

**OWENS-ILLINOIS ASBESTOS PERSONAL INJURY TRUST**  
**ALTERNATIVE DISPUTE RESOLUTION PROCEDURES**

**Effective July 7, 2023**

## **OWENS-ILLINOIS ASBESTOS PERSONAL INJURY TRUST ALTERNATIVE DISPUTE RESOLUTION PROCEDURES**

Pursuant to Section 5.10(a) of the Owens-Illinois Asbestos Personal Injury Trust Distribution Procedures (the “TDP”), the Owens-Illinois Asbestos Personal Injury Trust (the “Asbestos Trust”) hereby establishes the following Alternative Dispute Resolution (“ADR”) Procedures to resolve all “Asbestos Claims” (hereinafter referred to as “Asbestos Claims”) as that term is defined in the Third Amended Plan of Reorganization for Paddock Enterprises, LLC (the “Plan”). All capitalized terms herein shall be as defined and/or referenced within the TDP, the Plan, or the Owens-Illinois Asbestos Personal Injury Trust Agreement.

### **I. OVERVIEW**

The Asbestos Trust shall appoint a Private Adjudication Coordinator, at the cost of the Asbestos Trust, to administer these ADR Procedures. To initiate these ADR Procedures, the claimant must (1) make a written request to the Asbestos Trust, and (2) pay a \$250 processing fee. Within twenty (20) days of a claimant’s request for ADR, and receipt of the \$250 processing fee per individual ADR request, the Asbestos Trust will send the claimant an ADR packet containing the documents necessary to pursue the ADR process. If the \$250 processing fee is not paid within ninety (90) days of a claimant’s written request for ADR, the ADR shall be deemed withdrawn. These ADR Procedures shall not be construed as imparting to any claimant any substantive or procedural rights beyond those conferred by the TDP.

The ADR process available to the claimant includes both non-binding and binding elements. In addition, there are mandatory as well as voluntary options to be utilized by the claimant and the Asbestos Trust in proceeding toward settlement. As set forth below, the claimant may elect for a hearing to be held by videoconference. In such a case, the parties shall be responsible for paying their own respective costs and/or fees associated with the videoconference hearing, including participation by counsel.

These ADR Procedures must be pursued by claimants on an individual basis. As a general matter, claims of different claimants cannot be grouped together even if the claimants are represented by the same counsel, unless the Asbestos Trust, in its sole discretion, decides it would be expeditious to conduct ADR proceedings with respect to more than one claim involving differently exposed claimants with those claimants’ representative. In such a case, however, the arbitrator shall determine the compensability and or value of each such claim using the valuation factors set forth in Section 5.3(b)(2) of the TDP, and the claimants’ positions in the Asbestos Trust’s FIFO Processing and Payment Queues must be maintained separately.

The requisite steps in the ADR process are as follows, in order:

**Mandatory ADR Proceedings (Two Stages):**

**Stage One: Meet and Confer with Asbestos Trust Counsel**

**Stage Two: Arbitration (Binding or Non-Binding)**

**Initiation of ADR**

Within twenty (20) days of a claimant's request for ADR, and receipt of the \$250 processing fee, the Asbestos Trust will send the claimant an ADR packet containing a copy of these ADR Procedures and the following:

1. A Summary Outline of the ADR Procedures with the time limits identified;
2. Affidavit of Completeness;
3. Request for Meet and Confer with Asbestos Trust counsel;
4. Election Form and Agreement to submit to Binding Arbitration; and
5. Election Form and Agreement to submit to Non-binding Arbitration.

A claimant who wishes to proceed through the ADR process must engage in the Meet and Confer with Asbestos Trust counsel process before any form of arbitration. Only after either party rejects a non-binding arbitration award in accordance with these ADR Procedures may a claimant proceed to then commence a lawsuit in the tort system. It is the claimant's responsibility to comply with the ADR time deadlines. Although the deadlines may be extended by agreement or for cause shown, failure to comply with a deadline without obtaining an extension may result in withdrawal of the claim.

