribution ("Indirect Trust Claims"), if any, will be subject to the same categorization, evaluation, and payment provisions of this TDP as all other Trust Claims.

### SECTION III

#### **TDP Administration**

**3.1 Trust Advisory Committee and Future Claimants' Representative.** Pursuant to the Plan and the Trust Agreement, the Trust and this TDP shall be administered by the Trustees in consultation with the TAC, which represents the interests of holders of present Trust Claims against Flintkote, and the Future Claimants' Representative, who represents the interests of holders of Trust Claims against Flintkote that will be asserted in the future. The Trustees shall obtain the consent of the TAC and the Future Claimants' Representative on any amendments to this TDP pursuant to Section 8.1 below, and on such other matters as are otherwise required below and in Section 2.2(e) of the Trust Agreement. The Trustees shall also consult with the TAC and the Future Claimants' Representative on such matters as are provided below and in Section 2.2(d) of the Trust Agreement. The initial members of the TAC and the initial Future Claimants' Representative are identified in the Trust Agreement.

**3.2 Consent and Consultation Procedures.** In those circumstances in which consultation or consent is required, the Trustees will provide written notice to the TAC and the Future Claimants' Representative of the specific amendment or other action that is proposed. The Trustees will not implement such amendment or take such action unless and until the parties have engaged in the Consultation Process described in Sections 6.7(a) and 7.7(a) or the Consent Process described in Sections 6.7(b) and 7.7(b) of the Trust Agreement, respectively.

### SECTION IV

#### **Payment Percentage; Periodic Estimates**

**4.1 Uncertainty of Flintkote's Total Personal Injury Asbestos Liabilities.** As discussed above, there is inherent uncertainty regarding Flintkote total asbestos-related tort liabilities, as well as the total value of the assets available to the Trust to pay Trust Claims.

Consequently, there is inherent uncertainty regarding the amounts that holders of Trust Claims will receive. To seek to ensure substantially equivalent treatment of all present and future Trust Claims, the Trustees must determine from time to time the percentage of full liquidated value that holders of Trust Claims are likely to receive, i.e., the “Payment Percentage” described in Section 2.3 above and Section 4.2 below.

**4.2 Computation of Payment Percentage.** As provided in Section 2.3 above, the Initial Payment Percentage shall be set by the Trustees, with the consent of the TAC and the Future Claimants’ Representative, after the Trust is established and sufficient information is available concerning the anticipated assets and liabilities of the Trust over its lifetime. The Initial Payment Percentage may be either increased or decreased pursuant to the terms of this TDP and the Trust Agreement if the Trustees, with the consent of the TAC and the Future Claimants’ Representative, determine that an adjustment is required.

No less frequently than once every three (3) years, commencing with the first day of January occurring after the Plan is consummated, the Trustees shall reconsider the then-applicable Payment Percentage to assure that it is based on accurate, current information and may, after such reconsideration, change the Payment Percentage if necessary, with the consent of the TAC and the Future Claimants’ Representative. The Trustees shall also reconsider the then applicable Payment Percentage at shorter intervals if they deem such reconsideration to be appropriate or if requested to do so by the TAC or the Future Claimants’ Representative. In any event, no less frequently than once every twelve (12) months, commencing on the Initial Claims Filing Date, the Trustees shall compare the liability forecast on which the then applicable Payment Percentage is based with the actual claims filing and payment experience of the Trust to date. If the results of the comparison call into question the ability of the Trust to continue to rely

upon the current liability forecast, the Trustees shall undertake a reconsideration of the Payment Percentage.

The Trustees must base their determination of the Payment Percentage on then-current estimates of the number, types, and values of present and future Trust Claims, the value of the assets then available to the Trust for their payment, all anticipated administrative and legal expenses, and any other material matters that are reasonably likely to affect the sufficiency of funds to pay a comparable percentage of full liquidated value to all holders of Trust Claims. When making these determinations, the Trustees shall exercise common sense and flexibly evaluate all relevant factors. The Payment Percentage applicable to Category A or Category B claims may not be reduced to alleviate delays in payments of claims in the other Category; both Categories will receive the same Payment Percentage, but the payment may be deferred as needed pursuant to Section 7.3 below, and a Reduced Payment Option may be instituted as described in Section 2.5 above.

The uncertainty surrounding the amount of the Trust's future assets is due in significant part to the fact that the estimates of those assets do not take into account the possibility that the Trust may receive substantial additional funds from successful recoveries of insurance proceeds that have been assigned to the Trust with respect to which the coverage is presently in dispute or the solvency of the carrier is in doubt. If the Trust successfully resolves an insurance coverage dispute or otherwise receives a substantial recovery of insurance proceeds, the Trust shall use those proceeds first to maintain the Payment Percentage then in effect. There is also uncertainty surrounding the totality of the Trust Claims to be paid over time as well as the extent to which changes in existing foreign, federal, and/or state law could affect the Trust's liabilities under this TDP. If the value of the Trust's future assets increases significantly and/or if the value or

volume of Trust Claims actually filed with the Trust is significantly lower than originally estimated, the Trust shall use those proceeds and/or claims savings, as the case may be, first to maintain the Payment Percentage then in effect.

If the Trustees, with the consent of the TAC and the Future Claimants' Representative, make a determination to increase the Payment Percentage due to a material change in the estimates of the Trust's future assets and/or liabilities, the Trustees shall also make supplemental payments to all claimants who previously liquidated their claims against the Trust and received payments based on a lower Payment Percentage. The amount of any such supplemental payment shall be the liquidated value of the claim in question times the newly adjusted Payment Percentage, less all amounts previously paid to the claimant with respect to the claim (excluding the portion of such previously paid amounts that was attributable to any sequencing adjustment paid pursuant to Section 7.5 below).

The Trustees' obligation to make a supplemental payment to a claimant shall be suspended in the event the payment in question would be less than \$100.00, and the amount of the suspended payment shall be added to the amount of any prior supplemental payment/payments that was/were also suspended because it/they would have been less than \$100.00. However, the Trustees' obligation shall resume and the Trustees shall pay any such aggregate supplemental payments due the claimant at such time that the total exceeds \$100.00.

**4.3 Applicability of the Payment Percentage.** Except as otherwise provided (a) in Section 5.1(c) below for Trust Claims involving deceased or incompetent claimants for which approval of the Trust's offer by a court or through a probate process is required, (b) in the paragraph below with respect to Released Claims, and (c) in Section 4.2 above with respect to supplemental payments, no holder of any Trust Claim shall receive a payment that exceeds the

liquidated value of the claim times the Payment Percentage in effect at the time of payment; provided, however, that if there is a reduction in the Payment Percentage, the Trustees, in their sole discretion, may cause the Trust to pay a Trust Claim based on the Payment Percentage that was in effect prior to the reduction if such Trust Claim was filed and actionable with the Trust ninety (90) days or more prior to the date the Trustees proposed the new Payment Percentage in writing to the TAC and the Future Claimants' Representative (the "Proposal Date") and the processing of such claim was unreasonably delayed due to circumstances beyond the control of the claimant or the claimant's counsel, but only if such claim had no deficiencies for the ninety (90) days prior to the Proposal Date.

If a redetermination of the Payment Percentage has been proposed in writing by the Trustees to the TAC and the Future Claimants' Representative but has not yet been adopted, the claimant shall receive the lower of the current Payment Percentage or the proposed Payment Percentage. However, if the proposed Payment Percentage was the lower amount but was not subsequently adopted, the claimant shall thereafter receive the difference between the lower proposed amount and the higher current amount. Conversely, if the proposed Payment Percentage was the higher amount and was subsequently adopted, the claimant shall thereafter receive the difference between the lower current amount and the higher adopted amount.

Notwithstanding anything contained herein, if the proposed Payment Percentage is lower than the current Payment Percentage, a claimant who received a release from the Trust prior to the Proposal Date and who either (a) transmitted<sup>5</sup> an executed release to the Trust prior to the Proposal Date or (b) with respect to those claimants who had received releases fewer than thirty (30) days prior to the Proposal Date, transmitted an executed release to the Trust within thirty

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<sup>5</sup> For purposes of this sentence, "transmitted" is defined as the date/time postmarked if submitted by mail or the date/time uploaded if submitted electronically.

(30) days of the claimant's receipt of the release (the claims described in (a) and (b) are collectively referred to herein as the "Released Claims") shall be paid based on the current Payment Percentage (the "Released Claims Payment Percentage"). For purposes hereof, (a) a claimant represented by counsel shall be deemed to have received a release on the date that the claimant's counsel receives the release, (b) if the Trust transmits a release electronically, the release shall be deemed to have been received on the date the Trust transmits the offer notification, and (c) if the Trust places the release in the U.S. mail, postage prepaid, the release shall be deemed to have been received three (3) business days after such mailing date. A delay in the payment of the Released Claims for any reason, including delays resulting from limitations on payment amounts in a given year pursuant to Sections 2.4 and 2.5 hereof, shall not affect the rights of the holders of the Released Claims to be paid based on the Released Claims Payment Percentage.

At least thirty (30) days prior to proposing in writing to the TAC and the Future Claimants' Representative a change in the Payment Percentage, the Trustees shall issue a written notice to claimants or claimants' counsel indicating that the Trustees are reconsidering such Payment Percentage.

## SECTION V

### Resolution of Trust Claims

#### **5.1 Ordering, Processing and Payment of Claims.**

##### **5.1(a) Ordering of Claims.**

**5.1(a)(1) Establishment of the FIFO Processing Queue.** The Trust will order Trust Claims that are sufficiently complete to be reviewed for processing purposes on a FIFO basis except as otherwise provided herein (the "FIFO Processing Queue"). For all claims filed on or before the date six (6) months after the date that the Trust first makes available the

proof of claim forms and other claims materials required to file a Trust claim (such six-month anniversary being referred to herein as the “Initial Claims Filing Date”), a claimant’s position in the FIFO Processing Queue shall be determined as of the earliest of (i) the date prior to the Petition Date (if any) that the specific claim was either filed against Flintkote in the tort system or was actually submitted to Flintkote pursuant to an administrative settlement agreement; (ii) the date before the Petition Date that an asbestos claim was filed against another defendant in the tort system if at the time the claim was subject to a tolling agreement with Flintkote; (iii) the date after the Petition Date (if any) but before the date that the Trust first makes available the claims materials required to file a Trust Claim that the asbestos claim was filed against another defendant in the tort system; (iv) the date after the Petition Date (if any) but before the Effective Date that the claimant filed a proof of claim against Flintkote in Flintkote’s Chapter 11 proceeding; (v) the date the claimant submitted a ballot in Flintkote’s Chapter 11 proceeding for purposes of voting on the Plan pursuant to the voting procedures approved by the Bankruptcy Court; or (vi) the date after the Effective Date, but on or before the Initial Claims Filing Date, that the claim was filed with the Trust.

Following the Initial Claims Filing Date, the claimant’s position in the FIFO Processing Queue shall be determined by the date the claim is filed with the Trust. If any claims are filed on the same date, the claimant’s position in the FIFO Processing Queue shall be determined by the date of the diagnosis of the claimant’s asbestos-related disease, with claimants with earlier diagnosis dates given priority over later diagnosed claimants. If any claims are filed and diagnosed on the same date, the claimant’s position in the FIFO Processing Queue shall be determined by the date of the claimant’s birth, with older claimants given priority over younger claimants.

**5.1(a)(2) Effect of Statutes of Limitations and Repose.** All unliquidated Trust Claims must meet either, (i) for claims first filed in the tort system against Flintkote prior to the Petition Date, the applicable federal, state, or foreign statutes of limitations and repose that were in effect at the time of the filing of the claim in the tort system, or (ii) for claims that were not filed against Flintkote in the tort system prior to the Petition Date, the applicable federal, state, or foreign statute of limitations that was in effect at the time of the filing with the Trust.

However, the running of the relevant statute of limitations shall be tolled as of the earliest of (A) the actual filing of the claim against Flintkote prior to the Petition Date, whether in the tort system or by submission of the claim to Flintkote pursuant to an administrative settlement agreement; (B) the tolling of the claim against Flintkote prior to the Petition Date by an agreement or otherwise, provided such tolling is still in effect on the Petition Date; or (C) the Petition Date.

If a Trust Claim meets any of the tolling provisions described in the preceding sentence and the claim was not barred by the applicable federal, state or foreign statute of limitations at the time of the tolling event, it will be treated as timely filed if it is actually filed with the Trust within three (3) years after the Initial Claims Filing Date. In addition, any claims that were first diagnosed after the Petition Date, irrespective of the application of any relevant federal, state, or foreign statute of limitations or repose, must be filed with the Trust within three (3) years after the date of diagnosis or within three (3) years after the Initial Claims Filing Date, whichever occurs later, unless the applicable statute of limitations of the Claimant's Jurisdiction, as defined in Section 5.3(b)(2) below, is longer than three (3) years, in which case the claim must be filed within the time period prescribed by the statute of limitations of the Claimant's Jurisdiction in

effect at the time of the filing with the Trust. However, the processing of any Trust Claim by the Trust may be deferred at the election of the claimant pursuant to Section 6.3 below.

**5.1(b) Processing of Claims.** As a general practice, the Trust will review its claims files on a regular basis and notify all claimants whose claims are likely to come up in the FIFO Processing Queue in the near future.

**5.1(c) Payment of Claims.** Trust Claims that have been liquidated under the provisions of this TDP by the Expedited Review Process as provided in Section 5.3(a) below, by the Individual Review Process as provided in Section 5.3(b) below, by arbitration as provided in Section 5.10 below, or by litigation in the tort system as provided in Section 5.11 below, shall be paid in FIFO order based on the date their liquidation became final (the “FIFO Payment Queue”), all such payments being subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment, and the Claims Payment Ratio, except as otherwise provided herein. If the Trust Claim is entitled to a sequencing adjustment pursuant to the provisions of Section 7.5 below, the Trust shall apply such sequencing adjustment to the liquidated value of the Trust Claim. Pre-Petition Liquidated Trust Claims, as defined in Section 5.2 below, shall be subject to the Maximum Annual Payment and Payment Percentage limitations, but not to the Maximum Available Payment and Claims Payment Ratio provisions set forth above.

Where the claimant is deceased or incompetent, and the settlement and payment of his or her claim must be approved by a court of competent jurisdiction or through a probate process prior to acceptance of the claim by the claimant’s representative, an offer made by the Trust on the claim shall remain open so long as proceedings in that court or in the probate process remain pending, provided that the Trust has been furnished with evidence that the settlement offer has

been submitted to such court or in the probate process for approval. If the offer is ultimately approved by the court or through the probate process and accepted by the claimant's representative, the Trust shall pay the claim in the amount so offered, multiplied by the Payment Percentage in effect at the time the offer was first made, subject to the redetermination provisions set forth in Section 4.3 above. For purposes of placement in the FIFO Payment Queue, the date of final liquidation shall be the date the Trust receives evidence of said approval and acceptance.

If any claims are liquidated on the same date, the claimant's position in the FIFO Payment Queue shall be determined by the date of the diagnosis of the claimant's asbestos-related disease. If any claims are liquidated on the same date and the respective claimants' asbestos-related diseases were diagnosed on the same date, the position of those claimants in the FIFO Payment Queue shall be determined by the Trust based on the dates of the claimants' birth, with older claimants given priority over younger claimants.

## **5.2 Resolution of Pre-Petition Liquidated Trust Claims.**

**5.2(a) Processing and Payment.** As soon as practicable after the Effective Date, the Trust shall pay, upon submission by the claimant of all appropriate documentation required by the Trust, all Trust Claims that were liquidated (i) by a binding settlement agreement for the particular claim entered into prior to the Petition Date that is judicially enforceable by the claimant, (ii) after the Petition Date according to the terms of a binding settlement agreement entered into prior to the Petition Date (a "Pre-Petition Agreement"), (iii) by a jury verdict or non-final judgment in the tort system obtained prior to the Petition Date, or (iv) by a judgment that became final and non-appealable prior to the Petition Date (collectively "Pre-Petition Liquidated Trust Claims"). In order to receive payment from the Trust, the holder of a Pre-Petition Liquidated Trust Claim must submit all documentation necessary to demonstrate to the Trust that

the claim was liquidated in the manner described in (i), (ii), (iii), or (iv), which documentation shall include (A) a copy of the executed, binding settlement agreement, if applicable, (B) a court authenticated copy of the jury verdict (if applicable), non-final judgment (if applicable), or final judgment (if applicable), and (C) the name, Social Security number, and date of birth of the claimant and the name and address of the claimant's lawyer; provided, however, that such documentation shall not be required with respect to any Pre- Petition Liquidated Trust Claim that Flintkote has identified to the Trust as a Pre-Petition Liquidated Trust Claim as to which all conditions to payment under the applicable agreement, jury verdict, or judgment have been satisfied. Flintkote shall deliver to the Trust a list of the Pre-Petition Liquidated Trust Claims that Flintkote has approved for payment (the "Approved Pre- Petition Liquidated Trust Claims"), which claims shall be entitled to rely upon the exception set forth in the preceding sentence.

