

**PORTER HAYDEN COMPANY BODILY INJURY TRUST**  
**ALTERNATIVE DISPUTE RESOLUTION PROCEDURES**

# **THE PORTER HAYDEN BODILY INJURY TRUST**

## **ALTERNATIVE DISPUTE RESOLUTION PROCEDURES**

Pursuant to Section 5.10 of the Porter Hayden Company Trust Distribution Procedures (the “TDP”), the Porter Hayden Bodily Injury Trust (the “BI Trust”) hereby establishes the following Alternative Dispute Resolution (“ADR”) Procedures (“Procedures”) to resolve disputed present and future Asbestos Personal Injury Claims as that term is defined in the Porter Hayden Company Plan of Reorganization (hereinafter referred to, for all purposes, as “BI Trust Claims”). All capitalized terms herein shall be as defined and/or referenced within the TDP.

### **I. OVERVIEW**

The ADR process is available to Claimants who have filed claims with the BI Trust and have complied with TDP section 5.10(b). Under no circumstances may a Claimant bring suit against the BI Trust (or continue a suit previously brought but stayed) without first complying with these Procedures. These Procedures shall not be construed as imparting to any Claimant any substantive or procedural rights beyond those conferred by the TDP. These Procedures shall be deemed a part of, and incorporated by reference in, every arbitration and shall be binding on all parties.

A Claimant must notify the BI Trust in writing that the Claimant rejects the settlement offer or the Claimant disagrees with a determination of no value and seeks ADR. Within thirty (30) days of such written request the BI Trust will provide a copy of the current TDP and the Alternative Dispute Resolution Procedures to the Claimant by referring Claimant to the website or providing a hard copy if requested.

The Claimant may request arbitration, either binding or non-binding, by executing the Request for Arbitration Election Form attached to these procedures. If both parties agree to binding arbitration, then the Claimant and the BI Trust waive their respective rights to seek a jury trial as set forth in the TDP.

It is the Claimant’s responsibility to timely comply with the ADR deadlines. The deadlines may be extended by agreement or for good cause shown. Promptly after a Claimant fails to comply with a specified deadline without obtaining an extension, the BI 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 If the Claimant does not take any action on the claim, then thirty (30) days thereafter the claim will be deemed withdrawn.

## **II. ADR PROCEEDINGS SUMMARY**

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

A Claimant may request binding or non-binding arbitration by filing a Request for Arbitration Election Form on the form prescribed by the BI Trust, a copy of which is attached hereto. The Request for Arbitration must be submitted to the BI Trust within ninety (90) days of receipt of the ADR procedures from the BI Trust. The Claimant must specify whether he/she elects binding or non-binding arbitration. The BI 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. A decision made pursuant to binding arbitration shall have the effect of conclusively liquidating the Claimant's BI Trust Claim, and neither the BI Trust nor the Claimant shall have the right to appeal or contest any such award (except for such rights as are conferred by the Federal Arbitration Act or a similar statute of a state having jurisdiction over the matter) and the Claimant and the BI Trust have waived their right to seek a jury trial as set forth in the TDP.

Either party may reject a non-binding arbitration award. 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 the Claimant may commence a lawsuit against the BI Trust in the Claimant's Jurisdiction, as that term is defined in Section 5.3(b)(2) of the TDP.

## **III. PROCEDURES GOVERNING NON-BINDING AND BINDING ARBITRATION**

### **A. Appointment of the Arbitrator**

1. Panel of Arbitrators - The BI Trust shall establish and maintain a panel of five to seven qualified Arbitrators (the "Arbitration Panel") approved by the TAC and the Legal Representative. The BI Trust shall randomly rotate cases among the Arbitration Panel as cases are received, and select a single Arbitrator to administer each arbitration. An Arbitrator may be removed from the Arbitration Panel by the Trustee with the consent of the TAC and the Legal Representative. In the event of resignation, death or removal of an Arbitrator, the Trustee shall appoint a new Arbitrator with the consent of the TAC and the Legal Representative.
2. Qualifying the Arbitrator - No member of the Arbitration Panel shall serve as an Arbitrator in any arbitration in which that person has any financial or personal interest. An Arbitrator shall disclose any circumstances likely to create a reasonable appearance of partiality toward a party either directly or through a professional or personal association.