Promptly after a claimant fails to comply with a specified deadline without obtaining an extension, the Asbestos Trust shall send the claimant written notice of the failure to comply. If the claimant does not take any action on the claim, then thirty (30) days thereafter the claim will be deemed withdrawn under Section 6.3 of the TDP.

If the claimant requests arbitration, either binding or non-binding, the Asbestos Trust shall execute the appropriate election form and agreement. If the claimant requests binding arbitration, then the claimant and the Asbestos Trust waive their respective rights to file a lawsuit with respect to the Asbestos Claim as set forth in the TDP.

If either party rejects a non-binding arbitration award, and the claimant has otherwise complied with the requirements of these ADR Procedures and the Plan, then pursuant to Sections 5.11 and 7.6 of the TDP, the claimant may file a lawsuit against the Asbestos Trust in the Claimant's Jurisdiction, as that term is defined in Section 5.3(b)(2) of the TDP.

## **II. ADR PROCEEDINGS SUMMARY**

### **A. Showing Required**

As set forth in the TDP, in order to establish a valid Asbestos Claim, a claimant must make a demonstration, among other things, of exposure to an asbestos-containing product for which the Asbestos Trust bears legal responsibility.

### **B. Meet and Confer with Asbestos Trust Counsel**

Before proceeding to arbitration, a claimant, or if the claimant is represented by counsel, the claimant's counsel, must first participate in a conference with Asbestos Trust counsel. The claimant or claimant's counsel and Asbestos Trust counsel shall discuss all issues related to the compensability and/or value of the claim. The Meet and Confer with Asbestos Trust counsel shall be in the nature of a settlement conference. At the claimant's election, the Meet and Confer with Asbestos Trust counsel may be conducted by telephone or by videoconference (*See Attachment A*).

### **C. Binding and Non-binding Arbitration Procedures**

Upon completion of the Meet and Confer with Asbestos Trust counsel, the claimant may request non-binding or binding arbitration. Binding arbitration will be conducted in the "final offer" format also known as "baseball style" arbitration. If the claim is arbitrated in either the binding or non-binding format, then the arbitrator shall return an award no greater than the Maximum Value for the relevant Disease Category set forth in Section 5.3(b)(3) of the TDP, unless the claim qualifies as an Extraordinary Claim pursuant to Section 5.4(a) of the TDP. In that case, the arbitrator shall return an award no greater than the Maximum Value for such claims as also set forth in Section 5.4(a) of the TDP. *See TDP § 5.10(c)*.

If the claimant requests arbitration, either binding or non-binding, then the Asbestos Trust shall execute the appropriate Election Form and Agreement. Provided the claimant complies with these ADR Procedures, the Asbestos Trust may not decline the claimant's election of either binding or non-binding arbitration, but reserves all rights to reject any award in a non-binding arbitration proceeding. If the parties agree to engage in binding arbitration, then the claimant and the Asbestos Trust waive their respective rights to institute a lawsuit with respect to the Asbestos Claim as set forth in Sections 5.11 and 7.6 of the TDP.

## **III. RULES GOVERNING THE MEET AND CONFER WITH ASBESTOS TRUST COUNSEL**

Within ninety (90) days of a claimant's receipt of the ADR packet from the Asbestos Trust, the claimant must initiate the ADR process by returning to the

Asbestos Trust the Request for Meet and Confer with Asbestos Trust Counsel Form (Attachment A), along with an executed Affidavit of Completeness (Attachment B).

**A. Rules Governing the Meet and Confer with Asbestos Trust Counsel**

**1. Conference with Asbestos Trust Counsel**

Within thirty (30) days of the Asbestos Trust's receipt of the signed Request for Meet and Confer with Asbestos Trust Counsel Form, the Private Adjudication Coordinator shall schedule a conference with the claimant or, if the claimant is represented by counsel, claimant's counsel, and Asbestos Trust counsel. The claimant shall indicate on the form whether the claimant elects for the conference to be conducted by telephone or by videoconference. (*See Attachment A*) To the extent possible, the conference will occur within sixty (60) days of the Asbestos Trust's receipt of the signed Request for Meet and Confer with Asbestos Trust Counsel Form.

