

## **PORTER HAYDEN COMPANY**

### **ASBESTOS TRUST DISTRIBUTION PROCEDURES**

The Porter Hayden Company Asbestos Trust Distribution Procedures (“TDP”) contained herein provide for resolving all Asbestos Bodily Injury Claims and Demands as defined in the Plan of Reorganization of Porter Hayden Company under Chapter 11 of the United States Bankruptcy Code, dated as of March 21, 2005 (the “Plan Filing Date”) (as such plan may be amended, modified, or supplemented from time to time, the “Plan”) caused by exposure to asbestos-containing products for which Porter Hayden Company (“Porter Hayden”) has legal responsibility (hereinafter for all purposes of this TDP defined as the “Asbestos Bodily Injury Claims”), as provided in and required by the Porter Hayden Company Bodily Injury Trust Agreement (the “Trust Agreement”). The Plan and Trust Agreement establish the Porter Hayden Company Asbestos Trust (the “Trust”). The Trustee of the Trust (the “Trustee”) 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 and equitable treatment for all Asbestos Bodily Injury Claims that may presently exist or may arise in the future in substantially the same manner.

**1.2 Interpretation.** 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 Asbestos Bodily Injury 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 Asbestos Bodily Injury Claims equitably and in accordance with the requirements of Section 524(g) of the Bankruptcy Code. This TDP furthers that goal by setting forth procedures for processing and paying the liquidated value of all Asbestos Bodily Injury Claims (subject to the Payment Percentage) against the trust (the “Trust”) 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 civil courts. To this end, this TDP establishes a schedule of five asbestos related diseases (“Disease Levels I-V”), all of which have presumptive medical and exposure requirements (“Medical/Exposure Criteria”) and 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 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 settlement history of Porter Hayden and the rights that claimants would have in the tort system absent the bankruptcy.

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

**2.2(a) In General.** All Claimants holding an Asbestos Bodily Injury Claim must file the claim with the Trust in accordance with the proof of claim provisions of Section 6.1 as provided below. Upon filing of the Asbestos Bodily Injury Claim, the Claim shall be placed in the FIFO Processing Queue defined in Section 5.1(a)(1). The Trust shall take all reasonable steps to resolve Asbestos Bodily Injury 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 Asbestos Bodily Injury Claims required to exhaust the Maximum Annual Payment and the Maximum Available Payment from the Trust (as those terms are described below).

**2.2(b) Asbestos Bodily Injury Claims.** All Asbestos Bodily Injury Claims shall be processed based on their place in the Trust's FIFO Processing Queue to be established pursuant to Section 5.1(a) below. The Trust shall liquidate all Asbestos Bodily Injury Claims that meet the presumptive Medical/Exposure Criteria of Disease Levels I – V (set forth below in Section 5.3(a)(3)) under the Expedited Review Process described in Section 5.3(a) below. Asbestos Bodily Injury Claims involving Disease Levels I – V 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 civil courts.

Even if an Asbestos Bodily Injury Claim does meet the presumptive Medical/Exposure criteria and is eligible for the Expedited Review Process, Asbestos Bodily Injury Claims involving Disease Levels I - V may in addition or 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 an Asbestos Bodily Injury 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.

Based upon the available claims settlement history of Porter Hayden, 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 Trust shall use its reasonable best efforts to ensure that the Trust processes claims such that over time the combination of settlements at the Scheduled Values and those resulting from the Individual Review Process will not exceed the Average Values also set forth in Section 5.3(b)(3). In any event, all payments to a Claimant from the Trust shall be subject to the Maximum Annual Payment, the Maximum Available Payment limitations that are in effect at the time of payment, and the Payment Percentage in effect at the time the offer is made.