3. Arbitrator's Fee - Arbitrators shall be paid the hourly rate for the jurisdiction in which the Arbitrator resides, however, the Arbitrator is capped at \$3,500 per arbitration. The Arbitrator will be reimbursed for any reasonable expenses. The Arbitrator's fee and any reasonable expenses of the Arbitrator will be evenly split between the BI Trust and the Claimant. Reimbursement to the Arbitrator shall be made promptly upon receipt of the Arbitrator's invoice.
4. Immunity for Arbitrators - Arbitrators who serve pursuant to these Procedures shall have the same immunity as judges for their official acts.

## **B. Arbitration Process**

1. Pre-Hearing Conference Call - The BI Trust will schedule a pre-hearing conference call with the Arbitrator and Claimant within forty-five (45) days after the receipt of the Request for Arbitration Election Form. At that time the Arbitrator will provide the briefing schedule, as well as the schedule for submission of motions in limine and exhibits. The Arbitrator will attempt to seek agreement between the parties to narrow the issues, and determine any legal issues, whether Claimant or other witnesses will attend, and any other matters that may expedite the hearing.
2. Timelines - Subsequent to the Pre-Hearing Conference Call, the Arbitrator shall circulate to the Arbitrator and the Claimant in writing all deadlines for filing their submissions, and the date, time and arrangements for any hearing.
3. Telephonic Arbitrations - All arbitrations will occur telephonically.
4. Submission on Papers Only - If both parties consent, arbitrations may be based solely on written submissions.
5. Length of Hearing - The hearing will be limited to three (3) hours, with each side being allowed no more than 1.5 hours.
6. Communication with Arbitrator - There shall be no ex parte communications with the Arbitrator, except to allow the BI Trust to schedule matters.

## **C. Submission of Papers**

1. Briefs - Briefs shall be submitted to the Arbitrator and provided to the other party at the same time. Briefs shall be limited to ten (10) double-spaced pages.

2. Reply Briefs - Reply briefs may be filed if allowed by the Arbitrator. Reply briefs are limited to five (5) double-spaced pages.
3. Post-hearing Briefs - Post-hearing briefs will be permitted only upon order of the Arbitrator and shall be served upon the Arbitrator 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 determination shall commence to run upon the closing of the hearing or the submission of post-hearing statements whichever is later.

#### **D. Evidence**

1. 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.
2. Admission of Evidence - The evidence that the Arbitrator may consider shall be limited to the information relevant to the Individual Review factors in section 5.3(b)(2) of the TDP. In addition, each party may submit information from a physician where the medical criteria are an issue. Each party may submit product identification information where satisfaction of exposure criteria is an issue. The evidence may include, but is not limited to, documents submitted by the Claimant in his/her proof of claim, testimony of the Claimant, testimony from the BI Trust, historical information from the BI Trust regarding similarly situated Claimants in the tort system and settled by the BI Trust. Evidence not previously provided to the other party must be provided to the opposing party ten (10) days prior to the arbitration.
3. No Discovery With Limited Exceptions - There shall be no discovery except, however, if the BI Trust commissions an independent medical examination or a third-party medical review upon which the BI 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.
4. Evidence by Affidavit - The Arbitrator may receive and consider the evidence of witnesses by affidavit, deposition or, in the case of medical or other expert opinions, by report, and shall give it only such weight as the

Arbitrator deems it entitled to after consideration of any objection made to its admission.

5. Expenses of Witnesses - The expenses of witnesses for either side shall be paid by the party calling such witnesses.

#### **E. 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. Arbitration in the Absence of a Party or Representative - The Claimant may choose whether or not to attend the arbitration. 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.
3. Proceedings – Each party will be permitted a brief opening statement and brief closing argument. The Claimant may ask for an opportunity to rebut the BI Trust's evidence and arguments. Direct and cross-examination of witnesses shall be permitted.

#### **F. Arbitration Decision**

1. Timing of Decision - The Arbitrator shall issue a decision no later than thirty (30) calendar days after the date of the close of the hearing or submission of post-hearing briefs, whichever is later. If neither party in non-binding arbitration rejects the decision within thirty (30) days of the date of the Arbitrator's decision, the award will be deemed accepted.
2. Written Decision - The decision shall state only the amount of the award, if any, and shall not state reasons for the award. An Arbitrator shall not be permitted to award punitive, exemplary, trebled or other like damages; prejudgment or post-judgment interest; attorneys' fees or costs; or any other award beyond what is allowed in the TDP. The award shall dispose of all monetary claims presented to the Arbitrator and shall determine fully only the issue to be decided pursuant to the arbitration agreement: the amount, if any, at which the claim value should be fixed.