**2. Exchange of Information**

After the Meet and Confer with Asbestos Trust counsel, if either party believes that additional documentary evidence could be relevant to the determination of the claim's compensability or value, the parties shall produce any such evidence to the other side within thirty (30) days of the Meet and Confer with Asbestos Trust counsel conference call (the "Document Submission Period").

**3. Conclusion of the Meet and Confer with Asbestos Trust Counsel**

The Meet and Confer with Asbestos Trust counsel shall be deemed concluded (a) on the twenty-first day following the Meet and Confer with Asbestos Trust counsel Conference unless either party intends to submit additional information to the other side within the Document Submission Period or (b) if either side indicates the intention to submit such information, then twenty-one (21) days following the date of the end of the Document Submission Period.

**4. Submission of Written Offers After Meet and Confer with Asbestos Trust Counsel**

At the conclusion of the Meet and Confer with Asbestos Trust counsel, the parties shall exchange written settlement offers that shall remain open for ten (10) days. If, after the expiration of that ten (10) day period, neither party accepts the other's written offer or the parties do not otherwise settle the matter, then the claimant may request binding or non-binding arbitration by sending to the Asbestos Trust the appropriate signed Election Form and Agreement for either Binding or Non-Binding Arbitration. If the claimant does not take any action on the claim, then sixty (60) days thereafter the claim shall be deemed withdrawn under Section 6.3 of the TDP.

#### **IV. RULES GOVERNING NON-BINDING AND BINDING ARBITRATION**

##### **A. Election by the Claimant**

The Asbestos Trust shall review the Election Form and Agreement for Binding or Non-binding Arbitration (Attachments C and D) and within five (5) business days of receipt, the Asbestos Trust shall sign the Agreement and shall immediately send a fully signed Arbitration Agreement to the Private Adjudication Coordinator.

##### **B. Selection of the Arbitrator**

1. The Private Adjudication Coordinator shall maintain a list of arbitrators agreed upon by both the Asbestos Trust and the Asbestos Trust Advisory Committee (the "TAC"). As soon as reasonably possible after the receipt of the signed Arbitration Agreement, but no more than fifteen (15) days after the receipt of the signed Arbitration Agreement, the Private Adjudication Coordinator shall select three potential arbitrators from the agreed-upon list maintained by the Private Adjudication Coordinator. Arbitrator selections will be made, on a rotating basis nationally, by the Private Adjudication Coordinator. If a potential arbitrator is unable or unwilling to serve, then a replacement selection will be made prior to notifying the Asbestos Trust and the claimant of the three potential arbitrators selected.
2. Within seven (7) days of receipt of the list of the three potential arbitrators, the Asbestos Trust may select, and identify to the Private Adjudication Coordinator, one potential arbitrator to be stricken from the list. The Private Adjudication Coordinator shall then promptly notify the claimant of the Asbestos Trust's selection, whereupon, within seven (7) days of the receipt of such notification, the claimant may select, and identify to the Private Adjudication Coordinator, a second potential arbitrator to be stricken from the list. The Private Adjudication Coordinator shall promptly notify the arbitrator, and the parties, of the arbitrator selected to conduct the arbitration.

If either the Asbestos Trust or the claimant, or both, fails to exercise the right to strike an arbitrator from the list of potential arbitrators, the Private Adjudication Coordinator shall appoint from those potential arbitrators remaining, the arbitrator next in rotation on the Private Adjudication Coordinator's rotating list.

3. Any appointed arbitrator shall disclose to the Private Adjudication Coordinator any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or representatives. Upon

receipt of such information from the arbitrator or another source, the Private Adjudication Coordinator shall communicate the information to the parties and, if the administrator deems necessary, to the arbitrator and others. Upon objection of a party to the continued service, the Private Adjudication Coordinator shall determine whether the arbitrator should be disqualified and shall inform the parties of the decision, which shall be final.