All unresolved disputes over a Claimant's medical condition, exposure history and/or the liquidated value of an Asbestos Bodily Injury Claim shall be subject to binding or non-binding arbitration as provided in Section 5.10 below, at the election of the Claimant, under procedures that are provided in Attachment A hereto. Asbestos Bodily Injury Claims that are the subject of a dispute with the Trust that cannot be resolved by either binding or non-binding arbitration may enter the civil courts as provided in Sections 5.11 and 7.6 below. However, if and when a Claimant obtains a judgment in the civil courts, the judgment will be payable (subject to the Payment Percentage) and the Maximum Annual Payment and Maximum Available Payment) as provided in Section 7.7 below.

**2.2(c) Inflation Adjustment of Liquidated Values.** Beginning January 1, 2022 the liquidated value of each Asbestos Bodily Injury Claim shall be increased from the values otherwise set forth herein at an annual inflation rate of two percent (2%) applied on a compounding basis. The inflation-adjusted value of each Asbestos Bodily Injury Claim shall be determined at the time the offer is made to resolve the Claim. If more than one offer is made, the inflation adjustment is the one applicable at the date of the initial offer.

**2.3 Application of the Payment Percentage for Asbestos Bodily Injury Claims.** After the liquidated value of an Asbestos Bodily Injury Claim 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 civil courts, the Claimant will ultimately receive a pro-rata share of that value based on a Payment Percentage described in Section 4.2 below.

The initial Payment Percentage for Asbestos Bodily Injury Claims (the "Initial Payment Percentage", as may be adjusted from time to time, the "Payment Percentage"), shall be

established by the Trust with the consent of the Trust Advisory Committee for the Asbestos Bodily Injury Claimants (the “Trust Advisory Committee”) and the Legal Representative for Future Asbestos Bodily Injury Claimants (the “Legal Representative”) (who are described in Section 3.1 below) with respect to all Claims paid under this TDP. The Initial Payment Percentage is to be calculated by the Trust on the assumption that the Average Values set forth in Section 5.3(b)(3) below will be achieved with respect to existing present Claims and projected future Claims involving Disease Levels I – V.

The Payment Percentage for Asbestos Bodily Injury Claims may be adjusted upwards or downwards from time to time by the Trust with the consent of the Trust Advisory Committee and the Legal Representative to reflect then-current estimates of the Trust's assets and its 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 will not receive additional payments, except where doing so is economically and administratively reasonable. Because there is uncertainty in the prediction of both the number and severity of future Claims, and the amount of the Trust's assets, no guarantee can be made of any Payment Percentage of an Asbestos Bodily Injury Claim's liquidated value.

**2.4 Trust’s Determination of the Maximum Annual Payment and Maximum Available Payment for Asbestos Bodily Injury Claims.** The Trust shall estimate or model the amount of cash flow anticipated to be necessary over its entire life to ensure that funds will be available to treat all present and future Asbestos Bodily Injury Claims as similarly as possible. In each year, the Trust will be empowered to pay out all of the income earned during the year (net of any taxes payable in respect thereto), together with a portion of its principal, calculated so

that the application of the assets of the Trust over its life shall correspond with the needs created by the anticipated flow of Claims (the “Maximum Annual Payment”), taking into account the Payment Percentage provisions set forth in Sections 2.3 above and 4.2 below. The Trust’s distributions to all Claimants for that year shall not exceed the Maximum Annual Payment determined for that year.

In distributing the Maximum Annual Payment, the Trust shall first allocate the amount in question to outstanding Pre-Petition Liquidated 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 liquidated Asbestos Bodily Injury Claims. In the event there are insufficient funds in any year to pay the total number of outstanding Pre-Petition Liquidated Claims, the available funds shall be paid to the maximum extent to Claimants based on their place in the FIFO Payment Queue.

**2.5 Claims Payment Ratio for Asbestos Bodily Injury Claims.** No claims payment ratio has been set because the assets of the Trust are anticipated to be sufficient to pay a sufficient percentage of the value of the Claims expected to be asserted against the Trust. However, should the assets and cash flow of the Trust prove insufficient to meet the liabilities as they come due, the Trust, with the consent of the Trust Advisory Committee and the Legal Representative, may establish a claims payment ratio to control the distribution of Trusts based upon the varying degrees of severity and malignancy of the Asbestos Bodily Injury Claims.