The liquidated value of a Pre-Petition Liquidated Trust Claim shall be Flintkote's share of the unpaid portion of the amount agreed to in the binding settlement agreement or Pre-Petition Agreement, the unpaid portion of the amount awarded by the jury verdict or non-final judgment, or the unpaid portion of the amount of the final judgment, as the case may be, plus interest, if any, that has accrued on that amount in accordance with the terms of the binding settlement agreement or Pre-Petition Agreement, if any, or under applicable state law for settlements or judgments as of the Petition Date; however, except as otherwise provided in Section 7.4 below, the liquidated value of a Pre-Petition Liquidated Trust Claim shall not include any punitive or exemplary damages. In addition, the amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Claims Payment Ratio and the Maximum Available Payment limitations, but shall be subject to the Maximum Annual Payment and Payment Percentage provisions. In the absence of a Final Order of the Bankruptcy Court

determining whether a settlement agreement is binding and judicially enforceable, a dispute between a claimant and the Trust over this issue shall be resolved pursuant to the same procedures in this TDP that are provided for resolving the validity and/or liquidated value of a Trust Claim (i.e., arbitration and litigation in the tort system as set forth in Sections 5.10 and 5.11 below).

The Trust shall pay the Approved Pre-Petition Liquidated Trust Claims as expeditiously as possible. The other Pre-Petition Liquidated Trust Claims shall be processed and paid in accordance with their order in a separate FIFO queue to be established by the Trust based on the date the Trust received all required documentation for the particular claim; however, the amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Claims Payment Ratio or the Maximum Available Payment, but shall be subject to the Maximum Annual Payment and Payment Percentage provisions set forth above. If any Pre-Petition Liquidated Trust Claims are filed with the Trust on the same date, the claimant's position in the FIFO queue for such claims shall be determined by the date on which the claim was liquidated. If any Pre-Petition Liquidated Trust Claims are both filed with the Trust and liquidated on the same dates, those claimants' positions in the FIFO queue shall be determined by the dates of the claimants' birth, with older claimants given priority over younger claimants.

**5.2(b) Marshalling of Security.** Holders of Pre-Petition Liquidated Trust Claims that are secured by letters of credit, appeal bonds, or other security or sureties shall first exhaust their rights against any applicable security or surety before making a claim against the Trust. Only in the event that such security or surety is insufficient to pay the Pre-Petition Liquidated Trust Claim in full shall the deficiency be processed and paid as a Pre-Petition Liquidated Trust Claim.

**5.3 Resolution of Unliquidated Trust Claims.** Within six (6) months after the establishment of the Trust, the Trustees, with the consent of the TAC and the Future Claimants' Representative, shall adopt procedures for reviewing and liquidating all unliquidated Trust Claims, which shall include deadlines for processing such claims. Such procedures shall also require claimants seeking resolution of unliquidated Trust Claims to first file a proof of claim form, together with the required supporting documentation, in accordance with the provisions of Sections 6.1 and 6.2 below. It is anticipated that the Trust shall provide an initial response to the claimant within six (6) months of receiving the proof of claim form.

The proof of claim form shall require the claimant to assert his or her claim for the highest Disease Level for which the claim qualifies at the time of filing. Irrespective of the Disease Level alleged on the proof of claim form, all claims filed with the Trust shall be deemed to be a claim for the highest Disease Level for which the claim qualifies at the time of filing, and all lower Disease Levels for which the claim may also qualify at the time of filing or in the future shall be treated as subsumed into the higher Disease Level for both processing and payment purposes.

When the claim reaches the top of the FIFO Processing Queue, the Trust shall process and liquidate the claim based upon the medical/exposure evidence submitted by the claimant, and under the process elected by the claimant. If the claimant fails to elect either the Individual Review Process or the Expedited Review Process, then the Trust shall process and liquidate the claim under the Expedited Review Process, although the claimant shall retain the right to request Individual Review as described in Section 5.3(b) below.

**5.3(a) Expedited Review Process.**

**5.3(a)(1) In General.** The Trust's Expedited Review Process is designed primarily to provide an expeditious, efficient and inexpensive method for liquidating all

Trust Claims (except those involving Disease Level V (Lung Cancer 2), Secondary Exposure Claims for Disease Levels I-VI, and all Foreign Claims (as defined below), which must be liquidated pursuant to the Trust's Individual Review process) where the claim can easily be verified by the Trust as meeting the presumptive Medical/Exposure Criteria for the relevant Disease Level. Expedited Review thus provides claimants with a substantially less burdensome process for pursuing Trust Claims than does the Individual Review Process described in Section 5.3(b) below. Expedited Review is also intended to provide qualifying claimants a fixed and certain claims value.

Thus, claims that undergo Expedited Review and meet the presumptive Medical/Exposure Criteria for the relevant Disease Level shall be liquidated at the Scheduled Value for such Disease Level set forth in Section 5.3(a)(3) below. However, all claims liquidated by Expedited Review shall be subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment, and the Claims Payment Ratio. Claimants holding claims that (i) cannot be liquidated by Expedited Review because they do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level or (ii) have otherwise failed to qualify for payment through the Expedited Review Process may elect the Trust's Individual Review Process set forth in Section 5.3(b) below.

Subject to the provisions of Section 5.8, the claimant's eligibility to have his or her Trust Claim liquidated at the Scheduled Value pursuant to the Expedited Review Process shall be determined solely by reference to the Medical/Exposure Criteria set forth below for each of the Disease Levels eligible for Expedited Review.

**5.3(a)(2) Claims Processing under Expedited Review.** All claimants seeking liquidation of their Trust Claims pursuant to Expedited Review shall file the

Trust's proof of claim form. As a proof of claim form is reached in the FIFO Processing Queue, the Trust shall determine whether the claim described therein meets the Medical/Exposure Criteria for one of the six Disease Levels eligible for Expedited Review, and shall advise the claimant of its determination. If a Disease Level is determined, the Trust shall tender to the claimant an offer of payment of the Scheduled Value for the relevant Disease Level multiplied by the applicable Payment Percentage, together with a form of release approved by the Trust. If the claimant accepts the Scheduled Value and returns the release properly executed, the claim shall be placed in the FIFO Payment Queue, following which the Trust shall disburse payment subject to the limitations of the Maximum Available Payment and Claims Payment Ratio, if any.

**5.3(a)(3) Disease Levels, Scheduled Values and Medical/Exposure**

**Criteria.** The seven Disease Levels covered by this TDP, together with the Medical/Exposure Criteria and Scheduled Values for each, are set forth below. These Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all Asbestos Trust Voting Claims (other than Pre- Petition Liquidated Trust Claims) filed with the Trust on or before the Initial Claims Filing Date provided in Section 5.1 above for which the claimant elects the Expedited Review Process. Thereafter, for purposes of administering the Expedited Review Process and with the consent of the TAC and the Future Claimants' Representative, the Trustees may add to, change or eliminate Disease Levels, Scheduled Values, or Medical/Exposure Criteria; develop subcategories of Disease Levels, Scheduled Values or Medical/Exposure Criteria; or determine that a novel or exceptional asbestos personal injury claim is compensable even though it does not meet the Medical/Exposure Criteria for any of the then current Disease Levels.

**Disease Level**

**Scheduled Value**

**Medical/Exposure Criteria**

Mesothelioma (Level VII)	\$184,000	(1) Diagnosis <sup>6</sup> of mesothelioma; and (2) evidence of Flintkote Exposure (as defined in Section 5.7(b)(3) below).
Lung Cancer 1 (Level VI)	\$20,000	(1) Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, <sup>7</sup> (2) six months Flintkote Exposure prior to December 31, 1982, (3) Significant Occupational Exposure, <sup>8</sup> and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.
Lung Cancer 2 (Level V)	None	(1) Diagnosis of a primary lung cancer; (2) Flintkote Exposure prior to December 31, 1982, and (3) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.  Lung Cancer 2 (Level V) claims are claims that do not meet the more stringent medical and/or exposure requirements of Lung Cancer (Level VI)

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<sup>6</sup> The requirements for a diagnosis of an asbestos-related disease that may be compensated under the provisions of this TDP are set forth in Section 5.7 below.

<sup>7</sup> Evidence of “Bilateral Asbestos-Related Nonmalignant Disease” for purposes of meeting the criteria for establishing Disease Levels I, II, IV, and VI means either (i) a chest X-ray read by a qualified B reader of 1/0 or higher on the ILO scale or, (ii) (x) a chest X-ray read by a qualified B reader or other Qualified Physician, (y) a CT scan read by a Qualified Physician, or (z) pathology, in each case showing either bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification. Evidence submitted to demonstrate (i) or (ii) above must be in the form of a written report stating the results (e.g., an ILO report, a written radiology report or a pathology report). Solely for asbestos claims filed against Flintkote or another defendant in the tort system prior to the Petition Date, if an ILO reading is not available, either (i) a chest X-ray or a CT scan read by a Qualified Physician, or (ii) pathology, in each case showing bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification consistent with, or compatible with, a diagnosis of asbestos-related disease shall be evidence of Bilateral Asbestos-Related Nonmalignant Disease for purposes of meeting the presumptive medical requirements of Disease Levels I, II, IV, and VI. Pathological proof of asbestosis may be based on the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, “Asbestos-associated Diseases,” Vol. 106, No. 11, App. 3 (October 8, 1982). For all purposes of this TDP, a “Qualified Physician” is a physician who is board certified (or in the case of Canadian Claims or Foreign Claims, a physician who is certified or qualified under comparable medical standards or criteria of the jurisdiction in question) in one or more relevant specialized fields of medicine such as pulmonology, radiology, internal medicine or occupational medicine; provided, however, subject to the provisions of Section 5.8, that the requirement for board certification in this provision shall not apply to otherwise qualified physicians whose x-rays and/or CT scan readings are submitted for deceased holders of Trust Claims.

<sup>8</sup> “Significant Occupational Exposure” is defined in Section 5.7(b)(2) below.

claims. All claims in this Disease Level will be individually evaluated. The estimated likely Average Value of the individual evaluation awards for this category is \$4,000, with such awards capped at \$10,000, unless the claim qualifies for Extraordinary Claim treatment discussed in Section 5.4(a) below).

Level V claims that show no evidence of either an underlying Bilateral Asbestos-Related Non-malignant Disease or Significant Occupational Exposure may be individually evaluated, although it is not expected that such claims will be treated as having any significant value, especially if the claimant is also a Smoker.<sup>9</sup> In any event, no presumption of validity will be available for any claims in this category.

Other Cancer (Level IV)	\$4,500	(1) Diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, (2) six months Flintkote Exposure prior to December 31, 1982, (3) Significant Occupational Exposure, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.
Severe Asbestosis (Level III)	\$15,000	(1) Diagnosis of asbestosis with ILO <sup>10</sup> of 2/1 or greater, or asbestosis determined by pathological evidence of asbestos,

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<sup>9</sup> There is no distinction between Non-Smokers and Smokers for either Lung Cancer 1 (Level VI) or Lung Cancer 2 (Level V), although a claimant who meets the more stringent requirements of Lung Cancer 1 (Level VI) (evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease plus Significant Occupational Exposure), and who is also a Non-Smoker, may wish to have his or her claim individually evaluated by the Trust. In such a case, absent circumstances that would otherwise reduce the value of the claim, it is anticipated that the liquidated value of the claim might well exceed the \$20,000 Scheduled Value for Lung Cancer 1 (Level VI) shown above. “Non-Smoker” means a claimant who either (a) never smoked or (b) has not smoked during any portion of the twelve (12) years immediately prior to the diagnosis of the lung cancer.

<sup>10</sup> If the diagnostic images being interpreted in such regard are digital images, then a written report by a Qualified Physician confirming that the images reviewed are with reasonable certainty equivalent to those that would qualify for the required ILO grade shall be acceptable as well.

				plus (a) TLC less than 65%, or (b) FVC less than 65% and FEV1/FVC ratio greater than 65%, (2) six months Flintkote Exposure prior to December 31, 1982, (3) Significant Occupational Exposure, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Asbestosis/ (Level II)	Pleural Disease	\$1,400		(1) Diagnosis of Bilateral Asbestos-Related Nonmalignant Disease, plus TLC less than 80%, or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%, (2) six months Flintkote Exposure prior to December 31, 1982, (3) Significant Occupational Exposure, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Asbestosis/ (Level I)	Pleural Disease	\$650		(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease, (2) six months Flintkote Exposure prior to December 31, 1982, and (3) five years cumulative occupational exposure to asbestos.

### **5.3(b) Individual Review Process.**

**5.3(b)(1) In General.** Subject to the provisions set forth below, a Flintkote claimant may elect to have his or her Trust Claim reviewed under the Individual Review Process for purposes of determining whether the claim would be cognizable and valid in the applicable tort system even though it does not meet the presumptive Medical/Exposure Criteria for any of the Disease Levels set forth in Section 5.3(a)(3) above. In addition or alternatively, a Flintkote claimant holding a Trust Claim involving Disease Levels III, IV, VI, or VII may elect to have a claim undergo the Individual Review Process for purposes of

determining whether the liquidated value of the claim exceeds the Scheduled Value for the relevant Disease Level also set forth in Section 5.3(a) above. However, except for claimants who allege Disease Level V, Secondary Exposure Claims for Disease Levels I-VI, and all claimants with Foreign Claims (as defined below), until such time as the Trust has made an offer on a claim pursuant to Individual Review, the claimant may change his or her Individual Review election and have the claim liquidated pursuant to the Trust's Expedited Review Process. In the event of such a change in the processing election, the claimant shall nevertheless retain his or her place in the FIFO Processing Queue.

The liquidated value of all Foreign Claims payable under this TDP shall be established under the Trust's Individual Review Process only. Trust Claims of individuals exposed in Canada who were residents in Canada when such claims were filed shall not be considered Foreign Claims hereunder and shall be eligible for liquidation under the Expedited Review Process. Accordingly, a "Foreign Claim" is a Trust Claim with respect to which the claimant's exposure to an asbestos-containing product for which Flintkote has legal responsibility occurred outside of the United States and its Territories and Possessions, and outside of the Provinces and Territories of Canada.

In reviewing Foreign Claims, the Trust shall take into account all relevant procedural and substantive legal rules to which the claims would be subject in the Claimant's Jurisdiction as defined in Section 5.3(b)(2) below (including by reference to appropriate written expert or other evidence from the Claimant's Jurisdiction). The Trust shall determine the validity and/or value of a Foreign Claim, including whether the claim has been paid, satisfied, settled, released, waived, or otherwise discharged. The Trust shall determine the liquidated value of valid Foreign Claims based on historical settlements and verdicts in the Claimant's Jurisdiction, the other

valuation factors set forth in Section 5.3(b)(2) below, and any matrices or methodologies developed pursuant to the provisions of this Section 5.3(b)(1).

For purposes of the Individual Review Process for Foreign Claims, the Trustees, with the consent of the TAC and the Future Claimants' Representative, may develop separate Medical/Exposure Criteria and standards, as well as separate requirements for physician and other professional qualifications, which shall be applicable to all Foreign Claims channeled to the Trust; provided, however, that such criteria, standards or requirements shall not effectuate substantive changes to the claims eligibility requirements under this TDP, but rather shall be made only for the purpose of adapting those requirements to the particular licensing provisions and/or medical customs or practices of the foreign country in question.