## **G. Procedure for Rejected Non-Binding Award**

1. Timing of Rejection – If a party seeks to reject a non-binding award the other party must be notified in writing of the rejection within 30 days of the Arbitrator’s decision.
2. Rejection of Non-Binding Award
  - a. By the Claimant - If the Claimant rejects the non-binding arbitration award, then the Claimant may elect binding arbitration or proceed to the tort system. The Claimant must send notification of this election within sixty (60) days of the Claimant's rejection of the arbitration award.
  - b. By the BI Trust - If the BI Trust rejects the non-binding arbitration award, then the Claimant may elect binding arbitration or proceed to the tort system. The Claimant must send notification of this election within sixty (60) days of the BI Trust's rejection of the arbitration award.

## **H. Procedure for Binding Award**

1. Effect of Binding Award - A decision made pursuant to binding arbitration shall have the effect of conclusively liquidating the Claimant’s Claim, and neither the BI Trust nor the Claimant shall have the right to appeal or contest any such award, except for such rights as are conferred by the Federal Arbitration Act or a similar statute of a state having jurisdiction over the matter. Upon receipt of a release satisfactory to the BI Trust, disbursement will be made to the Claimant.

## **IV. GENERAL ADR PROCEDURES**

### **A. No Grouping or Bundling of Claims**

1. No Bundling of Claims - As a general matter, there shall be no grouping or bundling of claims by separate Claimants at any stage of arbitration. However, the BI Trust, in its sole discretion, may decide that it would be expeditious to allow the conduct of arbitration proceedings 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 BI Trust’s FIFO Processing and Payment Queues are maintained.

**B. 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 Arbitration proceedings under these Procedures 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; or
2. By facsimile transmission; or
3. By electronic mail if agreed upon by all parties.

**C. Service Upon the BI Trust**

1. Any notice that a Claimant is required to serve under the Procedures shall be served to the following address:

Gardner M. Duvall  
Whiteford, Taylor & Preston, LLP  
7 St. Paul Street  
Baltimore, Maryland 21202  
Telephone: (410) 347-9417  
Facsimile: (410) 223-4317  
E-mail: [gduvall@wtplaw.com](mailto:gduvall@wtplaw.com)

**D. Time Limits Triggered Upon Receipt**

1. Documents sent by U.S. mail under these Procedures 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 shall be deemed received on the business day that the transmission is received.
3. Documents sent via electronic transmission shall be deemed received on the business day that the transmission is received.

**E. Jurisdiction**

1. Disputes - Any dispute concerning the application of these Procedures shall be decided by the Arbitrator. Any dispute subject to the Federal Arbitration Act shall be subject to the jurisdiction of the District Court of Maryland.

**F. 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 BI Trust's obligation to report to the Bankruptcy Court and to provide ongoing evaluation of claim resolutions by the BI Trust, TAC and Legal 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 arbitration is privileged and shall not be disclosed to any court or Arbitrator or construed for any purpose as an admission against interest.
2. All 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 arbitration, or the nature or amount of the award. An award may be used for purposes of showing accord and satisfaction or res judicata, or to enforce the award. A binding arbitration award shall be admissible in support of a motion to enjoin any litigation which was waived by electing binding arbitration. No Arbitrator will 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.

**PORTER HAYDEN COMPANY  
REQUEST FOR ARBITRATION ELECTION FORM**

I, \_\_\_\_\_ (“Claimant”), Claim No. \_\_\_\_\_,  
hereby elect and agree to either:

Elect **Non-binding Arbitration and** submit all disputes with the BI Trust relating to my claim to Non-Binding Arbitration under the terms set forth for Non-Binding Arbitration procedure established by the BI Trust. I have been provided with a copy of the Procedures relating to Non-Binding Arbitration established by the BI Trust. I understand and agree to those Procedures in the course of the Non-Binding Arbitration.

OR

Elect **Binding Arbitration** and agree to submit all disputes with the PI Trust relating to my claim to Binding Arbitration under the terms set forth for Binding Arbitration procedure established by the BI Trust. I have been provided with a copy of the Procedures relating to Binding Arbitration established by the BI Trust. I understand and agree to those rules in the course of the Binding Arbitration. I understand that as a result of this agreement if accepted by the BI Trust, I will waive my rights to litigate my claim in Court including the right to trial by jury and I will be bound by the arbitration award.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Claimant

\_\_\_\_\_  
Claimant’s Attorney

**Claimant and attorney must both sign**

Accepted and Consented to:

Porter Hayden Company Asbestos Trust

By: \_- \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

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