**C. Extraordinary Claims and Those Reviewed by the Extraordinary Claims Panel**

In the event that the Extraordinary Claims Panel has deemed the claim worthy of extraordinary treatment, the Private Adjudication Coordinator shall forward to the arbitrator the written decision of the Extraordinary Claims Panel, and the parties may submit a final request that exceeds the values ascribed to the type of injury in the TDP. In such circumstances, the arbitrator may issue an award in accordance the final offer/request.

In the event that the Extraordinary Claims Panel declined to give extraordinary treatment to the claim, the arbitrator shall not be informed of the Extraordinary Claims Panel's decision. In such a case, the claimant must confine his/her request to the values ascribed to the type of injury in the TDP because the arbitrator may not award an amount in excess of the Maximum Value assigned to the appropriate category for the injury in the TDP. The Asbestos Trust will not engage in non-binding or binding arbitration, and reserves the unilateral right to withdraw from a signed non-binding or binding arbitration agreement at any time, where the claimant's final offer and award demand exceeds the Maximum Value assigned to the type of injury in the TDP and the Extraordinary Claims Panel has declined to give extraordinary treatment to the claim.

**D. "Baseball Style" or "Final Offer" Binding Arbitration**

All binding arbitration shall be conducted in the "final offer" format also known as "baseball style" arbitration. In the course of submitting the arbitration materials, as explained in these rules, the parties shall submit their final offer of settlement which shall also serve as the party's demand for arbitration award. The arbitrator must choose from one of these two demands in determining the amount of the arbitration award.

**E. Submission of Pre-Hearing Statements**

Within twenty (20) days of the appointment of the arbitrator, each party shall submit to the opposing party and to the arbitrator a written statement (not to exceed ten (10) double-spaced pages) containing that party's positions and arguments. Each party may then submit a supplement to its position paper (not to exceed five (5) double-spaced pages) to respond to the opposing party's positions and arguments and addressing issues raised at the pre-hearing

conference. Supplements must be sent to the opposing party and to the arbitrator within ten (10) days after the pre-hearing conference.

**F. Pre-Hearing Conference, Scheduling Arbitration Date, Format**

1. Within fifteen (15) calendar days of the receipt of both parties' statements, the Private Adjudication Coordinator shall contact the claimant, the arbitrator, and the Asbestos Trust to schedule the pre-hearing conference. The pre-hearing conference shall be presided over by the arbitrator. At the claimant's election, the pre-hearing conference may be held by telephone or by videoconference. If the claimant elects for the pre-hearing conference to be held by videoconference, the claimant shall notify the parties when the claimant provides the claimant's availability for the pre-hearing conference.
2. During the pre-hearing conference, the arbitrator shall schedule the date and select the location of the arbitration hearing either at the location of the arbitrator or a location mutually agreeable by the parties. The arbitration hearing should be scheduled not less than forty-five (45) days, and not more than sixty (60) days, from the date of the pre-hearing conference. The Private Adjudication Coordinator will transmit a confirmation notice of this date to the claimant and the Asbestos Trust. At the claimant's election, the arbitration hearing may be conducted by videoconference. If the claimant so elects, the claimant shall state that election in writing prior to the pre-hearing conference.
3. During the pre-hearing conference, the arbitrator shall seek to achieve agreement between the parties on:
  - a. narrowing the issues (through-methods including but not limited to stipulation of facts);
  - b. whether the claimant will appear at the hearing (at the claimant's sole discretion);
  - c. any legal issues; and
  - d. any other matters that will expedite the arbitration proceedings.

If appropriate, or if the parties do not agree on these issues, then the arbitrator must issue orders governing the process.