**2.6 Indemnity and Contribution Claims.** As set forth in Section 5.6 below, Asbestos Bodily Injury Claims for indemnity and contribution, if any, shall be subject to the same categorization, evaluation, and payment provisions of this TDP as all other Asbestos Bodily Injury Claims.

## SECTION III

### TDP Administration

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

**3.2 Consent and Consultation Procedures.** In those circumstances in which consultation or consent is required, the Trust will provide written notice to the Trust Advisory Committee and the Legal Representative of the specific amendment or other action that is proposed. The Trust 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), or the consent process described in Sections 5.7(b) and 6.6(b) of the Trust Agreement, respectively.

## SECTION IV

### Payment Percentage; Periodic Estimates

**4.1 Uncertainty of Porter Hayden's Injury Asbestos Liabilities.** As discussed above, there is inherent uncertainty regarding Porter Hayden's total asbestos-related tort



liabilities, as well as the total value of the assets available to the Trust to pay Asbestos Bodily Injury Claims. Consequently, there is inherent uncertainty regarding the amounts that holders of Asbestos Bodily Injury Claims will receive. To seek to ensure substantially equivalent treatment of all present and future Asbestos Bodily Injury Claims, the Trust must determine from time to time the percentage of liquidated value that holders of present and future Asbestos Bodily Injury Claims will 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 Payment Percentage for Asbestos Bodily Injury Claims shall be set by the Trust, with the consent of the Trust Advisory Committee and the Legal Representative, and shall apply to all Asbestos Bodily Injury Claims.

The Payment Percentage shall be subject to change (either increased or decreased) pursuant to the terms of this TDP and the Trust Agreement if the Trust determines that an adjustment is required. No less frequently than once every three (3) years, commencing with the first (1<sup>st</sup>) day of January occurring after the Plan is consummated, the Trust 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 Trust Advisory Committee and the Legal Representative.

The Trust shall also reconsider the then applicable Payment Percentage at shorter intervals if it deems such reconsideration to be appropriate or if requested to do so by the Trust Advisory Committee or the Legal Representative. The Trust must base its determination of the Payment Percentage on current estimates of the number, types, and values of present and future Asbestos Bodily Injury 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 Asbestos Bodily Injury Claims. When making these determinations, the Trust shall exercise common sense and flexibly evaluate all relevant factors.

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.

However, if the Trust successfully resolves an insurance coverage dispute or otherwise receives a substantial recovery of insurance proceeds on behalf of the Trust, the Trust shall use those proceeds first to maintain the Payment Percentage then in effect. If the insurance recovery exceeds the amount estimated to be reasonably necessary to maintain the Payment Percentage then in effect, the Trust, with the consent of the Trust Advisory Committee and the Legal Representative, shall adjust the Payment Percentage upward to reflect the increase in available assets in the Trust, and shall also make supplemental payments to 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 the Claimant with respect to the claim (excluding the portion of such previously paid amounts that was attributable to interest paid pursuant to Section 5.2(a) below).

The 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 Trust's obligation shall resume and the Trust 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 in Section 5.1(c) below (for all Asbestos Bodily Injury Claims involving deceased or incompetent Claimants for which approval of the Trust's offer by a court or probate process is required, no holder of any other Asbestos Bodily Injury Claim 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 a redetermination of the Payment Percentage has been proposed in writing by the Trust to the Trust Advisory Committee and the Legal 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.