In taking into account the relevant procedural and substantive legal rules of a foreign jurisdiction, the Trust may use reliable sources and data to develop methodologies for the Trust's use in evaluating the validity of and valuing the Foreign Claims with respect to such foreign jurisdiction. The Trustees, with the consent of the TAC and the Future Claimants' Representative, may also establish a separate valuation matrix for any such Foreign Claims based on such sources and data. Any such Foreign Claims valuation matrix shall contain the "Scheduled Value," "Average Value," and "Maximum Value" amounts for the subject foreign country, and those amounts shall be the relevant amounts for any application of provisions in this TDP relating to caps or sequencing adjustment calculations for claims with respect to such country (e.g., Sections 5.4(a), 5.10(a), 7.5(b), and 7.7).

**5.3(b)(1)(A) Review of Medical/Exposure Criteria.** The Trust's Individual Review Process provides a claimant with an opportunity for individual consideration and evaluation of a Trust Claim that fails to meet the presumptive Medical/Exposure Criteria for

Disease Levels I–IV, and VI or VII. In such a case, the Trust shall either deny the claim, or, if the Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the applicable tort system, the Trust can offer the claimant a liquidated value amount up to the Scheduled Value for that Disease Level, unless the claim qualifies as an Extraordinary Claim as defined in Section 5.4(a) below, in which case its liquidated value cannot exceed the extraordinary maximum value for such a claim.

**5.3(b)(1)(B) Review of Liquidated Value.** Claimants holding claims involving Disease Levels III–VII shall also be eligible to seek Individual Review of the liquidated value of their claims, as well as of their medical/exposure evidence. The Individual Review Process is intended to result in payments equal to the full liquidated value for each claim multiplied by the applicable Payment Percentage; however, the liquidated value of any Trust Claim that undergoes Individual Review may be determined to be less than the Scheduled Value the claimant would have received under Expedited Review. Moreover, the liquidated value for a claim involving Disease Levels III–VII shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(b)(3) below, unless the claim meets the requirements of an Extraordinary Claim described in Section 5.4(a) below, in which case its liquidated value cannot exceed the extraordinary maximum value set forth in that provision for such claims. Because the detailed examination and valuation process pursuant to Individual Review requires substantial time and effort, claimants electing to undergo the Individual Review Process may be paid the liquidated value of their Trust Claims later than would have been the case had the claimant elected the Expedited Review Process. Subject to the provisions of Section 5.8, the Trust shall devote reasonable resources to the review of all claims to ensure that there is a reasonable balance maintained in reviewing all classes of claims.

**5.3(b)(2) Valuation Factors to Be Considered in Individual Review.**

The Trust will liquidate the value of each Trust Claim that undergoes Individual Review based on the historic liquidated values of other similarly situated claims in the applicable tort system for the same Disease Level. The Trust will thus take into consideration all of the factors that affect the severity of damages and values within the applicable tort system including, but not limited to credible evidence of (i) the degree to which the characteristics of a claim differ from the presumptive Medical/Exposure Criteria for the Disease Level in question; (ii) factors such as the claimant's age, disability, employment status, disruption of household, family or recreational activities, dependencies, special damages, and pain and suffering; (iii) whether the claimant's damages were (or were not) caused by asbestos exposure, including exposure to an asbestos-containing product for which Flintkote has legal responsibility prior to December 31, 1982 (for example, alternative causes, and the strength of documentation of injuries); (iv) the industry of exposure; (v) settlement and verdict histories in the Claimant's Jurisdiction for similarly situated claims; and (vi) settlement and verdict histories for the claimant's law firm for similarly situated claims. Where the claimant's law firm submits clear and convincing evidence to the Trust, and the Trustees determine, in their sole discretion, that the claimant's law firm, prior to the Petition Date, played a substantial role in the prosecution, trial and resolution of asbestos personal injury claims against Flintkote in the Claimant's Jurisdiction, such as actively participating in court appearances, discovery and trial of the subject cases (evidence will be required of all three phases: prosecution, trial and resolution for each law firm involved; necessary evidence will include evidence of active participation in the cases; and the mere referral of a case, without further involvement will not be viewed as having played a substantial role in the prosecution and resolution of a case), irrespective of whether a second law firm also was involved, the Trust shall

include such cases in the settlement and verdict histories for the claimant's law firm in the Claimant's Jurisdiction. If this occurs, the claimant's law firm shall certify, as required by the Trust, that it has provided all settlement and verdict history information for asbestos cases against Flintkote in which claimant's law firm, prior to the Petition Date, played a substantial role in the prosecution, trial and resolution of asbestos personal injury claims against Flintkote in the Claimant's Jurisdiction, as described above.

For these purposes, the "Claimant's Jurisdiction" is the jurisdiction in which the claim was filed (if at all) against Flintkote in the tort system prior to the Petition Date. If the claim was not filed against Flintkote in the tort system prior to the Petition Date, the claimant may elect as the Claimant's Jurisdiction either (i) the jurisdiction in which the claimant resides at the time of diagnosis or when the claim is filed with the Trust; or (ii) a jurisdiction in which the claimant experienced exposure to an asbestos-containing product for which Flintkote has legal responsibility.

With respect to the "Claimant's Jurisdiction" in the event a personal representative or authorized agent makes a claim under the TDP for wrongful death with respect to which the governing law of the Claimant's Jurisdiction could only be the Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for "exemplary" or "punitive" damages, the Claimant's Jurisdiction for such claim shall be the Commonwealth of Pennsylvania, and such claimant's damages shall be determined pursuant to the statutory and common laws of the Commonwealth of Pennsylvania without regard to its choice of law principles. The choice of law provision in Section 7.4 below applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant's Jurisdiction pursuant to this Section 5.3(b)(2) is determined to be the

Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for “exemplary” or “punitive” damages, shall only govern the rights between the Trust and the claimant, and, to the extent the Trust seeks recovery from any entity that provided insurance coverage to Flintkote, the otherwise applicable state law shall govern.

**5.3(b)(3) Scheduled, Average, and Maximum Values.** The Scheduled, Average, and Maximum Values for domestic claims involving the Disease Levels compensable under this TDP are the following:

<b>Scheduled Disease</b>	<b>Scheduled Value</b>	<b>Average Value</b>	<b>Maximum Value</b>
Mesothelioma (Level VII)	\$184,000	\$210,000	\$450,000
Lung Cancer 1 (Level VI)	\$20,000	\$25,000	\$40,000
Lung Cancer 2 (Level V)	None	\$6,000	\$10,000
Other Cancer (Level IV)	\$4,500	\$6,000	\$10,000
Severe Asbestosis (Level III)	\$15,000	\$20,000	\$35,000
Asbestosis/Pleural Disease (Level II)	\$1,400	\$1,400	\$1,400
Asbestosis/Pleural Disease (Level I)	\$650	\$650	\$650

These Scheduled, Average, and Maximum Values shall apply to all domestic Asbestos Trust Voting Claims other than Pre-Petition Liquidated Trust Claims filed with the Trust on or before the Initial Claims Filing Date as provided in Section 5.1 above. Thereafter, the Trustees, with the consent of the TAC and the Future Claimants’ Representative, pursuant to Sections 6.7(b) and 7.7(b) of the Trust Agreement, may change these valuation amounts for good cause and consistent with other restrictions on the amendment power.

**5.4 Categorizing Claims as Extraordinary and/or Exigent Hardship.**

**5.4(a) Extraordinary Claims.** “Extraordinary Claim” means a Trust Claim that otherwise satisfies the Medical Criteria for Disease Levels III–VII, and that is held by a claimant whose exposure to asbestos (i) occurred predominately as the result of working in a manufacturing facility of Flintkote during a period in which Flintkote was manufacturing asbestos-containing products at that facility, or (ii) was at least 75% the result of exposure to an asbestos-containing product for which Flintkote has legal responsibility, and in either case there is little likelihood of a substantial recovery elsewhere. All such Extraordinary Claims shall be presented for Individual Review and, if valid, shall be entitled to an award of up to an extraordinary maximum value of five (5) times the Scheduled Value for claims qualifying for Disease Levels III, IV, VI, and VII, and five (5) times the Average Value for claims in Disease Level V, multiplied by the applicable Payment Percentage. The Trustees may ask that a holder of an Extraordinary Claim provide the Trust with evidence of all recoveries from other asbestos trusts and all asbestos-related recoveries from other defendants. If a claimant submits such evidence, the Trust shall preserve the confidentiality of the submission as provided in Section 6.5 below.

Any dispute as to Extraordinary Claim status shall be submitted to a special Extraordinary Claims Panel to be established by the Trustees with the consent of the TAC and the Future Claimants’ Representative. All decisions of the Extraordinary Claims Panel shall be final and not subject to any further administrative or judicial review. An Extraordinary Claim, following its liquidation, shall be placed in the Trust’s FIFO Payment Queue ahead of all other Trust Claims except Pre-Petition Liquidated Trust Claims and Exigent Hardship Claims, which shall be paid first in that order in said Queue, based on its date of liquidation and shall be subject to the Maximum Available Payment and Claims Payment Ratio described above.

**5.4(b) Exigent Hardship Claims.** At any time the Trust may liquidate and pay Trust Claims that qualify as Exigent Hardship Claims as defined below. Such claims may be considered separately no matter what the order of processing otherwise would have been under this TDP. An Exigent Hardship Claim, following its liquidation, shall be placed first in the FIFO Payment Queue ahead of all other liquidated Trust Claims except Pre-Petition Liquidated Trust Claims, and shall be subject to the Maximum Available Payment and Claims Payment Ratio described above. A Trust Claim qualifies for payment as an Exigent Hardship Claim if the claim meets the Medical/Exposure Criteria for Severe Asbestosis (Disease Level III) or an asbestos-related malignancy (Disease Levels IV–VII), and the Trust, in its sole discretion, determines (i) that the claimant needs financial assistance on an immediate basis based on the claimant’s expenses and all sources of available income, and (ii) that there is a causal connection between the claimant’s dire financial condition and the claimant’s asbestos-related disease.

**5.5 Secondary Exposure Claims.** Except with respect to Disease Level VII claims, if a claimant alleges an asbestos-related disease resulting solely from exposure to an occupationally exposed person, such as a family member, the claimant must seek Individual Review of his or her claim pursuant to Section 5.3(b) above. In such a case, the claimant must establish that the occupationally exposed person would have met the exposure requirements under this TDP for the claimant’s Disease Level that would have been applicable the occupationally exposed person filed a direct claim against the Trust. In addition, the claimant with secondary exposure must establish that he or she is suffering from one of the seven Disease Levels described in Section 5.3(a)(3) above or an asbestos-related disease otherwise compensable under the TDP, that his or her own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person was exposed to

asbestos products produced by Flintkote, and that such secondary exposure was a cause of the claimed disease. All other liquidation and payment rights and limitations under this TDP shall be applicable to such claims.

**5.6 Indirect Trust Claims.** Indirect Trust Claims asserted against the Trust shall be treated as presumptively valid and paid by the Trust subject to the applicable Payment Percentage if (a) such claim satisfied the requirements of the Bar Date for such claims established by the Bankruptcy Court, if applicable, and is not otherwise disallowed by Section 502(e) of the Code or subordinated under Section 509(c) of the Code, and (b) the holder of such claim (the “Indirect Claimant”) establishes to the satisfaction of the Trustees that (i) the Indirect Claimant has paid in full the existing liability and obligation of the Trust to the individual claimant to whom the Trust would otherwise have had a liability or obligation under these Procedures (the “Direct Claimant”), (ii) the Direct Claimant and the Indirect Claimant have forever and fully released the Trust from all liability to the Direct Claimant with respect to the Trust Claim satisfied by the Indirect Claimant, and (iii) the claim is not otherwise barred by a statute of limitations or repose or by other applicable law. In no event shall any Indirect Claimant have any rights against the Trust superior to the rights of the related Direct Claimant against the Trust, including any rights with respect to the timing, amount or manner of payment. In addition, no Indirect Claim may be liquidated and paid in an amount that exceeds what the Indirect Claimant has actually paid the related Direct Claimant.

To establish a presumptively valid Indirect Trust Claim, the Indirect Claimant’s aggregate liability for the Direct Claimant’s claim must also have been fixed, liquidated, and paid fully by the Indirect Claimant by settlement (with an appropriate full release in favor of the Trust) or a Final Order (as defined in the Plan) provided that such claim is valid under the

applicable state, federal, or foreign law. In any case where the Indirect Claimant has satisfied the claim of a Direct Claimant against the Trust under applicable law by way of a settlement, the Indirect Claimant shall obtain for the benefit of the Trust a release in form and substance satisfactory to the Trustees.

If an Indirect Claimant cannot meet the presumptive requirements set forth above, including the requirement that the Indirect Claimant provide the Trust with a full release of the Direct Claimant's claim, the Indirect Claimant may request that the Trust review the Indirect Trust Claim individually to determine whether the Indirect Claimant can establish under applicable state, federal, or foreign law that the Indirect Claimant has paid all or a portion of a liability or obligation that the Trust had to the Direct Claimant as of the Effective Date of this TDP. If the Indirect Claimant can show that it has paid all or a portion of such a liability or obligation, the Trust shall reimburse the Indirect Claimant the amount of the liability or obligation so paid, times the then applicable Payment Percentage. However, in no event shall such reimbursement to the Indirect Claimant be greater than the amount to which the Direct Claimant would have otherwise been entitled. Further, the liquidated value of any Indirect Trust Claim paid by the Trust to an Indirect Claimant shall be treated as an offset to or reduction of the full liquidated value of any Trust Claim that might be subsequently asserted by the Direct Claimant against the Trust.

Any dispute between the Trust and an Indirect Claimant over whether the Indirect Claimant has a right to reimbursement for any amount paid to a Direct Claimant shall be subject to the ADR Procedures provided in Section 5.10(a) below. If such dispute is not resolved by said ADR Procedures, the Indirect Claimant may litigate the dispute in the tort system pursuant to Sections 5.11 and 7.6 below.

The Trustees may develop and approve a separate proof of claim form for Indirect Trust Claims. Indirect Trust Claims that have not been disallowed, discharged, or otherwise resolved by prior order of the Bankruptcy Court shall be processed in accordance with procedures to be developed and implemented by the Trustees, consistent with the provisions of this Section 5.6, which procedures (a) shall determine the validity, allowability and enforceability of such claims; and (b) shall otherwise provide the same liquidation and payment procedures and rights to the holders of such claims as the Trust would have afforded the holders of the underlying valid Trust Claims. Nothing in this TDP is intended to preclude a trust to which asbestos-related liabilities are channeled from asserting an Indirect Trust Claim against the Trust subject to the requirements set forth herein.

**5.7 Evidentiary Requirements.**

**5.7(a) Medical Evidence.**

**5.7(a)(1) In General.** All diagnoses of a Disease Level shall be accompanied by either (i) a statement by the physician providing the diagnosis that at least ten (10) years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis, or (ii) a history of the claimant's exposure sufficient to establish a 10-year latency period. A finding by a physician after the Effective Date that a claimant's disease is "consistent with" or "compatible with" asbestosis will not alone be treated by the Trust as a diagnosis.<sup>11</sup> For all Trust Claims, including Foreign Claims, all evidence submitted to the Trust must be in English.

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<sup>11</sup> All diagnoses of Asbestosis/Pleural Disease (Disease Levels I and II) not based on pathology shall be presumed to be based on findings of bilateral asbestosis or pleural disease, and all diagnoses of Mesothelioma (Disease Level VII) shall be presumed to be based on findings that the disease involves a malignancy. However, the Trust may refute such presumptions.

**5.7(a)(1)(A) Disease Levels I–III.** Except for asbestos claims filed against Flintkote or another defendant in the tort system prior to the Petition Date, all diagnoses of a nonmalignant asbestos-related disease (Disease Levels I–III) shall be based in the case of a claimant who was living at the time the claim was filed, upon a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease. All living claimants must provide (i) for Disease Levels I and II, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in footnote 7 above), (ii) for Disease Level III, an ILO reading of 2/1 or greater or pathological evidence of asbestosis, and (iii) for Disease Levels II and III, pulmonary function testing.<sup>12</sup>

In the case of a claimant who was deceased at the time the claim was filed, all diagnoses of a nonmalignant asbestos-related disease (Disease Levels I–III) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease, or (ii) pathological evidence of the nonmalignant asbestos-related disease, or (iii) in the case of Disease Levels I and II, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in footnote 7 above), and for Disease Level III, either an ILO reading of 2/1 or greater or pathological evidence of asbestosis; or (iv) for either Disease Level II or III, pulmonary function testing.