**G. No Discovery With Limited Exceptions**

There shall be no discovery except as specifically provided below. The purpose of the arbitration is to resolve differences between the Asbestos Trust and the claimant based only on the documents that have been previously submitted to the Asbestos Trust by the claimant and upon the documents relied upon by the Asbestos Trust to make a settlement offer to the claimant or to disallow the claim, as well as those documents permitted pursuant to Section IV.K.3.b herein. Except, however, if the Asbestos Trust commissions an independent medical examination or a third-party medical review upon which the Asbestos Trust relies in evaluating the claimant's claim, then the claimant may depose the medical professional conducting the review or examination after having a reasonable opportunity to study any report or written opinion generated by the medical professional.

**H. No Record of Proceedings Unless Requested by Arbitrator**

There will be no record or transcript of the proceedings unless and except if the arbitrator requests a transcript to assist him/her in reviewing the evidence or otherwise to aid in the decision making process. In the event an arbitrator requests a transcript prior to the arbitration, then the Asbestos Trust shall arrange for a court reporter and shall pay all expenses associated with the preparation of the transcript. In no event, however, will the transcript be made available to the parties, nor shall any time required for preparation of the transcript affect the time for the arbitrator to render a decision.

**I. Postponement of Hearing**

The arbitrator for good cause may postpone any hearing upon the request of a party or upon the arbitrator's own initiative, and shall also grant such postponement when all of the parties agree.

**J. Duration of Hearings**

The arbitrator shall complete the hearing in one (1) day except for good cause shown. The arbitrator shall set time limits on the respective presentations, and shall enforce those set limits. The parties shall request no more than three (3) hours per side for presentation of their cases.

**K. Procedure at Arbitration Hearing**

**1. Testimony Under Oath or Affirmation**

If the claimant or any other witness testifies, such testimony shall be under oath or affirmation administered by the arbitrator.

2. **Conduct of Hearing**

At the opening of the arbitration hearing, the arbitrator shall make a written record of the time, place, and date of the hearing, and the presence of the parties and counsel.

3. **Evidence**

- a. **Rules of Evidence:** The arbitrator is not required to apply the rules of evidence used in judicial proceedings; provided, however, that the arbitrator shall apply the attorney-client privilege and the work product privilege. The arbitrator shall determine the applicability of any privilege or immunity and the admissibility, relevance, materiality and weight of the evidence offered.
- b. **Admission of Evidence:** The evidence that the arbitrator may consider shall be limited to the following:
- (i) The documents supplied to the Asbestos Trust prior to the execution of the Affidavit of Completeness;
  - (ii) Non-binding or binding Arbitration Agreement;
  - (iii) Testimony of the claimant. The claimant may offer evidence regarding the nature and extent of compensable damages, including physical injuries, and/or the market share of Kaylo, if there is a claim of greater than average market share. The Asbestos Trust may cross-examine on these issues. At the claimant's option, a claimant's deposition, including videotaped testimony, shall be admissible into evidence in lieu of live testimony;
  - (iv) Any additional deposition testimony taken by the Asbestos Trust or the claimant, and provided to both sides, prior to the initiation of ADR;
  - (v) As set forth in TDP Section 5.10, the underlying data used to create the Individual Review model, if submitted to the claimant and his/her counsel at least ten (10) days prior to the arbitration. In addition, historical information provided by the claimant regarding similarly situated claimants in the tort system, if submitted to the Asbestos Trust at least ten (10) days prior to the arbitration;
  - (vi) Evidence presented by the Asbestos Trust that the claim has been settled, paid, dismissed, or otherwise resolved by Old O-I, but only if provided to the claimant or

his/her counsel at the time of the Asbestos Trust's filing of its initial pre-hearing statement described in Section IV.E. above;