## **SECTION V**

### **Resolution of Asbestos Bodily Injury Claims.**

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

##### **5.1(a) Ordering of All Asbestos Bodily Injury Claims.**

**5.1(a)(1) Establishment of the FIFO Processing Queue.** The Trust will order separately Claims payable from the Trust 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 claims materials required to file a Trust claim (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 Porter Hayden, in the civil courts or was actually submitted to Porter Hayden pursuant to an administrative settlement agreement; (ii) the date before the Petition Date that an asbestos claim was filed against Porter Hayden, or another defendant in the civil courts if at the time the claim was subject to a tolling agreement with Porter Hayden; (iii) the date after the Petition Date (if any) but before the Initial Claims Filing Date that the asbestos claim was filed against Porter Hayden, or another defendant in the civil courts; (iv) the date the Claimant filed a ballot in the Bankruptcy Court for purposes of voting on the Plan in accordance with the voting procedures adopted by the Court; or (v) 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 was 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. 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.** To be

eligible for a place in the FIFO Processing Queue, a claim must meet either (i) (for Claims first

filed in the civil courts against Porter Hayden 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 civil courts, or (ii) (for Claims that were not filed against Porter Hayden in the civil courts prior to the Petition Date), the applicable 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 Porter Hayden, prior to the Petition Date, whether in the civil courts or by submission of the claim to Porter Hayden, pursuant to an Asbestos Liability Settlement Agreement; (B) the filing of the Claim against another defendant in the civil courts prior to the Petition Date if the Claim was tolled against Porter Hayden at the time by an agreement or otherwise; (C) the filing of a Claim after the Petition Date but prior to the Initial Claims Filing Date against another defendant in the civil courts; (D) the filing by the Claimant of a ballot for voting purposes in this Chapter 11 proceeding; or (E) the filing of a proof of Claim with the requisite supporting documentation with the Trust after the Effective Date. For the purposes of the applicable statute of limitations, limitations shall be tolled during the time between the Petition Date and the Initial Claims Filing Date.

If an Asbestos Bodily Injury Claim meets any of the tolling provisions described in the preceding sentence and was not barred by the applicable 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 statute of limitation, may 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. However, the processing of any Asbestos

Bodily Injury 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.** Asbestos Bodily Injury 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 civil courts provided in Section 5.11 below, shall be paid in FIFO order based on the date their liquidation became final (the “FIFO Payment Queue”), with all such payments being subject to the applicable Payment Percentage, the Maximum Available Payment, and the Maximum Annual Payment, except as otherwise provided herein.

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 before 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 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, if any, 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 positions 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 Claims.**

**5.2(a) Processing and Payment.** As soon as practicable after the Effective Date, the Trust shall pay (subject to the applicable Payment Percentage, the Maximum Available Payment, and the Maximum Annual Payment limitations), upon submission by the Claimant of the applicable Trust proof of claim form together with all documentation required thereunder, all Asbestos Bodily Injury Claims that were liquidated 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 civil courts obtained prior to the Petition Date, which jury verdict or non-final judgment failed to become final and non-appealable as a result of the pendency of the Debtor's Chapter 11 case, or (iii) by a judgment that became final and non-appealable prior to the Petition Date (collectively "Pre-Petition Liquidated Claims"). In order to receive payment from the Trust, the holder of a Pre-Petition Liquidated Claim must submit all documentation necessary to demonstrate to the 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), non-final judgment (if applicable) or 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. Provided, however, that the Trust may in its discretion verify Pre-Petition Liquidated Claims by selecting alternative methods of verification, including but not limited to reference to pre-petition settlement records, without prejudice to the Trust's right to employ the methods set forth in this Section 5.2(a) to verify any or all Pre-Petition Liquidated Claims.

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 interest, if any, that has accrued on the judgment under applicable state law as of the date of the Trust's payment of the Claim; however, pursuant to Section 7.4 below, the liquidated value of a Pre-Petition Liquidated Claim shall not include any Non-Compensatory Damages. 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 Trust over this issue shall be resolved pursuant to the same procedures in this TDP that are provided for resolving the validity and/or the liquidated value of an Asbestos Bodily Injury Claim (i.e., arbitration and litigation in the civil courts as set forth in Sections 5.10 and 5.11 below).