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<sup>12</sup> “Pulmonary function testing” or “PFT” shall mean testing that is in material compliance with the quality criteria established by the American Thoracic Society (“ATS”) and is performed on equipment which is in material compliance with ATS standards for technical quality and calibration. PFT performed in a hospital accredited by the JCAHO, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician shall be presumed to comply with ATS standards, and the claimant may submit a summary report of the testing. If the PFT was not performed in a JCAHO accredited hospital, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician, the claimant must submit the full report of the testing (as opposed to a summary report); provided, however, that if the PFT was conducted prior to the Effective Date of the Plan and the full PFT report is not available, the claimant must submit a declaration signed by a Qualified Physician or other party who is qualified to make a certification regarding a PFT in the form provided by the Trust, certifying that the PFT was conducted in material compliance with ATS standards.

**5.7(a)(1)(B) Disease Levels IV–VII.** All diagnoses of an asbestos-related malignancy (Disease Levels IV–VII) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease, (ii) a diagnosis of such a malignant Disease Level by a board-certified pathologist, or (iii) a pathology report prepared at or on behalf of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (“JCAHO”).

**5.7(a)(1)(C) Exception to the Exception for Certain Pre-Petition Claims.** If the holder of a Trust Claim that was filed against Flintkote or another defendant in the tort system prior to the Petition Date has available a report of a diagnosing physician engaged by the holder or his or her law firm who conducted a physical examination of the holder as described in Section 5.7(a)(1)(A), or if the holder has filed such medical evidence and/or a diagnosis of the asbestos-related disease by a physician not engaged by the holder or his or her law firm who conducted a physical examination of the claimant with another asbestos-related personal injury settlement trust that requires such evidence, without regard to whether the holder or the law firm engaged the diagnosing physician, the holder shall provide such medical evidence and/or diagnosis to the Trust notwithstanding the exception in Section 5.7(a)(1)(A).

**5.7(a)(2) Credibility of Medical Evidence.** Before making any payment to a claimant, the Trust must have reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical standards. The Trust may require the submission of X-rays, CT scans, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examinations or reviews of other medical evidence, and may require that medical evidence submitted comply with

recognized medical standards regarding equipment, testing methods, and procedures to assure that such evidence is reliable. Medical evidence that is (i) of a kind shown to have been received in evidence by a state or federal, or foreign judge at trial, (ii) consistent with evidence submitted to Flintkote to settle for payment of similar disease cases prior to Flintkote's bankruptcy, or (iii) a diagnosis by a physician shown to have previously qualified as a medical expert with respect to the asbestos-related disease in question before a state or federal judge, is presumptively reliable, although the Trust may seek to rebut the presumption. Notwithstanding the foregoing or any other provision of these TDP, any medical evidence submitted by a physician or entity that the Trust has determined, after consulting with the TAC and the FCR, to be unreliable shall not be acceptable as medical evidence in support of any Trust Claim.

In addition, except for Foreign Claims, claimants who otherwise meet the requirements of this TDP for payment of a Trust Claim shall be paid irrespective of the results of any litigation at any time between the claimant and any other defendant in the applicable tort system. However, any relevant evidence submitted in a proceeding in the applicable tort system involving another defendant, other than any findings of fact, a verdict, or a judgment, may be introduced by either the claimant or the Trust in any Individual Review proceeding conducted pursuant to Section 5.3(b) above or any Extraordinary Claim proceeding conducted pursuant to Section 5.4(a) above.

**5.7(b) Exposure Evidence.**

**5.7(b)(1) In General.** As set forth in Section 5.3(a)(3) above, to qualify for any Disease Level, the claimant must demonstrate a minimum exposure to an asbestos-containing product manufactured or distributed by Flintkote. Claims based on conspiracy theories that involve no exposure to an asbestos-containing product produced by Flintkote are not compensable under this TDP. To meet the presumptive exposure requirements of Expedited

Review set forth in Section 5.3(a)(3) above, the claimant must show (i) for all Disease Levels, Flintkote Exposure as defined in Section 5.7(b)(3) below prior to December 31, 1982; (ii) for Asbestos/Pleural Disease Level I, six (6) months Flintkote Exposure prior to December 31, 1982, plus five (5) years cumulative occupational asbestos exposure; and (iii) for Asbestosis/Pleural Disease (Disease Level II), Severe Asbestosis (Disease Level III), Other Cancer (Disease Level IV) or Lung Cancer 1 (Disease Level VI), six (6) months Flintkote Exposure prior to December 31, 1982, plus Significant Occupational Exposure as defined in Section 5.7(b)(2) below. If the claimant cannot meet the relevant presumptive exposure requirements for a Disease Level eligible for Expedited Review, the claimant may seek Individual Review pursuant to Section 5.3(b) above of his or her claim based on exposure to an asbestos-containing product for which Flintkote has legal responsibility.

**5.7(b)(2) Significant Occupational Exposure.** “Significant Occupational Exposure” means employment for a cumulative period of at least five (5) years, with a minimum of two (2) years prior to December 31, 1982 in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b), and/or (c).

**5.7(b)(3) Flintkote Exposure.** “Flintkote Exposure” means meaningful and credible exposure, which occurred prior to December 31, 1982, to asbestos or asbestos-containing products supplied, specified, manufactured, installed, maintained, or

repaired by Flintkote and/or any entity, including a Flintkote contracting unit, for which Flintkote has legal responsibility. Meaningful and credible exposure evidence may be established by an affidavit or sworn statement of the claimant, by an affidavit or sworn statement of a co-worker, or by an affidavit or sworn statement of a family member in the case of a deceased claimant (providing the Trust finds such evidence reasonably reliable), by invoices, employment, construction or similar records, interrogatory answers, sworn work histories, and depositions, or by other credible evidence. The specific exposure information required by the Trust to process a claim under either Expedited or Individual Review shall be set forth on the proof of claim form to be used by the Trust. The Trust can also require submission of other or additional evidence of exposure when it deems such to be necessary.

Evidence submitted to establish proof of exposure to Flintkote products is for the sole benefit of the Trust, not third parties or defendants in the tort system. The Trust has no need for, and therefore claimants are not required to furnish the Trust with evidence of, exposure to specific asbestos products other than those for which Flintkote has legal responsibility, except to the extent such evidence is required elsewhere in this TDP. Similarly, failure to identify Flintkote products in the claimant's underlying tort action, or to other bankruptcy trusts, does not preclude the claimant from recovering from the Trust, provided the claimant otherwise satisfies the medical and exposure requirements of this TDP.

**5.8 Claims Audit Program.** The Trust with the consent of the TAC and the Future Claimants' Representative may develop methods for auditing the reliability of medical evidence, including additional reading of X-rays, CT scans and verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including exposure to asbestos-containing products manufactured or distributed by Flintkote prior to December 31, 1982. In the

event that the Trust reasonably determines that any individual or entity has engaged in a pattern or practice of providing unreliable medical or exposure evidence to the Trust, it may decline to accept additional evidence from such provider in the future.

Further, in the event that an audit reveals that fraudulent information has been provided to the Trust, the Trust may penalize any claimant or claimant's attorney by disallowing the Trust Claim and/or by other means including, but not limited to, requiring the source of the fraudulent information to pay the costs associated with the audit and any future audit or audits, reordering the priority of payment of all affected claimants' Trust Claims, raising the level of scrutiny of additional information submitted from the same source or sources, refusing to accept additional evidence from the same source or sources, seeking the prosecution of the claimant or claimant's attorney for presenting a fraudulent claim in violation of 18 U.S.C. § 152, and seeking sanctions from the Bankruptcy Court.

**5.9 Second Disease (Malignancy) Claims.** Notwithstanding the provisions of Section 2.1 above that a claimant may not assert more than one Trust Claim hereunder with respect to a specific injured party, the holder of a Trust Claim involving a nonmalignant asbestos-related disease (Disease Levels I–III) may file a new Trust Claim against the Trust for a malignant disease (Disease Levels IV–VII) that is subsequently diagnosed. Any additional payments to which such claimant may be entitled with respect to such malignant asbestos-related disease shall not be reduced by the amount paid for the nonmalignant asbestos-related disease, provided that the malignant disease had not been diagnosed at the time the claimant was paid with respect to his or her original claim involving the nonmalignant disease. The provisions hereof shall also apply with respect to claimants who were paid by Flintkote for nonmalignant asbestos-related diseases prior to the formation of the Trust.

## **5.10 Arbitration.**

**5.10(a) Establishment of ADR Procedures.** The Trust, with the consent of the TAC and the Future Claimants' Representative, shall institute binding and non-binding arbitration procedures in accordance with the ADR Procedures to be established by the Trustees, with the consent of the TAC and the FCR, for resolving disputes concerning whether a Pre-Petition settlement agreement with Flintkote is binding and judicially enforceable in the absence of a Final Order of the Bankruptcy Court determining the issue, whether the Trust's outright rejection or denial of a claim was proper, or whether the claimant's medical condition or exposure history meets the requirements of this TDP for purposes of categorizing a claim involving Disease Levels I–IV, VI, and VII. Binding and non-binding arbitration shall also be available for resolving disputes over the liquidated value of a claim involving Disease Levels III–VII as well as disputes over Flintkote's share of the unpaid portion of a Pre-Petition Liquidated Trust Claim described in Section 5.2 above and disputes over the validity of an Indirect Trust Claim.

In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in Section 5.7 above. In the case of an arbitration involving the liquidated value of a claim involving Disease Levels III–VII, the arbitrator shall consider the same valuation factors that are set forth in Section 5.3(b)(2) above. In order to facilitate the Individual Review Process with respect to such claims, the Trust may from time to time develop valuation methodologies and/or matrices taking account of the valuation factors that are set forth in Section 5.3(b)(2) above that enable the Trust to efficiently make initial liquidated value offers on these claims in the Individual Review setting. With respect to all claims except Foreign Claims, these valuation methodologies and/or matrices are often referred

to as the Individual Review model. Except as provided below for arbitrations involving Foreign Claims, the Trust shall neither offer into evidence or describe any such methodologies and/or matrices, or assert that any information generated by the methodologies and/or matrices has any evidentiary relevance or should be used by the arbitrator in determining the presumed correct liquidated value in the arbitration. The underlying data that was used to create the methodologies and/or matrices may be relevant and may be made available to the arbitrator but only if provided to the claimant or his or her counsel at least ten (10) days prior to the arbitration proceeding.

In arbitrations involving Foreign Claims, the Trust may introduce into evidence its matrices and/or methodologies developed pursuant to Section 5.3(b)(1) above for evaluating and valuing such Foreign Claims. The arbitrator is to assign a value to a valid Foreign Claim that is consistent with the value such claim would receive in the tort system in the Claimant's Jurisdiction.

In all arbitrations, the arbitrator shall consider evidence presented by the Trust, including written expert or other evidence regarding the validity of a Foreign Claim, including evidence regarding whether the claim has been paid, satisfied, settled, released, waived, or otherwise discharged under the law and procedure of the Claimant's Jurisdiction, but only if provided to the claimant or his or her counsel at least ten (10) days prior to the arbitration hearing.

With respect to all claims eligible for arbitration, the claimant, but not the Trust, may elect either non-binding or binding arbitration. The ADR Procedures may be modified by the Trust with the consent of the TAC and the Future Claimants' Representative. Such amendments may include adoption of mediation procedures as well as establishment of an Extraordinary Claims Panel to review such claims pursuant to Section 5.4(a) above.

**5.10(b) Claims Eligible for Arbitration.** In order to be eligible for arbitration, the claimant must first complete the Individual Review Process set forth in Section 5.3(b) above with respect to the disputed issue, as well as the other preliminary steps to arbitration set forth in the ADR Procedures<sup>13</sup> with respect to the disputed issue. Individual Review will be treated as completed for these purposes when the claim has been individually reviewed by the Trust, the Trust has made an offer on the claim, the claimant has rejected the liquidated value resulting from the Individual Review, and the claimant has notified the Trust of the rejection in writing. Individual Review will also be treated as completed if the Trust has rejected the claim.

**5.10(c) Limitations on and Payment of Arbitration Awards.** In the case of a non-Extraordinary Claim involving Disease Levels III–VII, the arbitrator shall not return an award in excess of the Maximum Value for the appropriate Disease Level as set forth in Section 5.3(b)(3) above, and for an Extraordinary Claim involving one of those Disease Levels, the arbitrator shall not return an award greater than the maximum extraordinary value for such a claim as set forth in Section 5.4(a) above. For claims involving Disease Levels I and II, the arbitrator shall not award more than the Scheduled Value for such claims. A claimant who submits to arbitration and who accepts the arbitral award will receive payment in the same manner as one who accepts the Trust’s original valuation of the claim.

**5.11 Litigation.** Claimants who elect non-binding arbitration and then reject their arbitral awards retain the right to institute a lawsuit in the tort system against the Trust pursuant to Section 7.6 below. However, a claimant shall be eligible for payment of a judgment for monetary damages obtained in the tort system from the Trust’s available cash only as provided in Section 7.7 below.

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<sup>13</sup> To the extent there is any ambiguity or conflict between any provision of this TDP and the ADR Procedures, the provisions of this TDP shall control.

## SECTION VI

### Claims Materials

**6.1 Claims Materials.** The Trust shall prepare suitable and efficient claims materials (“Claims Materials”) for all Trust Claims, and shall provide such Claims Materials upon a written request for such materials to the Trust. The proof of claim form to be submitted to the Trust shall require the claimant to (i) assert the highest Disease Level for which the claim qualifies at the time of filing and shall include a certification by the claimant or his or her attorney sufficient to meet the requirements of Rule 11(b) of the Federal Rules of Civil Procedure, and (ii) provide sufficient information for the Trust to determine whether the claim resulted from exposure for which the Flintkote Company, Flintkote Mines Limited, or both the Flintkote Company and Flintkote Mines Limited have legal responsibility. In developing its claim filing procedures, the Trust shall make every reasonable effort to provide claimants with the opportunity to utilize currently available technology at their discretion, including filing claims and supporting documentation over the internet and electronically by disk or CD-rom. The proof of claim form to be used by the Trust shall be developed by the Trust and submitted to the TAC and the Future Claimants’ Representative for approval; it may be changed by the Trust with the consent of the TAC and the Future Claimants’ Representative.

**6.2 Content of Claims Materials.** The Claims Materials shall include a copy of this TDP, such instructions as the Trustees shall approve, and a detailed proof of claim form. If feasible, the forms used by the Trust to obtain claims information shall be the same or substantially similar to those used by other asbestos claims resolution organizations. If requested by the claimant, the Trust shall accept information provided electronically. The claimant may, but will not be required to, provide the Trust with evidence of recovery from other asbestos defendants and claims resolution organizations, except that the Trust may require a claimant

holding a Foreign Claim to provide it with such evidence of recovery or other information that such claimant would be required to provide pursuant to the substantive law, rules of procedure, or practices in the tort system in the Claimant's Jurisdiction, including pre- and post-verdict rules, so as to enable the Trust to (1) determine whether the claim would be valid and cognizable in the tort system in the Claimant's Jurisdiction, (2) comply with the provisions of Section 5.3(b)(1) hereof, and (3) determine Flintkote's several share of liability for the claimant's unpaid damages.

**6.3 Withdrawal or Deferral of Claims.** A claimant can withdraw a Trust Claim at any time upon written notice to the Trust and file another such claim subsequently without affecting the status of the claim for statute of limitations or repose purposes, but any such claim filed after withdrawal shall be given a place in the FIFO Processing Queue based on the date of such subsequent filing. A claimant can also request that the processing of his or her Trust Claim by the Trust be deferred for a period not to exceed three (3) years without affecting the status of the claim for statute of limitations purposes, in which case the claimant shall also retain his or her original place in the FIFO Processing Queue. During the period of such deferral, a sequencing adjustment on such claimant's Trust Claim as provided in Section 7.5 below shall not accrue and payment thereof shall be deemed waived by the claimant. Except for Trust Claims held by representatives of deceased or incompetent claimants for which court or probate approval of the Trust's offer is required, or a Trust Claim for which deferral status has been granted, a claim will be deemed to have been withdrawn if the claimant neither accepts, rejects, nor initiates arbitration within six (6) months of the Trust's written offer of payment or rejection of the claim. Upon written request and good cause, the Trust may extend either the deferral or withdrawal period for an additional six (6) month period.