- (vii) Evidence establishing that the information provided by the claimant on the Proof of Claim form is inaccurate, but only if provided to the claimant or his/her counsel at the time of the Asbestos Trust's filing of its initial pre-hearing statement described in Section IV.E. above;
- (viii) Evidence establishing that the claimant was not exposed to an asbestos-containing product for which the Asbestos Trust is responsible, including evidence related to product misidentification, but only if provided to the claimant or his/her counsel at the time of the Asbestos Trust's filing of its initial pre-hearing statement described in Section IV.E. above;
- (ix) In the case of Indirect Asbestos Claims, such evidence as the parties deem necessary or appropriate, but only if such evidence is provided to the other party at least ten (10) days prior to the arbitration;
- (x) Any evidence submitted by either party in connection with the Meet and Confer with Asbestos Trust counsel and/or the Document Submission Period following the Meet and Confer with Asbestos Trust counsel conference call; and
- (xi) Arguments of the claimant and the Asbestos Trust. The arguments shall be limited to the evidence contained and the issues raised in the documents or testimony referred to above and shall be limited to ½ hour. The arbitrator shall disregard any effort to introduce further evidence or issues in argument.

#### **L. Arbitration in the Absence of a Party or Representative**

The claimant may choose whether or not to attend the arbitration in person at his/her sole discretion. The arbitration may proceed in the absence of any party or representative who, after due notice, chooses not to be present, fails to be present, or fails to obtain a postponement if he/she desires to be present but cannot. An award shall not be made against a party solely for the failure to appear. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

**M. Conclusion of Hearing and Submission of Post-Hearing Briefs**

When the parties state that they have no further evidence or witnesses to offer, and after the parties have made their closing arguments, if any, the arbitrator shall declare the hearing closed. Post-hearing statements will be permitted only upon order of the arbitrator and shall be served upon the arbitrator and the other party to the arbitration no later than ten (10) days after the hearing is closed. Such statements shall be no longer than five (5) double-spaced pages. The time limit within which the arbitrator is required to make the award shall commence to run upon the closing of the hearing or the submission of post-hearing statements, whichever is later.

**N. Option to Waive Oral Hearings**

The parties may request a waiver of oral arbitration hearings. Oral arbitration hearings will only be waived if all parties consent.

**O. Arbitration Decision**

1. The arbitrator shall issue a decision no later than fifteen (15) calendar days after the date of the close of the hearing or submission of post-hearing statements, whichever is later.
2. The decision shall state only the amount of the award, if any. The decision shall not state the reasons for the award. An arbitrator shall not be permitted to award punitive, exemplary, trebled or other like damages or attorneys' fees. Pre-judgment and/or post-judgment interest and costs shall not be sought or allowed. The award shall be subject to the applicable payment percentage. The award shall dispose of all monetary claims presented to the arbitrator and shall determine fully the only issue to be decided pursuant to the Arbitration Agreement: the amount, if any, at which the claim value should be fixed. To assist the arbitrator, the Private Adjudication Coordinator will provide the arbitrator with a schedule setting forth the Disease Levels and the Scheduled, Average and Maximum Values associated with each category. Unless the Extraordinary Claims Panel has determined that a claim is entitled to extraordinary treatment during the claims review process, the arbitrator's award shall not exceed the Maximum Value amount for the appropriate Disease Level in the TDP.

**P. Payment of Award**

Pursuant to the terms of the Arbitration Agreement, the Asbestos Trust will promptly send to the claimant the appropriate release. The Asbestos Trust will then pay the claim based upon the binding or, if accepted by both parties, the non-binding award, in accordance with the TDP provisions in effect at that time.

**Q. Rejection of Non-binding Award**

1. A party in a non-binding arbitration proceeding that wishes to reject the award must notify the other party within thirty (30) days from the date a non-binding award is issued. If no rejection is received or sent by the Asbestos Trust, then the decision will stand and the award will be deemed accepted by both parties and the Asbestos Trust will promptly send to the claimant the appropriate release. The Asbestos Trust will then pay the claim in accordance with the TDP in effect at that time.

**2. Procedure for Rejected Award**

**a. Rejection by Claimant**

If claimant has sent the Asbestos Trust timely notification of rejection of a non-binding award and wishes to pursue the claim through litigation, then the claimant must notify the Asbestos Trust through correspondence postmarked no later than sixty (60) days from the date of the non-binding award. If notification is received within the sixty (60) day deadline and claimant wishes to pursue the claim, then the Asbestos Trust will within fifteen (15) days of receipt of this notification send the claimant an authorization to commence litigation.

**b. Rejection by Asbestos Trust**

If the Asbestos Trust rejects the non-binding award, then claimant may elect binding arbitration or request that the Asbestos Trust forward the authorization to commence litigation.

**V. GENERAL ADR PROCEDURES GOVERNING MEET AND CONFER WITH ASBESTOS TRUST COUNSEL, NON-BINDING ARBITRATION, AND BINDING ARBITRATION**

**A. ADR Submissions**

The claimant's submissions (with the exception of the binding arbitration's written argument) will be reviewed by the Asbestos Trust claims department before they are submitted to the arbitrator. If they contain materials not previously submitted in support of the claim, then the Asbestos Trust claims department will have thirty (30) days in which to review the additional information and determine the effect, if any, it would have on the Asbestos Trust's evaluation of the claim. In appropriate situations, a new offer may be made to the claimant.

If an attorney or other agent represents the claimant, both the attorney and the claimant must also sign the Election and Agreement for Binding Arbitration. The

attorney or agent may not sign in place of, or for, the claimant unless the claimant is incapacitated, incompetent or deceased and the attorney or agent has been designated legally to act on the claimant's behalf. Documentation of this legal designation will be required.

**B. No Grouping or Bundling of Claims**

As a general matter, there shall be no grouping or bundling of claims by separate claimants at any stage of the ADR or arbitrations even if the claims are related and/or the claimants have the same counsel. Each claimant must proceed individually through the ADR and arbitration processes with all claims that claimant may have or may represent. This provision is intended to separate claims of different exposed persons and has no effect upon multiple claims brought by a claimant's representative, such as heirs of a deceased worker. However, the Asbestos Trust, in its sole discretion, may decide that it would be expeditious to allow the conduct of an arbitration proceeding with respect to more than one claim of different exposed persons, provided that the arbitrator individually values each such claim in accordance with the valuation factors set forth in Section 5.3(b)(2) of the TDP, and provided that the respective claimants' separate positions in the Asbestos Trust's Processing and Payment Queues are maintained.

**C. No Ex Parte Communication**

There shall be no ex parte communication between the arbitrator and any counsel or party in any matter. All correspondence between the arbitrator and the parties will be facilitated by the Private Adjudication Coordinator.

**D. Claims and Defenses**

All available claims and defenses which exist under the law subject to the claimant's election under the TDP shall be available to both sides.

**E. Costs of ADR**

**1. ADR Expenses**

The Asbestos Trust will pay the arbitrator's fee for binding arbitration up to two thousand dollars (\$2,000.00) per claim depending on the length of the hearing. The Asbestos Trust and the claimant will equally split the cost of the arbitrator's fee for non-binding arbitration up to two thousand dollars (\$2,000.00) per claim depending on the length of the hearing. The Asbestos Trust will assume the costs of meeting and hearing facilities for arbitration. Claimants will pay their costs and attorney fees, including any expenses incurred should the claimant testify.

## **2. Processing Fee**

As stated above, the claimant must pay a \$250 processing fee to initiate these ADR Procedures.

## **F. Waiver of Objection to Rules Infraction**

Either party who continues with a non-binding arbitration or binding arbitration proceeding after knowing that any provision or requirement of the applicable rules has not been complied with, and who fails to state a timely objection in writing to the arbitrator shall be deemed to have waived the right to object. A timely objection by a claimant must be stated in writing and mailed to the Asbestos Trust with instructions to forward the objection to the Private Adjudication Coordinator and to the arbitrator. A timely objection by the Asbestos Trust will be mailed to the claimant and to the Private Adjudication Coordinator with instructions to forward to the arbitrator.