**6.4 Filing Requirements and Fees.** The Trustees shall have the discretion to determine, with the consent of the TAC and the Future Claimants' Representative, (a) whether a claimant must have previously filed an asbestos-related personal injury claim in the tort system to be eligible to file the claim with the Trust, and (b) whether a filing fee should be required for any Trust Claims.

**6.5 Confidentiality of Claimants' Submissions.** All submissions to the Trust by a holder of a Trust Claim or a proof of claim form and materials related thereto shall be treated as made in the course of settlement discussions between the holder and the Trust and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including, but not limited to, those directly applicable to settlement discussions. The Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only, with the permission of the holder, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) and/or section 105 of the Bankruptcy Code or other applicable law, to such other persons as authorized by the holder, or in response to a valid subpoena of such materials issued by the Bankruptcy Court, a Delaware State Court, the United States District Court for the District of Delaware or any other court or body that may issue a valid subpoena on the Trust. Furthermore, the Trust shall provide counsel for the holder a copy of any such subpoena immediately upon being served. The Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privileges before the Bankruptcy Court, a Delaware State Court, the United States District Court for the District of Delaware or any other similar body that may issue a valid subpoena on the Trust and before those courts having appellate jurisdiction related thereto. Notwithstanding anything in the foregoing to the contrary, with the consent of the TAC and the

Future Claimants' Representative, the Trust may, in specific limited instances, disclose information, documents or other materials reasonably necessary in the Trust's judgment to preserve, litigate, resolve, or settle coverage, or to comply with an applicable obligation under an insurance policy or settlement agreement within the Asbestos Insurance Policies or the Asbestos Insurance Settlement Agreements; provided, however, that the Trust shall take any and all steps reasonably feasible in its judgment to preserve the further confidentiality of such information, documents, and materials, and prior to the disclosure of such information, documents or materials to a third party, the Trust shall receive from such third party a written agreement of confidentiality that (a) ensures that the information, documents, and materials provided by the Trust shall be used solely by the receiving party for the purpose stated in the agreement, and (b) prohibits any other use or further dissemination of the information, documents, and materials by the third party.

## SECTION VII

### **General Guidelines for Liquidating and Paying Claims**

**7.1 Showing Required.** To establish a valid Trust Claim, a claimant must meet the requirements set forth in this TDP. The Trust may require the submission of X-rays, CT scans, laboratory tests, medical examinations or reviews, other medical evidence, or any other evidence to support or verify the Trust Claim, and may further require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods, and procedures to assure that such evidence is reliable.

Nothing in this TDP shall prohibit the Trust at any time from challenging the validity of a claim under the provisions of this TDP and/or whether a claim has been paid, satisfied, settled, released, waived, or otherwise discharged; provided, however, that as provided in Section 5.9,

the Trust shall not assert a prior release for a nonmalignant disease as a defense in the event a claimant later develops a malignant disease.

**7.2 Costs Considered.** Notwithstanding any provisions of this TDP to the contrary, the Trustees shall always give appropriate consideration to the cost of investigating and uncovering invalid Trust Claims so that the payment of valid Trust Claims is not further impaired by such processes with respect to issues related to the validity of the medical evidence supporting a Trust Claim. The Trustees shall also have the latitude to make judgments regarding the amount of transaction costs to be expended by the Trust so that valid Trust Claims are not unduly further impaired by the costs of additional investigation. Nothing herein shall prevent the Trustees, in appropriate circumstances, from contesting the validity of any claim against the Trust whatever the costs, or declining to accept medical evidence from sources that the Trustees have determined to be unreliable pursuant to the Claims Audit Program described in Section 5.8 above.

**7.3 Discretion to Vary the Order and Amounts of Payments in Event of Limited Liquidity.** Consistent with the provisions hereof and subject to the FIFO Processing and Payment Queues, the Maximum Annual Payment, the Maximum Available Payment and the Claims Payment Ratio requirements set forth above, the Trustees shall proceed as quickly as possible to liquidate valid Trust Claims, and shall make payments to holders of such claims in accordance with this TDP promptly as funds become available and as claims are liquidated, while maintaining sufficient resources to pay future valid claims in substantially the same manner.

Because the Trust's income and liabilities over time remain uncertain, and decisions about payments must be based on estimates that cannot be done precisely, such decisions may

have to be revised in light of experiences over time, and there can be no guarantee of any specific level of payment to claimants. However, the Trustees shall use their best efforts to treat similar claims in substantially the same manner, consistent with their duties as Trustees, the purposes of the Trust, the established allocation of funds to claims in Categories A and B, and the practical limitations imposed by the inability to predict the future with precision.

In the event that the Trust faces temporary periods of limited liquidity, the Trustees may, with the consent of the TAC and the Future Claimants' Representative, (a) suspend the normal order of payment, (b) temporarily limit or suspend payments altogether, (c) offer a Reduced Payment Option as described in Section 2.5 above, and/or (d) commence making payments on an installment basis.

**7.4 Punitive Damages.** Except as provided below for claims asserted under the Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for “exemplary” or “punitive” damages, in determining the value of any liquidated or unliquidated Trust Claim, punitive or exemplary damages, i.e., damages other than compensatory damages, shall not be considered or allowed, notwithstanding their availability in the tort system. Similarly, no punitive or exemplary damages shall be payable with respect to any claim litigated against the Trust in the tort system pursuant to Sections 5.11 above and 7.6 below. The only damages that may be awarded pursuant to this TDP to claimants who are deceased and whose personal representatives pursue their claims only under the Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for “exemplary” or “punitive” damages, shall be compensatory damages determined pursuant to the statutory and common law of the Commonwealth of Pennsylvania, without regard to its choice of law principles. The choice of

law provision in this Section 7.4 applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant's Jurisdiction pursuant to Section 5.3(b)(2) is determined to be the Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for "exemplary" or "punitive" damages, shall only govern the rights between the Trust and the claimant including, but not limited to, suits in the tort system pursuant to Section 7.6 below, and to the extent the Trust seeks recovery from any entity that provided insurance to Flintkote, the otherwise applicable state law shall govern.

**7.5 Sequencing Adjustment.**

**7.5(a) In General.** Subject to the limitations set forth below, a sequencing adjustment shall be paid on all Trust Claims with respect to which the claimant has had to wait a year or more for payment, provided, however, that no claimant shall receive a sequencing adjustment for a period in excess of seven (7) years. The sequencing adjustment factor for each year shall be the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the first auction of 5-year Treasury Notes occurring in such year.

**7.5(b) Unliquidated Trust Claims.** A sequencing adjustment shall be payable on the Scheduled Value of any unliquidated Trust Claim that meets the requirements of Disease Levels I-IV, VI, and VII, whether the claim is liquidated under Expedited Review, Individual Review, or by arbitration. No sequencing adjustment shall be paid on any claim liquidated in the tort system pursuant to Sections 5.11 above and 7.6 below. The sequencing adjustment on an unliquidated Trust Claim that meets the requirements of Disease Level V shall be based on the Average Value of such a claim. Sequencing adjustments on all such unliquidated claims shall be

measured from the date of payment back to the earliest of the date that is one year after the date on which (a) the claim was filed against Flintkote prior to the Petition Date, (b) the claim was filed against another defendant in the tort system on or after the Petition Date, but before the Effective Date, or (c) the claim was filed with the Trust after the Effective Date.

**7.5(c) Liquidated Pre-Petition Trust Claims.** A sequencing adjustment shall also be payable on the liquidated value of all Pre-Petition Liquidated Trust Claims described in Section 5.2(a) above. In the case of Pre-Petition Liquidated Trust Claims liquidated by verdict or judgment, the sequencing adjustment shall be measured from the date of payment back to the date that is one year after the date that the verdict or judgment was entered. In the case of Pre-Petition Liquidated Trust Claims liquidated by a binding, judicially enforceable settlement, the sequencing adjustment shall be measured from the date of payment back to the date that is one year after the Petition Date.

**7.6 Suits in the Tort System.** If the holder of a disputed claim disagrees with the Trust's determination regarding the Disease Level of the claim, the claimant's exposure or medical history, the validity of the claim under the provisions of this TDP, or the liquidated value of the claim, and if the holder has first submitted the claim to non-binding arbitration as provided in Section 5.10 above, the holder may file a lawsuit in the Claimant's Jurisdiction as defined in Section 5.3(b)(2) above. Any such lawsuit must be filed by the claimant in his or her own right and name and not as a member or representative of a class, and no such lawsuit may be consolidated with any other lawsuit. All defenses (including, with respect to the Trust, all defenses which could have been asserted by Flintkote) shall be available to both sides at trial; however, the Trust may waive any defense and/or concede any issue of fact or law. If the claimant was alive at the time the initial pre-petition complaint was filed or on the date the proof

of claim form was filed with the Trust, the case will be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim.

**7.7 Payment of Judgments for Money Damages.** If and when a claimant obtains a judgment in the tort system, the claim shall be placed in the FIFO Payment Queue based on the date on which the judgment became final. Thereafter, the claimant shall receive from the Trust an initial payment (subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment, and the Claims Payment Ratio provisions set forth above) of an amount equal to 100% of the greater of (i) the Trust's last offer to the claimant or (ii) the award that the claimant declined in non-binding arbitration; provided, however, that in no event shall such payment amount exceed the amount of the judgment obtained in the tort system. The claimant shall receive the balance of the judgment, if any, in five (5) equal installments in years six (6) through ten (10) following the year of the initial payment (also subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment, and the Claims Payment Ratio provisions set forth above in effect on the date of the payment of the subject installment).

In the case of non-Extraordinary Claims involving Disease Levels III–VII, the total amounts paid with respect to such claims shall not exceed the Maximum Values for such Disease Levels set forth in Section 5.3(b)(3) above. In the case of Extraordinary Claims, the total amounts paid with respect to such claims shall not exceed the extraordinary maximum value for such claims set forth in Section 5.4(a) above. In the case of claims involving Disease Levels I and II, the total amounts paid with respect to such claims shall not exceed the Scheduled Value of such claims. Under no circumstances shall either a sequencing adjustment be paid pursuant to

Section 7.5 above or interest be paid under any statute on any judgments obtained in the tort system pursuant to Sections 5.11 and 7.6 above.

**7.8 Releases.** The Trustees shall have the discretion to determine the form and substance of the releases to be provided to the Trust in order to maximize recovery for claimants against other tortfeasors without increasing the risk or amount of claims for indemnification or contribution from the Trust. As a condition to making any payment to a claimant, the Trust shall obtain a general, partial, or limited release as appropriate in accordance with the applicable state, federal, foreign, or other law. If allowed by applicable law, the endorsing of a check or draft for payment by or on behalf of a claimant may, in the discretion of the Trust, constitute such a release.

**7.9 Third-Party Services.** Nothing in this TDP shall preclude the Trust from contracting with another asbestos claims resolution organization to provide services to the Trust so long as decisions about the categorization and liquidated value of Trust Claims are based on the relevant provisions of this TDP, including the Disease Levels, Scheduled Values, Average Values, Maximum Values, and Medical/Exposure Criteria set forth above.

**7.10 Trust Disclosure of Information.** Periodically, but not less often than once a year, the Trust shall make available to claimants and other interested parties, the number of claims by Disease Levels that have been resolved both by the Individual Review Process and by arbitration as well as by litigation in the tort system, indicating the amounts of the awards and the averages of the awards by jurisdiction.

## **SECTION VIII**

### **Miscellaneous**

**8.1 Amendments.** Except as otherwise provided herein, the Trustees may amend, modify, delete, or add to any provisions of this TDP (including, without limitation, amendments

to conform this TDP to advances in scientific or medical knowledge or other changes in circumstances), provided they first obtain the consent of the TAC and the Future Claimants' Representative pursuant to the Consent Process set forth in Sections 6.7(b) and 7.7(b) of the Trust Agreement, except that the right to amend the Claims Payment Ratio is governed by the restrictions in Section 2.5 above, and the right to adjust the Payment Percentage is governed by Section 4.2 above. Nothing herein is intended to preclude the TAC or the Future Claimants' Representative from proposing to the Trustees, in writing, amendments to this TDP. Any amendment proposed by the TAC or the Future Claimants' Representative shall remain subject to Section 8.3 of the Trust Agreement.

**8.2 Severability.** Should any provision contained in this TDP be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this TDP. Should any provision contained in this TDP be determined to be inconsistent with or contrary to Flintkote obligations to any insurance company providing insurance coverage to Flintkote in respect of claims for personal injury based on exposure to asbestos-containing products manufactured or produced by Flintkote, the Trust with the consent of the TAC and the Future Claimants' Representative, may amend this TDP and/or the Trust Agreement to make the provisions of either or both documents consistent with the duties and obligations of Flintkote to said insurance company.

**8.3 Governing Law.** Except for purposes of determining the liquidated value of any Trust Claim, administration of this TDP shall be governed by, and construed in accordance with, the laws of the State of Delaware. The law governing the liquidation of Trust Claims in the case of Individual Review, arbitration or litigation in the tort system shall be the law of the Claimant's Jurisdiction as described in Section 5.3(b)(2) above.

6376273.2

**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 2022, the *Declaration of Richard Winner* was caused

to be served as indicated upon the following parties:

Morgan R. Hirst  
Jones Day  
110 North Wacker Drive, Suite 4800  
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mhirst@jonesday.com  
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Kevin Gross  
Kelly E. Farnan  
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gross@rlf.com  
farnan@rlf.com  
(Electronic Mail and Hand Delivery)

Dated: July 26, 2022

/s/ Kevin A. Guerke  
Kevin A. Guerke (No. 4096)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE: )  
 ) C.A. No. 22-mc-308-CFC  
 )  
ALDRICH PUMP LLC, et al., ) Underlying Case No. 20-30608 (JCW)  
 ) (U.S. Bankruptcy Court Western  
Debtors. ) District of North Carolina)

**STIPULATION TO EXTEND TIME**

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, and subject to the approval of the Court, that the time for Respondents Aldrich Pump LLC and Murray Boiler LLC to respond to Third-Party Asbestos Trusts' Motion to Quash or Modify Subpoenas (D.I. 1) is extended through and including August 22, 2022.

IT IS FURTHER STIPULATED AND AGREED that the deadline for the Third-Party Asbestos Trusts to file their Reply Brief is extended through and including September 6, 2022.

/s/ Beth Moskow-Schnoll

Beth Moskow-Schnoll (#2900)  
Tyler B. Burns (#6978)  
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Wilcox Company Asbestos PI Trust;  
Celotex Asbestos Settlement Trust; DII  
Industries, LLC Asbestos PI Trust;  
Federal-Mogul Asbestos Personal  
Injury Trust; Flintkote Asbestos Trust;  
Owens Corning / Fibreboard Asbestos  
Personal Injury Trust; Pittsburgh  
Corning Corporation Asbestos  
Personal Injury Settlement Trust;  
United States Gypsum Asbestos  
Personal Injury Settlement Trust; and  
WRG Asbestos PI Trust*

Dated: August 8, 2022

SO ORDERED this \_\_\_ day of \_\_\_\_\_, 2022.

/s/ Kelly E. Farnan

Kelly E. Farnan (#4395)  
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*Attorneys for Respondents Aldrich Pump  
LLC and Murray Boiler LLC*

---

Chief United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE: )  
 ) C.A. No. 22-mc-308-CFC  
 )  
ALDRICH PUMP LLC, et al., ) Underlying Case No. 20-30608 (JCW)  
 ) (U.S. Bankruptcy Court Western  
Debtors. ) District of North Carolina)

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IT IS FURTHER STIPULATED AND AGREED that the deadline for the Third-Party Asbestos Trusts to file their Reply Brief is extended through and including September 6, 2022.

/s/ Beth Moskow-Schnoll  
Beth Moskow-Schnoll (#2900)  
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Industries, Inc. Asbestos Personal  
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Wilcox Company Asbestos PI Trust;  
Celotex Asbestos Settlement Trust; DII  
Industries, LLC Asbestos PI Trust;  
Federal-Mogul Asbestos Personal  
Injury Trust; Flintkote Asbestos Trust;  
Owens Corning / Fibreboard Asbestos  
Personal Injury Trust; Pittsburgh  
Corning Corporation Asbestos  
Personal Injury Settlement Trust;  
United States Gypsum Asbestos  
Personal Injury Settlement Trust; and  
WRG Asbestos PI Trust*

*Attorneys for Respondents Aldrich Pump  
LLC and Murray Boiler LLC*

Dated: August 8, 2022

SO ORDERED this 8<sup>th</sup> day of August, 2022.



Chief United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE: )  
) C.A. No. 22-mc-308-CFC  
)  
ALDRICH PUMP LLC, et al., ) Underlying Case No. 20-30608 (JCW)  
) (U.S. Bankruptcy Court Western District of  
Debtors. ) North Carolina)

**STIPULATION TO EXTEND TIME**

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, and subject to the approval of the Court, that the time for Respondents Aldrich Pump LLC and Murray Boiler LLC to respond to Delaware Claims Processing Facility, LLC's (I) Motion to Quash or Modify Subpoena and (II) Joinder (D.I. 3) is extended through and including August 22, 2022.

IT IS FURTHER STIPULATED AND AGREED that the deadline for the Delaware Claims Processing Facility, LLC to file its Reply Brief is extended through and including September 6, 2022.

/s/ Kevin A. Guerke

Edwin J. Harron (#3396)  
Kevin A. Guerke (#4096)  
Roxanne M. Eastes (#6654)  
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*Attorneys for Delaware Claims  
Processing Facility, LLC*

Dated: August 9, 2022

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2022.

/s/ Kelly E. Farnan

Kelly E. Farnan (#4395)  
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*Attorneys for Respondents Aldrich  
Pump LLC and Murray Boiler LLC*

---

Chief United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE: )  
 ) C.A. No. 22-mc-308-CFC  
 )  
ALDRICH PUMP LLC, et al., ) Underlying Case No. 20-30608 (JCW)  
 ) (U.S. Bankruptcy Court Western District of  
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**STIPULATION TO EXTEND TIME**

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, and subject to the approval of the Court, that the time for Respondents Aldrich Pump LLC and Murray Boiler LLC to respond to Delaware Claims Processing Facility, LLC's (I) Motion to Quash or Modify Subpoena and (II) Joinder (D.I. 3) is extended through and including August 22, 2022.

IT IS FURTHER STIPULATED AND AGREED that the deadline for the Delaware Claims Processing Facility, LLC to file its Reply Brief is extended through and including September 6, 2022.

/s/ Kevin A. Guerke

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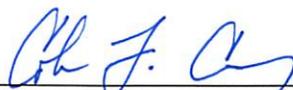
Dated: August 9, 2022

SO ORDERED this 9<sup>th</sup> day of August, 2022.

/s/ Kelly E. Farnan

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*Attorneys for Respondents Aldrich  
Pump LLC and Murray Boiler LLC*

  
\_\_\_\_\_  
Chief United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE: ) Misc. No. 22-308-CFC  
)  
ALDRICH PUMP LLC, *et al.*, ) Underlying Case No. 20-30608  
) (JCW)  
Debtor. ) (U.S. Bankruptcy Court for the  
) Western District of North Carolina)

**THIRD-PARTY ASBESTOS TRUSTS’ MOTION TO STAY**

The ten asbestos settlement trusts identified below<sup>1</sup> (the “Trusts”), by and through their undersigned counsel, respectfully move the Court to enter an order staying the above-captioned case pending the Third Circuit’s resolution of this Court’s prior ruling in *In re Bestwall*, No. 21-141 (“*Bestwall*”). In support, the Trusts state as follows:

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<sup>1</sup> The ten Trusts are:

- Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust;
- The Babcock & Wilcox Company Asbestos PI Trust;
- Celotex Asbestos Settlement Trust;
- DII Industries, LLC Asbestos PI Trust;
- Federal-Mogul Asbestos Personal Injury Trust;
- Flintkote Asbestos Trust;
- Owens Corning / Fibreboard Asbestos Personal Injury Trust;
- Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust;
- United States Gypsum Asbestos Personal Injury Settlement Trust; and
- WRG Asbestos PI Trust.

## INTRODUCTION

Aldrich Pump LLC and Murray Boiler LLC (collectively, “Aldrich”) are debtors and debtors-in-possession in a chapter 11 bankruptcy case pending in the Bankruptcy Court for the Western District of North Carolina, Case No. 20-30080 (JCW) (the “Bankruptcy Court”). On July 5, 2022, Aldrich served subpoenas on the third-party Trusts and the Delaware Claims Processing Facility (“DCPF”) seeking the protected and confidential claims data of approximately 12,000 Trust Claimants (the “Aldrich Subpoenas”) for use in estimating its future liability.

Previously, in *Bestwall*, this Court rejected a chapter 11 debtor’s nearly identical attempt to subpoena the protected and confidential claims data of approximately 15,000 Trust Claimants. June 1, 2022 Order (*Bestwall* D.I. 30); June 17, 2021 Order (*Bestwall* D.I. 33). On July 1, 2021, the debtor appealed the Court’s rulings in *Bestwall* to the Third Circuit. *In re Bestwall*, No. 21-2263 (“*Bestwall Appeal*”). The parties completed briefing on the appeal in October 2021. The Third Circuit held oral argument on the merits on March 15, 2022, and the parties await the Third Circuit’s decision, which should be imminent.

On July 25, approximately three ago, the Trusts moved to quash the Aldrich Subpoenas (the “Motion to Quash”) for failing to incorporate the necessary protections outlined in *Bestwall*. Mot. to Quash (D.I. 1). Because the Third Circuit’s

decision will undoubtedly shape the instant litigation, the Trusts seek a limited stay of this matter pending the outcome of the *Bestwall* Appeal.

### ARGUMENT

This Court has the inherent discretion to stay litigation pursuant to its power to control its own docket. *SZ DJI Tech. Co. v. Autel Robotics USA LLC*, [2019 U.S. Dist. LEXIS 44056](#), at \*2 (D. Del. Mar. 18, 2019) (citing *Landis v. North Am. Co.*, [299 U.S. 248, 254-55](#) (1936)). The Court should exercise its discretion to “conserve judicial resources” and promote “the efficient and fair resolution of disputed issues.” *Tigercat Int’l v. Caterpillar Inc.*, [2018 U.S. Dist. LEXIS 83010](#), at \*6 (D. Del. May 2, 2018) (collecting cases). In determining whether to grant a stay, the Court considers three factors: (1) “whether granting the stay will simplify the issues”; (2) “the status of the litigation”; and (3) “whether a stay would cause the non-movant to suffer undue prejudice from any delay, or allow the movant to gain a clear tactical advantage.” *SZ DJI Tech. Co.*, [2019 U.S. Dist. LEXIS 44056](#), at \*2-3 (quoting *Toshiba Samsung Storage Tech. Korea Corp. v. LG Elecs., Inc.*, [193 F. Supp. 3d 345, 348](#) (D. Del. 2016)). All three factors weigh decisively in favor of a stay pending the Third Circuit’s resolution of the *Bestwall* Appeal.

First, a stay will simplify the issues for this Court. The primary issue the Motion to Quash presents is whether the Aldrich Subpoenas comply with this Court’s rulings in *Bestwall* – specifically, whether the Aldrich Subpoenas

incorporate the required sampling and pre-production anonymization limitations this Court previously ordered. Mot. to Quash 2-3 (“[T]he Trusts move to quash the Aldrich Subpoenas for ... failing to incorporate the necessary Bestwall protections.”).

The debtor in the *Bestwall* Appeal, however, has asserted this Court abused its discretion by imposing these limitations. Opening Br. 36-40 (3d Cir. D.I. 35); Reply Br. 14-18 (3d. Cir. D.I. 47). If the Third Circuit affirms this Court’s prior rulings, it will resolve any remaining doubt as to the contours of *Bestwall*. If the Third Circuit reverses or remands for further proceedings in *Bestwall*, its opinion may inform any subsequent decision by this Court. Regardless of whether the Third Circuit’s decision resolves the issues between the parties as to the Aldrich Subpoenas, the Third Circuit’s decision will undoubtedly shape the instant litigation – helping to further define the scope of any production of Trust Claimant data.

As this Court recognized at a May 9, 2022 teleconference in *Bestwall*, “the higher court and the lower court should not be working on the same issue.”<sup>2</sup> May 9, 2022 Tr. 17 (*Bestwall* D.I. 54). Moving forward with this matter now only impedes judicial economy and the “fair and efficient resolution of this matter,” and unnecessarily duplicates the efforts of this Court and the Third Circuit. *Tigercat*

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<sup>2</sup> Despite the outstanding *Bestwall* Appeal, *Bestwall* is again before this Court as the debtor there served revised subpoenas on the Trusts, which the Trusts moved to quash. Mot. to Quash (*Bestwall* D.I. 52).

*Int'l*, [2018 U.S. Dist. LEXIS 83010](#), at \*6. Accordingly, a stay will simplify, if not resolve, the issues raised in the Motion to Quash, and this factor weighs heavily in favor of a stay. *E.g.*, *LG Elecs., Inc. v. Toshiba Samsung Storage Tech. Korea Corp.*, [2015 U.S. Dist. LEXIS 167153](#), at \*8-13 (D. Del. Dec. 11, 2015) (factor weighed in favor of stay where impending Federal Circuit decision could resolve certain claims or “provide greater clarity” as to the issues in dispute).

Second, the nascent status of this dispute weighs in favor of a stay. Typically, a stay is granted “when a case is in the early stages of litigation.” *Sirona Dental Sys. GMBH v. Dental Wings, Inc.*, [2016 U.S. Dist. LEXIS 155706](#), at \*21 (D. Del. Mar. 22, 2016). Granting a stay early in the litigation advances “judicial efficiency and ‘maximize[s] the likelihood that neither the Court ... nor the parties expend their assets addressing invalid claims.’” *Id.* (quoting *Gioello Enters. v. Mattel, Inc.*, [2001 U.S. Dist. LEXIS 26158](#), at \*4 (D. Del. Jan. 1, 2009)).

Here, the dispute is unquestionably in “the early stages of litigation.” The Trusts filed their Motion to Quash on July 25 – approximately three weeks ago. The Court and the parties have invested little into the current dispute. This is in stark contrast to the advanced nature of the *Bestwall* Appeal, which is ripe for decision. Therefore, the early status of the litigation when compared to the advanced stage of

the *Bestwall* Appeal also favors a stay.<sup>3</sup> *Abbott Diabetes Care, Inc. v. Dexcom, Inc.*, 2007 U.S. Dist. LEXIS 73198, at \*5 (D. Del. Sept. 30, 2007) (staying litigation where “little time [had] yet to be invested in the litigation”); *Bonutti Skeletal Innovations, L.L.C. v. Zimmer Holdings, Inc.*, [2014 U.S. Dist. LEXIS 47430](#), at \*6 (D. Del. Apr. 7, 2014) (factor “strongly favors granting a stay” where the litigation “is still in its early stages”).

Third, a stay will neither unduly prejudice Aldrich, nor provide the Trusts a clear tactical advantage. The only potential prejudice to Aldrich would be a slight delay in receiving Trust Claimant information (and then, only if this Court eventually denies the Motion to Quash). But, a slight delay here would have a minimal impact at most. There is no trial date set for Aldrich’s estimation, and the Bankruptcy Court only recently entered a *limited* case management order, setting certain initial disclosure deadlines and a written discovery deadline of August 2, 2023. Case Mgmt. Order for Est. of Asbestos Claims ¶¶3-10 (Bankr. D.I. 1302). At

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<sup>3</sup> Aldrich will presumably attempt to obfuscate the stage of this litigation by interjecting its bankruptcy history into the instant matter. The history of Aldrich’s bankruptcy – to which the Trusts were not parties – is not relevant here. As this Court has explained, this factor explores whether “discovery is complete and a trial date has been set” in the *instant* matter. *E.g.*, *Neste Oil Oyj v. Dynamic Fuels, LLC*, 2013 U.S. Dist. LEXIS, at \*4, \*18-19 (D. Del. Jan. 31, 2013); *SZ DJI Tech. Co.*, [2019 U.S. Dist. LEXIS 44056](#), at \*2-3 (same). This is not the case here. And even if this Court were to consider the stage of Aldrich’s estimation proceeding, this factor still weighs in favor of a stay. As discussed below, the Bankruptcy Court has not set a trial date for Aldrich’s estimation and limited written discovery has only recently begun.

the Bankruptcy Court’s direction, this limited case management order excludes, among other things, a trial date and any deadlines relating to discovery from the Trusts. July 7, 2022 Hearing Audio Rec. (Bankr. D.I. 1248); *see also* July 7, 2022 Hearing Audio Rec. 51:30-50 (D.I. 1499 - *In re DBMP LLC*, No. 20-30080-JCW (Bankr. W.D.N.C.) (Whitley, J.)) 42:27 (“We’re talking in the other case, the Aldrich and Murray, about setting dates to take us through written discovery and then having a further pre-trial conference or further pre-trial order to set follow-on dates that supersede that.”). Moreover, Aldrich requested (and received) a briefing extension from both the Trusts and DCPF in this case. Order (D.I. 6); Order (D.I. 8). If Aldrich were truly concerned about delay, it would not have requested any extension of time. Thus, there is minimal, if any, risk of prejudice to Aldrich from a slight delay while the parties await the Third Circuit’s decision.

Further, the Trusts would not receive any advantage from a stay, let alone a “clear tactical advantage.” However, should the Court grant a stay, the Court and the parties will benefit from increased efficiency and judicial economy, as the Third Circuit’s decision will invariably provide valuable guidance, if not resolve the matter entirely. *OENGINE, LLC v. PayPal Holdings, Inc.*, [2019 U.S. Dist. LEXIS 141545](#), at \*20 (D. Del. Aug. 21, 2019) (stay favored where contemporaneous proceedings would have “significant effect on the issues presented”); *Huvepharma Eood v.*

*Associated British Foods, PLC*, [2019 U.S. Dist. LEXIS 139034](#), at \*4 (D. Del. Aug. 12, 2019) (stay favored where stay removed prospect of issues being tried twice).

Finally, courts also reference “undue prejudice or hardship to the movant as a factor to be considered in evaluating a request to stay litigation.” *SZ DJI Tech. Co.*, [2019 U.S. Dist. LEXIS 44056](#), at \*3 (citation and quotation omitted). This factor also favors a stay. Depending on the outcome of the appeal in *Bestwall*, the scope of the Trusts’ compliance with the Aldrich Subpoenas could be significantly altered. If the Trusts are compelled to comply with the subpoenas before knowing the outcome in the Third Circuit, it may result in the unnecessary disclosure of protected Trust Claimant data, which the Trusts are judicially-bound to protect. Thus, moving forward with this matter now presents a significant risk of undue prejudice and hardship to the Trusts. As non-parties, the Trusts should not be forced to bear the hardship of such uncertainty – especially where Aldrich can show no prejudice.

Accordingly, because all factors weigh decisively in favor of a stay, this Court should exercise its discretion to stay this matter pending resolution of the *Bestwall* Appeal.

### **CONCLUSION**

The Third Circuit’s decision in the *Bestwall* Appeal will undoubtedly shape, if not resolve, this matter. A stay would thus promote judicial economy and the fair and efficient resolution of this matter by preventing the Court and the parties from

needlessly expending additional resources on this dispute while the Third Circuit addresses the exact same issues. For this reason, and all the reasons set forth above, the Trusts respectfully request the Court enter an order staying the above-captioned case pending resolution of the *Bestwall* Appeal.

Date: August 18, 2022

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this Motion is in 14-point Times New Roman font and that it contains 1,935 words as determined by Microsoft Word, excluding the case caption, signature block, this certificate, and the certificate pursuant to Local Rule 7.1.1.