## **G. Serving of Notices and Other Papers**

Each party to the ADR and arbitration agreements shall be deemed to have consented that any papers, notices, or processes necessary or proper for the initiation or continuation of ADR and arbitration proceedings under these rules may be served upon such party as follows:

1. By regular U.S. mail or overnight courier addressed to such party or their attorneys at their last known address;
2. By facsimile transmission, if a copy of the transmitted papers is mailed addressed to the party or their attorney at their last known address within twenty-four (24) hours of the facsimile transmission;
3. By personal service, within or without the state where the arbitration is to be held, whether the party is within or without the United States of America; or
4. By electronic mail, if all parties agree to such service.

## **H. Time Limits Triggered Upon Receipt**

1. Documents sent by U.S. mail under these rules shall be deemed received three (3) business days after the date of postmark. Documents sent via overnight mail shall be deemed received on the next business day after mailing.
2. Documents sent via facsimile transmission or electronic mail shall be deemed received on the business day that the transmission is received.

**I. Exclusion of Liability**

Neither the Private Adjudication Coordinator, nor the arbitrator shall be liable to any party for any act or omission in connection with any evaluation conducted under these rules.

**J. Relationship of Rules to Request for Meet and Confer with Asbestos Trust Counsel, Non-binding Arbitration Agreement or Binding Arbitration Agreement**

These Rules shall be deemed a part of, and incorporated by reference in, every duly executed ADR agreement or Arbitration Agreement and shall be binding on all parties.

**K. Arbitrator Immunity**

Arbitrators who serve pursuant to these rules shall have the same immunity as judges for their official acts.

**L. Jurisdiction**

Any dispute under these rules shall be subject to the jurisdiction of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

**M. Statement of Confidentiality**

1. All ADR and arbitration proceedings and information relating to the proceeding will be confidential. Neither party shall disclose the information obtained during the proceedings, or the valuation placed on the case by an arbitrator to anyone or use such information or valuation in any further proceeding except as necessary to maintain the Asbestos Trust’s obligation to report to the Bankruptcy Court and to provide ongoing evaluation by the Asbestos Trust, the TAC, and the Future Claimants’ Representative. Except for documents prepared by a non-party which are introduced as evidence before an arbitrator, any document prepared by another party, attorney, or other participant in anticipation of the ADR is privileged and shall not be disclosed to any court or arbitrator or construed for any purpose as an admission against interest.
2. All ADR and arbitration proceedings shall be deemed a settlement conference pursuant to Rule 408 of the Federal Rules of Evidence. Except by agreement of the parties, the parties will not introduce into evidence in any other proceedings the fact that there was an arbitration, the nature or amount of the award, and written submissions may not be used for purposes of showing accord and satisfaction or res judicata. In



binding arbitration, the decision of the arbitrator may be admissible in the event the claimant improperly seeks to litigate the claim. The binding arbitration award shall be admissible in support of a motion to enjoin such litigation. No arbitrator shall ever be subpoenaed or otherwise required by any party or any third party, to testify or produce records, notes, or work product in any future proceedings.

**N. Amendments**

Except as otherwise ruled by the Bankruptcy Court, these rules, as they may from time to time be amended by the Asbestos Trustees, with the consent of the TAC and the Future Claimants' Representative, will be binding on all parties in the form in which they are in force on the date the claimant signs the election agreement.

**O. Time Limits**

The time limits included in these ADR Procedures are to be strictly enforced. Any time limit set forth herein may be extended by agreement of the parties or for cause shown to the arbitrator presiding over the particular arbitration proceeding. Any request for extension, however, shall first be made to the opposing party and then, if the parties cannot agree, shall be submitted to the Private Adjudication Coordinator who will request a ruling from the arbitrator.

Although the deadlines may be extended by agreement or for cause shown, failure to comply with a deadline without obtaining an extension may result in withdrawal of the claim. Promptly after a claimant fails to comply with a specified deadline without obtaining an extension, the Asbestos Trust shall send the claimant written notice of the failure to comply. If the claimant does not take any action on the claim, then thirty (30) days thereafter the claim will be deemed withdrawn under Section 6.3 of the TDP and is no longer eligible for the ADR process.