Dated: August 18, 2022

/s/ Tyler B. Burns  
Tyler B. Burns (No. 6978)

**CERTIFICATE PURSUANT TO LOCAL RULE 7.1.1**

I, Beth Moskow-Schnoll, hereby certify pursuant to Local Rule 7.1.1 that a reasonable effort has been made to reach an agreement with Aldrich Pump LLC and Murray Boiler LLC (collectively, “Aldrich”) on the matters set forth in the Third-Party Asbestos Trusts’ Motion to Stay (the “Motion”). An agreement was not reached, and Aldrich indicated it will oppose the Motion.

Dated: August 18, 2022

/s/ Beth Moskow-Schnoll  
Beth Moskow-Schnoll (No. 2900)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE: ) Misc. No. 22-308-CFC  
)  
ALDRICH PUMP LLC, *et al.*, ) Underlying Case No. 20-30608  
) (JCW)  
Debtor. ) (U.S. Bankruptcy Court for the  
) Western District of North Carolina)

**[PROPOSED] ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, upon consideration of the Third-Party Asbestos Trusts’ (the “Trusts”) Motion to Stay (the “Motion”), and any response thereto, it is hereby ORDERED the Motion is GRANTED. The above-captioned matter is STAYED pending the Third Circuit’s resolution of *In re Bestwall*, No. 21-2263.

BY THE COURT:

\_\_\_\_\_  
Chief U.S. District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE: )  
) C.A. No. 22-mc-308-CFC  
)  
ALDRICH PUMP LLC, et al., ) Underlying Case No. 20-30608 (JCW)  
) (U.S. Bankruptcy Court Western  
Debtors. ) District of North Carolina)

**ALDRICH PUMP LLC AND MURRAY BOILER LLC'S  
BRIEF IN OPPOSITION TO: (A) THIRD-PARTY ASBESTOS  
TRUSTS' MOTION TO QUASH OR MODIFY SUBPOENAS; AND  
(B) DELAWARE CLAIMS PROCESSING FACILITY, LLC'S (I) MOTION  
TO QUASH OR MODIFY SUBPOENA AND (II) JOINDER**

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Dated: August 22, 2022

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Aldrich Pump LLC (“Aldrich”) and Murray Boiler LLC (“Murray”) (collectively, the “Debtors”), debtors in Chapter 11 proceedings pending in the Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”), respectfully submit this memorandum in opposition to the subpoena-related motions filed by the Delaware Claims Processing Facility, LLC (“DCPF”) and ten asbestos settlement trusts<sup>1</sup> (collectively, the “Trusts”) [D.I. 809 and 807].

### **PRELIMINARY STATEMENT**

On July 5, 2022, the Debtors served subpoenas duces tecum (the “Subpoenas”)<sup>2</sup> upon DCPF and the Trusts. Prior to service of the Subpoenas on DCPF and the Trusts, the Bankruptcy Court approved of their issuance in a hearing in the Debtors’ bankruptcy case. In approving the Subpoenas, the Bankruptcy Court overruled objections based on relevance, proportionality, burden and

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<sup>1</sup> Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust; The Babcock & Wilcox Company Asbestos PI Trust; Celotex Asbestos Settlement Trust; DII Industries, LLC Asbestos PI Trust; Federal-Mogul Asbestos Personal Injury Trust; Flintkote Asbestos Trust; Owens Corning / Fibreboard Asbestos Personal Injury Trust; Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust; United States Gypsum Asbestos Personal Injury Settlement Trust; and WRG Asbestos PI Trust.

<sup>2</sup> See Subpoenas, attached as Exhibits A–K to the accompanying August 22, 2022 Declaration of Debtor’s Delaware counsel, Kelly E. Farnan (“Debtors’ Counsel’s Decl.”).

confidentiality.<sup>3</sup> The Bankruptcy Court found that the information sought by the Subpoenas was “relevant and necessary” to the Debtors’ bankruptcy proceeding.

DCPF and the Trusts now seek to quash the Subpoenas in this Court. Their primary argument is that the Subpoenas do not comply with this Court’s prior order in a similar matter, *In re Bestwall LLC*, Misc. No. 21-141 (CFC), [2021 WL 2209884](#) (D. Del. June 1, 2021).

DCPF and the Trusts are wrong. Instead, as the Bankruptcy Court found, the Subpoenas here are fundamentally different from the subpoenas this Court quashed in *Bestwall*. In *Bestwall*, this Court agreed that the debtor had “demonstrated a legitimate purpose in requesting the Claimant data to aid in plan formulation and estimation proceedings,” but determined that “additional safeguards” were necessary to protect claimants’ privacy, given the “sweeping personal data” sought. *Id.* at \*6–7.

After *Bestwall*, but before the Bankruptcy Court ruled on the Debtors’ request to issue the Subpoenas in this case, another debtor (DBMP LLC) tailored its own subpoenas to address the privacy concerns raised in *Bestwall*. Specifically, DBMP removed from its subpoenas any request for personal identifying information (“PII”)

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<sup>3</sup> See Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC, *In re Aldrich Pump LLC*, No. 20-30608 (JCW) [D.I. 1240] (the “Bankruptcy Court Order”) ¶ 5, attached as a rider to Debtors’ Counsel’s Decl. Exs. A–K, Subpoenas.

of individuals who have asserted claims against one or more of the Trusts and DBMP (the “Matching Claimants”) and included a protocol to anonymize the data. DCPF appeared in the *DBMP* bankruptcy case and filed an objection, raising the same arguments it and the Trusts raise now. Those arguments were each considered and rejected by the *DBMP* court, the Honorable J. Craig Whitley, who also presides over the Debtors’ bankruptcy cases and approved the Subpoenas here. In doing so, Judge Whitley specifically acknowledged this Court’s ruling in *Bestwall*, and found that the DBMP subpoenas addressed and resolved the concerns this Court had raised.

The Subpoenas here are nearly identical to DBMP’s post-*Bestwall* subpoenas that the Bankruptcy Court found satisfied the requirements this Court laid out in *Bestwall*. The Debtors, like DBMP, do not seek any PII; they do not seek the names, addresses, or social security numbers of Matching Claimants, they do not seek to learn the amounts that any Matching Claimant recovered from any of the Trusts. Instead, the Debtors want to discern whether there are Matching Claimants that made claims against the Debtors along with the Trusts, and, if so, the status of those claims and how those Matching Claimants asserted they were exposed to asbestos-containing products. None of this information implicates confidentiality concerns or otherwise warrants protection from discovery. And any data produced will be subject to significant protections, limiting their use to the Debtors’ bankruptcy cases.

Because the Subpoenas seek production of information that is relevant to the Debtors' bankruptcy cases, represent a minimal burden on DCPF and the Trusts to produce, and address the privacy and confidentiality concerns raised by this Court in *Bestwall*, the Motions should be denied.

### **STATEMENT OF RELEVANT FACTS**

#### **A. The Debtors' Chapter 11 Bankruptcy Cases**

On June 18, 2020, the Debtors voluntarily filed Chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the Western District of North Carolina, Charlotte Division, which remain pending and active. *See In re Aldrich Pump LLC, et al.*, Case No. 20-30608 (JCW) (Jointly Administered) (Bankr. W.D.N.C. 2020). The Debtors filed their Chapter 11 cases to address the unrelenting burden of asbestos tort claims pursued against them. A core issue in the Bankruptcy Cases is how to estimate or value the Debtors' liability for those claims pursuant to section § 502(c) of the Bankruptcy Code, which will be determined in an estimation proceeding. The estimation proceeding will, among other things, help inform the merits of the settlement the Debtors have reached with the Future Claims Representative (the "FCR") and the plan proposed by the Debtors and the FCR.

#### **B. The Subpoenas Relate to the Estimation Proceeding in the Bankruptcy Cases**

Based on positions taken in other asbestos bankruptcies, the Official Committee of Asbestos Personal Injury Claimants (the "ACC") will argue that the

Debtors’ historical settlements of asbestos claims in the tort system are an appropriate guide to measure the Debtors’ liability for asbestos personal injury claims. Several years ago, a bankruptcy court explicitly rejected that position. *In re Garlock Sealing Techs., LLC*, [504 B.R. 71](#) (Bankr. W.D.N.C. 2014) (“*Garlock*”). There, the court found that the debtor’s “settlement history data [did] not accurately reflect fair settlements because [asbestos] exposure evidence was withheld” in the tort system. *Id.* at 94. *Garlock* found widespread failures on the part of asbestos claimants to disclose either exposure to alternative sources or recovery from other sources for their personal injury claims. The Debtors were involved in many of the same tort cases where the *Garlock* court found that the settlement history was tainted as a result.<sup>4</sup>

To arrive at an accurate estimate of the Debtors’ liabilities in light of *Garlock*, the Debtors require information beyond what is available to them—specifically, information indicating whether plaintiffs in the tort system similarly withheld evidence of alternative exposures and recoveries from the Debtors. DCPF and the Trusts are entities that have “assumed the asbestos-related liabilities” of debtor companies, and are “charged with ensuring that claimants’ asbestos-related personal injury claims are processed and, when appropriate, settled in accordance with

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<sup>4</sup> See Informational Brief of Aldrich Pump LLC and Murray Boiler LLC, *In re Aldrich Pump LLC*, No. 20-30608 (JCW) (Bankr. W.D.N.C. 2020) [D.I. 5] at 20–29, attached as Exhibit L to the Debtors’ Counsel’s Decl.

bankruptcy court directives.” Declaration of Richard Winner, [D.I. 810], ¶¶ 2, 4 (the “Winner Decl.”). As such, both DCPF and the Trusts have information relevant to the Debtors’ estimation proceeding.

**C. The Bankruptcy Court Authorizes Issuance of the Subpoenas**

On April 7, 2022, the Debtors filed a motion in the Bankruptcy Court seeking an order authorizing them to issue subpoenas on a number of entities, including DCPF and the Trusts. Both the ACC and one of the potential subpoena recipients filed written objections to the Debtors’ motion. On May 26, 2022, the Bankruptcy Court held oral argument on the Debtors’ request.<sup>5</sup>

At the conclusion of the May 26 hearing, the Bankruptcy Court announced that it was granting the Debtors’ motion. *See* Debtors’ Counsel’s Decl. Ex. M, May 26, 2022 Trans. at 57, 59. In doing so, the Bankruptcy Court noted that it was relying in significant part upon its prior ruling on nearly identical subpoenas requested in the *DBMP* bankruptcy just a few months earlier. *See id.* at 57:6–8 (“I generally agree with the debtor here and I believe that, particularly, the response brief for the reasons stated in that and as announced in the *DBMP* matter.”).

In the *DBMP* matter that the Bankruptcy Court also presides over and referenced in his May 26 ruling, DCPF appeared, and filed briefs opposing *DBMP*’s

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<sup>5</sup> *See* Transcript of Proceedings Held May 26, 2022, *In re Aldrich Pump LLC*, No. 20-30608 (Bankr. W.D.N.C.) (JCW) (the “May 26, 2022 Trans.”) attached as Exhibit M to the Debtors’ Counsel’s Decl.

request to issue nearly identical subpoenas to the Subpoenas at issue here, raising the same objections concerning privacy and confidentiality it asserts here.<sup>6</sup> During the December 2021 hearing in the *DBMP* case on those objections, the Bankruptcy Court specifically acknowledged this Court’s ruling in *Bestwall*, noting “I think we’ve got to bear in mind what Judge Connolly has done.” *Id.* at 133:16–17. The Bankruptcy Court found that DBMP’s subpoenas were significantly different than the ones the debtor had served and this Court quashed in *Bestwall*. Instead, the Bankruptcy Court found that DBMP’s proposed subpoenas complied with this Court’s order in *Bestwall*, given “the fact that there’s no ... personal identifying information now satisfies the privacy concerns.” *Id.* at 134:13–15. For the same reason, the Bankruptcy Court declined DCPF’s request to limit the data sought by the DBMP subpoenas to a random ten percent sample of claimants, finding that because no PII was requested, combined with DBMP’s pre-disclosure anonymization protocol, fulfilled the same goals of a sample. Importantly, he recognized that DBMP “needs to be able to match [Trust data with a specific claimant] or otherwise, this is unusable to it for its purposes.” *Id.* at 134:17–20.

In *Aldrich*, the Bankruptcy Court formalized its ruling granting the Debtors’ motion to issue the Subpoenas in a written order on July 1, 2022. *See* Debtors’

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<sup>6</sup> *See* Transcript of Proceedings Held Dec. 16, 2021, *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C. Dec. 21, 2021) [D.I. 1260], (the “Dec. 16, 2021 DBMP Trans.”), attached as Exhibit N to the Debtors’ Counsel’s Decl.

Counsel's Decl. Rider to Exs. A–K, Bankruptcy Court Order. In addition to authorizing service of the Subpoenas, the Bankruptcy Court specifically held that the information the Debtors seek is relevant to their bankruptcy case:

The subpoenas seek evidence that is relevant and necessary to specific purposes in connection with the estimation of the Debtors' liability for current and future asbestos-related claims and the negotiation, formulation, and confirmation of a plan of reorganization in these cases, specifically: the determination of whether pre-petition settlements of mesothelioma claims provide a reliable basis for estimating the Debtors' asbestos liability; the estimation of the Debtors' asbestos liability; and the development and evaluation of trust distribution procedures for any plan of reorganization confirmed in these cases.

*See* Debtors' Counsel's Decl. Rider to Exs. A–K, Bankruptcy Court Order ¶ 5.

**D. The Subpoenas**

Shortly after the issuance of the Bankruptcy Court's Order, the Debtors served the Subpoenas on DCPF and the Trusts on July 5, 2022. The Bankruptcy Court's Order are the riders to each of the Subpoenas. *See id.* The Subpoenas do not request that DCPF or the Trusts search for or produce any documents. The Subpoenas do not request that DCPF or the Trusts produce any PII concerning any claimant. The Subpoenas do not request the details or amounts of any recoveries any claimant obtained from DCPF or the Trusts. Instead, the Subpoenas are narrowly tailored to seek production of a small number of data fields from the entities' database that would allow the Debtors to identify whether and the extent to which claimants who

obtained recoveries on asbestos claims from the Debtors also obtained recoveries from the Trusts. *See* Debtors' Counsel's Decl. Rider to Exs. A–K, Bankruptcy Court Order ¶ 10.

Specifically, for each claimant that both the Debtors and DCPF/the Trusts have in their databases, the Debtors request that DCPF and the Trusts produce the following information:

1. Claimant pseudonym;
2. Claimant's law firm (with contact information);
3. Date claim filed against Trust;
4. Date claim approved by Trust, if approved;
5. Date claim paid by Trust, if paid;
6. If not approved or paid, status of claim; and
7. Exposure-related fields, including: (i) date(s) exposure(s) began; (ii) date(s) exposure(s) ended; (iii) manner of exposure; (iv) occupation and industry when exposed; and (v) products to which exposed.

*See id.* The production of the data will be subject to anonymization, notice to affected claimants, substantial confidentiality requirements, and strict access and use restrictions, all as set forth in the Bankruptcy Court Order. *See generally id.*

**E. DCPF's and the Trusts' Motions**

On July 25, 2022, the Trusts<sup>7</sup> filed a Motion to Quash the Subpoenas, and DCPF joined the Trusts' Motion later that same day.<sup>8</sup> The Motions argue the same issues previously ruled on by the Bankruptcy Court. Specifically, the Motions argue that the Subpoenas fail to incorporate *Bestwall's* confidentiality safeguards and inadequately protect the privacy of the Claimants' information.

**ARGUMENT**

A nonparty “seeking to quash [a] subpoena” bears the “heavy burden” of establishing a basis to quash under Rule 45. *Robocast, Inc. v. Microsoft Corp.*, No. 1:13-mc-00104-RGA, [2013 WL 1498666](#), at \*1 (D. Del. Apr. 12, 2013). The Trusts and DCPF cannot meet that burden here, because: (1) the Subpoenas fully comply with Rule 45 in that they are necessary, relevant, and proportional to the needs of the Debtors' bankruptcy cases; and (2) address the confidentiality concerns raised by the Court in *Bestwall*.

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<sup>7</sup> See Third-Party Asbestos Trusts' Motion to Quash or Modify Subpoenas, *In re Aldrich Pump*, No. [D.I. 807] (the “Trusts Motion”).

<sup>8</sup> See Delaware Claims Processing Facility, LLC's (I) Motion to Quash or Modify Subpoena and (II) Joinder, [D.I. 809] (the “DCPF Motion”) (together with the Trusts Motion, the “Motions”).

**I. THE SUBPOENAS COMPLY WITH RULE 45.**

The Subpoenas comply with Rule 45 because they seek information that is relevant and necessary to the Debtors' bankruptcy cases, and do so in a permissible manner.

As the Bankruptcy Court held, the information sought is "relevant and necessary" to the Debtors' estimation proceeding. This information is critical to the Debtors' ability to present evidence related to assessing claimants' claims against other entities and exposures to their products. As found by the *Garlock* court, the requested information will help in estimating the Debtors' legal liability to claimants taking into account other recoveries and other exposures of those claimants. *See Garlock*, [504 B.R. at 73](#) (concluding that the "best evidence of Garlock's aggregate responsibility is the projection of its legal liability that takes into consideration causation, limited exposure and the *contribution of exposures to other products*") (emphasis added); *id.* at 96 (relying on the fact that "the typical claimant alleges exposure to products of 36 parties").

While DCPF appears to not contest that the Subpoena seeks relevant information, DCPF argues that the Subpoena is unduly burdensome. *See* DCPF Motion ¶¶ 5, 12. In determining whether compliance with a subpoena would create an undue burden, courts "consider not only the potential burden to the producing party, but the necessity of the information for the party seeking production, and

whether the information can be obtained from other, more convenient sources.” *Cash Today of Tex., Inc. v. Greenberg*, No. Civ. A 02-MC-77-GMS, [2002 WL 31414138](#), at \*4 (D. Del. Oct. 23, 2002). A nonparty objecting to a subpoena on burden grounds cannot rely on a “mere assertion that [it] will be burdened by compliance with the subpoena to show an undue burden[.]” *Itochu Int’l v. Devon Robotics, LLC*, No. 09-cv-1819, [2014 WL 12613395](#), at \*1 n.1 (E.D. Pa. Nov. 6, 2014). Rather, it must come forward with evidentiary proof, usually in the form of “affidavits or other evidence which reveals the nature of the burden.” *Deibler v. SanMedica Int’l, LLC*, Civ. No. 19-20155 (NLH/MJS), [2021 WL 6136090](#), at \*7 (D.N.J. Dec. 29, 2021). That requires more than “generalized and unsupported allegations,” but a showing that outlines the specific burden imposed. *Stokes v. Cenveo Corp.*, No. 2:16-cv-886, [2017 WL 3648327](#), at \*2 (W.D. Pa. Aug. 24, 2017).

Here, DCPF argues that the Subpoena should be quashed because it requires DCPF to manually review and redact “sensitive PII,” including social security numbers, names, “and other highly sensitive information,” and review an undisclosed number of false hits. *See Winner Decl.* [D.I. 810] at ¶¶ 27, 29. That review “has already taken up a significant amount of DCPF employees’ time.” *Id.* ¶ 29. Nowhere, however, does DCPF actually explain (or even attempt to quantify) this supposed burden. DCPF does not provide an estimate or estimated range of the

hours it may incur, nor of expense.<sup>9</sup> Instead, DCPF relies entirely on the number of claimants revealed by its initial search. And although that number—over 150,000 claimants—may seem large, DCPF’s argument is undercut by the fact that: (1) these claimants are across all ten Trusts that are subject to Subpoenas, and actually seek a much smaller number of total individual claimants; (2) past practice in *Garlock* shows that there is minimal burden in collecting such data through electronic searches, and (3) the Debtors are responsible under the Bankruptcy Court’s Order to reimburse the reasonable costs of compliance incurred by DCPF.

In *Garlock*, similar categories of data requested from certain trusts were produced less than a month after the court overruled objections to their production.<sup>10</sup> Similarly, during discovery relating to estimation of non-mesothelioma claims, the *Garlock* court ordered a trust to produce asbestos exposure and medical data fields, as well as copies of medical and exposure records submitted to that trust—pertaining to over 90,000 *Garlock* claimants—a little more than a month after the discovery order was entered.<sup>11</sup>

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<sup>9</sup> Though the Trusts cite the standard that a subpoena may be quashed as “unduly burdensome,” *see* Trusts Motion [D.I. 807] at 11 n.8, nowhere do they outline any burden the Subpoena imposes on the Trusts.

<sup>10</sup> *See* Letter from Stephen M. Juris to Garland S. Cassada dated Sept. 5, 2012, attached as Exhibit O to the Debtors’ Counsel’s Decl.

<sup>11</sup> *See* Order Granting in Part and Denying in Part Debtors’ Motion for Leave to Serve Subpoena on Manville Trust, *In re Garlock Sealing Techs. LLC*, Case No. 10-31607 (Bankr. W.D.N.C. July 24, 2015) [D.I. 4721], ¶ 5, attached as Exhibit P to the Debtors’ Counsel’s Decl.

But more, DCPF's claims of undue burden are belied by the fact that the Bankruptcy Court Order requires the Debtors to reimburse all of DCPF's reasonable costs of compliance with the Subpoena. *See* Debtors' Counsel's Decl. Rider to Exs. A–K, Bankruptcy Court Order ¶ 19. Courts routinely overrule objections based on undue burden by shifting costs to the party seeking production. *See, e.g., Cash Today of Tex.*, [2002 WL 31414138](#), at \*4 (finding no undue burden where a party offered to copy “over 20,000 individual loan files” at its own expense, making the burden “substantially reduced such that the burden is not ‘undue’”).

DCPF also claims undue burden (again, without citing any case law saying that such an order is inappropriate) based on the fact that provisions of the Bankruptcy Court Order transform the Subpoena into a “mandatory injunction, requiring the DCPF to act in response to a court order.” DCPF Motion ¶ 17. This argument is as confusing as it is meritless.

The argument is meritless because there is nothing in the Federal Rules of Civil Procedure preventing a court order from serving as a rider to a subpoena. Indeed, unlike most subpoena riders, which are typically drafted by attorneys without any judicial oversight, the riders to the Subpoenas here are the Bankruptcy Court's Order, where the court carefully proscribed what information the Debtors could request and provided significant limitations on the Debtors' use of that information. The Subpoena is no different than any other subpoena issued with or

without a court's blessing: it commands DCPF and the Trusts to produce certain information, and if DCPF and the Trusts fail to comply with the Subpoenas, they would be subject to the same potential sanctions under Rule 45 as any other subpoena recipient who refuses to respond.

The argument is confusing because many of the provisions of the Subpoena that DCPF complains about *alleviate* the burdens that DCPF now complains that it suffers. Instead of seeking all data on all claimants in DCPF's database, the Subpoenas provide that the Debtors will provide a list of anonymized claimants, to ensure DCPF would not be required to disclose any PII, and that DCPF would provide notice to those claimants who matched in their database, and ultimately meet and confer with the Debtors about the same. It is odd for DCPF to complain about the first requirement (the notice to the claimants), which DCPF claims it is already contractually bound to provide, *see* Winner Decl. [D.I. 810] at ¶ 21, and the second (the meet-and-confer), which is required under the Federal Rules of Civil Procedure in addressing discovery related disputes. *See* [Fed. R. Civ. P. 1, 37](#). It is even odder given that both of these events have, to the Debtors' knowledge, already happened.

## **II. THE SUBPOENAS COMPLY WITH THIS COURT'S RULING IN *BESTWALL*.**

In *Bestwall*, this Court outlined safeguards it believed were appropriate to ensure that claimants' sensitive information was kept confidential. Most importantly, *Bestwall* emphasized the need for "additional safeguards" to protect

claimants' privacy because of the "sweeping personal data" that Bestwall sought. *See Bestwall*, [2021 WL 2209884](#), at \*6–7.

DCPF and the Trusts argue that the Subpoenas fail to comply with *Bestwall* because the Subpoenas do not limit their request to a sample of claimants nor authorize DCPF to "anonymize the Trust Claimants' data before producing it." Trusts Motion [D.I. 807] at 11–12.

DCPF and the Trusts are wrong. Instead, the Subpoenas comply with this Court's ruling in *Bestwall*. The Subpoenas were specifically tailored to match the subpoenas approved by the Bankruptcy Court in *DBMP*, a decision that post-dated this Court's decision in *Bestwall*, considered that decision, and, over the objections of DCPF, found the subpoenas in that case complied with this Court's *Bestwall* ruling. *See generally* Order Granting Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response, *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C. Feb. 17, 2022) (JCW) [D.I. 1340] (the "DBMP Order"), attached as Exhibit Q to the Debtors' Counsel's Decl.

First, unlike *Bestwall*, the Subpoenas here do not request "sweeping personal data."<sup>12</sup> To the contrary, the Subpoenas do not request *any* PII regarding the Matching Claimants (which the Trusts acknowledge). The Debtors already possess

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<sup>12</sup> *See* Trusts Motion [D.I. 807] at 10 n.6.

PII regarding the Matching Claimants (the claimants themselves provided it in connection with claims asserted against the Debtors) and have maintained that information securely for years. The Subpoenas only seek non-confidential information concerning whether the Matching Claimants submitted trust claims against the Trusts (but not how much they recovered), and how they were exposed to asbestos containing products. None of the information sought implicates any confidential information, and DCPF's and the Trusts' arguments to the contrary are a meritless distraction.

The Trusts note that the Bankruptcy Court in *DBMP* “recently stressed the need for debtors in estimation proceedings to use sampling.” Trusts Motion [D.I. 807] at 14. But even after making that and other similar statements related to sampling, the Bankruptcy Court ultimately found that the protections provided in the Subpoenas eliminated the risk of harm—making sampling unnecessary. *See* Transcript of Proceedings Held Aug. 11, 2022, *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C. Aug. 11, 2022), at 67:5–10, attached as Exhibit R to the Debtors’ Counsel’s Decl. (“I think sampling is something that I strongly favor, but I believe for the reasons that I’ve previously stated in a prior order that we have protections here and that there’s not a real risk of harm.”).

Moreover, the Debtors have a mechanism to anonymize all data before it is even produced by DCPF and the Trusts. Pursuant to the Bankruptcy Court Order,

the Matching Key contains the last name, social security number and a unique numerical identifier for each Claimant. DCPF uses the Matching Key to determine which Claimants asserted claims against the Trusts and either Debtor. For each Matching Claimant, DCPF produces only the requested trust data and the unique numerical identifier—no PII. The Matching Key must remain “separate” from other data “in a password-protected folder,” “accessible only to [authorized] individuals.” *See* Debtor’s Counsel’s Decl. Rider to Exs. A–K, Bankruptcy Court Order ¶ 9.

The Trusts argue that “the very existence of a matching key flies in the face of *Bestwall*,” and that “[n]o key decrypting the Trust Claimants’ data should exist[.]” Trusts Motion [D.I. 807] at 20–21. But as the *DBMP* court noted, without a Matching Key, Trust Discovery is useless: “the debtor needs to be able to match [Trust data with a specific claimant] or otherwise, this is unusable to it for its purposes.” *See* Debtor’s Counsel’s Decl. Ex. N, Dec. 16, 2021 Trans. at 134:17–18.

## **II. DCPF’S AND THE TRUSTS’ REMAINING OBJECTIONS HAVE NO MERIT.**

In a footnote, the Trusts argue that “there are additional grounds to quash the Aldrich Subpoenas, including ... for seeking disclosure of confidential commercial information under Rule 45(d)(3)(B)(i).” Trusts Motion [D.I. 807] at 11 n.8. The Trusts cite one case in support, where a court noted that it could place “certain conditions upon document production where the disclosure of a trade secret or other confidential business information is at issue”—there, agreements related to a sale of

a domain name. *Verisign, Inc. v. XYZ.com, LLC*, No. 15-mc-175-RGA-MPT, [2015 WL 7960976](#), at \*4 (D. Del. Dec. 4, 2015). The Trusts have not shown (because they cannot) that the information requested falls within this very narrow confidential business information exception outlined in Rule 45. And in any event, as the *Verisign* court held before ordering the documents produced pursuant to a protective order, there is “no absolute privilege for . . . confidential information.” [2015 WL 7960976](#), at \*4–5. The significant protections of the Bankruptcy Court Order answer any privacy concerns.

Similarly, DCPF argues that the information sought by the Subpoena constitutes “settlement communications” that are confidential “and protected by all state and federal privileges, including all settlement privileges.” DCPF Motion [DI 809] at ¶ 9. DCPF is wrong; the Subpoenas do not seek to learn any terms of confidential settlement agreements. The Subpoenas do not ask for any information concerning the amount of money paid to any claimant, the terms of any settlement, or anything about the negotiation of that settlement. And the details the Subpoenas do seek—whether a resolution was reached at all, and what were the circumstances of the claimant’s exposure to DCPF’s asbestos containing products—are not confidential. *See, e.g., Hershey Co. v. Promotion in Motion, Inc.*, No. 07-1601 (SDW), [2010 WL 11475252](#), at \*4 (D.N.J. Aug. 4, 2010) (noting that “the mere existence of a settlement agreement” is not confidential). Moreover, as courts in this

Circuit have found, “[t]o the extent that the disclosure of these documents risk disturbing a settlement agreement or requires [DCPF] to produce confidential information, a protective order could be requested to manage these risks.” *First Sealand Sur. v. Durkin & Devries Ins. Agency*, [918 F. Supp. 2d 362, 383–84](#) (E.D. Pa. 2013).

DCPF’s and the Trusts’ remaining arguments are similarly without merit. First, the Trusts appear to argue that the anonymization procedures outlined in the Bankruptcy Court Order are insufficient, as the Debtors share “the same counsel and expert ... as other debtors seeking identical Trust Claimant information.” Trusts Motion [D.I. 807] at 19–20. That overlap, according to the Trusts, “magnifies the risk that Trust Claimant data may be used or disclosed in a manner inconsistent with the restrictions contained” in the Subpoenas. *Id.* This argument is no more than unsupported speculation—and the only case cited in support shows just that. *Virginia Dep’t of Corr. v. Jordan*, [921 F.3d 180](#) (4th Cir. 2019) involved inmates that sought sensitive information about the maker of Virginia’s death penalty drug. There, the Court noted that because the provision of execution drugs was “a flash point in the ongoing debate over the death penalty,” the drug maker’s identity was “‘extremely potent’ confidential information,” such that it would be “‘humanly impossible’ to control its inadvertent disclosure.” *Id.* at 193. There was thus good reason to think a confidentiality order would not serve its intended purpose. *Id.*

Here, the Debtors do not seek sensitive information whatsoever—much less information on the order of that in *Jordan*. No special circumstances warrant an inference that the protective order will be ineffective.

Next, DCPF and the Trusts cite several cases assessing whether information should be made public under FOIA. *See* DCPF Motion [D.I. 809] ¶ 22; Trusts Motion [D.I. 807] at 17. None of those cases are about Rule 45 discovery. And here, the Debtors do not seek to make the data public. The data will be subject to robust protections that restrict access to certain categories of individuals with a “clear need to know or access the data,” and provide that the data can be used only for a specific purpose in connection with the Debtors’ bankruptcy cases. *See* Debtors’ Counsel’s Decl. Rider to Exs. A–K, Bankruptcy Court Order, ¶¶ 3, 9.

Last, the remaining cases cited similarly fail. *See Mannington Mills, Inc. v. Armstrong World Indus., Inc.*, [206 F.R.D. 525, 529, 532](#) (D. Del. 2002) (involving trade secrets); *Apex Fin. Options, LLC v. Gilbertson*, [2021 WL 965509](#), at \*5 (D. Del. Mar. 15, 2021) (quashing subpoena without discussing confidentiality). In short, none of these cases indicate that a subpoena seeking limited data concerning claimants’ Trust claims must be limited or quashed.

## CONCLUSION

For the foregoing reasons, the Court should deny the Motions in their entirety.

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**WORD COUNT CERTIFICATION**

The undersigned hereby certifies that Aldrich Pump LLC and Murray Boiler LLC's Brief in Opposition to: (A) Third-Party Asbestos Trusts' Motion to Quash or Modify Subpoenas; and (B) Delaware Claims Processing Facility, LLC's (I) Motion to Quash or Modify Subpoena and (II) Joinder contains 4,974 words in Times New Roman 14-point font, counted using Microsoft Word's word count feature.

*/s/ Kelly E. Farnan*  
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