Pre-Petition Liquidated 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 a completed proof of claim form with all required documentation for the particular Claim.

However, the amounts payable with respect to Pre-Petition Liquidated Claims payable from the



Trust shall be subject to the Maximum Annual Payment limitation and Payment Percentage provisions set forth above, but shall not be subject to the terms of Section 7.7 below.

If any 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 Pre-Petition Liquidated Claims were both filed and liquidated on the same dates, the positions of those Claimants in the FIFO queue shall be determined based on the dates of the Claimants' birth, with older Claimants given priority over younger Claimants.

To the extent that any holder of a Pre-Petition Liquidated Claim opts not to seek recovery from the Trust on account of Pre-Petition Liquidated Claim, such holder may instead seek to liquidate the Claim through the Trust's Expedited Review Process or Individual Review Process and shall have the right to pursue any and all remedies available under the Trust, including arbitration of his or her Claim pursuant to Section 5.10 below and litigation of his or her Claim pursuant to Section 5.11 below; provided, however, that any amount previously received on account of such Pre-Petition Liquidated Claim shall be set-off against any amount to be paid (after the application of the Payment Percentage) by the Trust to such holder.

**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 Trust. The Trust, Reorganized Debtor, and such Pre-Petition Liquidated Claimant shall cooperate to the extent reasonable in the exercise of such Claimant's rights against any applicable security or surety. To the extent, if any, that the Trust, Debtor or Reorganized Debtor, has received payments from Asbestos Insurance Policies or other Assets subject to a security or surety interest held by such Pre-Petition Liquidated Claimant, the Trust, Debtor and the Reorganized Debtor

shall preserve and hold the extent of such security or surety interest for the exclusive benefit of such Pre-Petition Liquidated Claimant. 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, and only in the event, and to the extent, shall the provisions herein for the FIFO Processing Queue and FIFO Payment Queue apply to such Pre-Petition Liquidated Claim.

**5.3 Resolution of Unliquidated Asbestos Bodily Injury Claims.** Within six (6) months after the establishment of the Trust and with the consent of the Trust Advisory Committee and the Legal Representative, the Trust shall adopt procedures for reviewing and liquidating all unliquidated Asbestos Bodily Injury Claims under the terms of this TDP, which shall also include deadlines for processing such claims. Such procedures shall require Claimants seeking resolution of unliquidated Asbestos Bodily Injury 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 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, and shall advise the Trust, whether the Claim should be liquidated under the Trust's Expedited Review Process described in Section 5.3(a) below or, in certain circumstances, the Trust's Individual Review Process described in Section 5.3(b) below.

**5.3(a) Expedited Review Process for Asbestos Bodily Injury Claims.**

**5.3(a)(1) In General.** The Trust's Expedited Review Process (or "Expedited Review") is designed primarily to provide an expeditious, efficient and inexpensive method for liquidating all Asbestos Bodily Injury Claims 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 Asbestos Bodily Injury 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 Claim liquidated value.

Thus, Asbestos Bodily Injury 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, all Claims liquidated by Expedited Review shall be subject to the applicable Payment Percentage, Maximum Available Payment, and Maximum Annual Payment limitations set forth above. Claimants holding Asbestos Bodily Injury 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 receive the Scheduled Value for his or her Asbestos Bodily Injury 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) Asbestos Bodily Injury Claims Processing under**

**Expedited Review.** All Claimants seeking liquidation of their 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 five (5) 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.

**5.3(a)(3) Disease Levels, Scheduled Values and**

**Medical/Exposure Criteria for Porter Hayden Claims.** The five (5) Disease Levels for Asbestos Bodily Injury Claims, together with the Medical/Exposure Criteria for each and the Scheduled Values for the five (5) Disease Levels eligible for Expedited Review, are set forth below. These Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all Asbestos Bodily Injury Claims payable from the Trust that were 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, with the consent of the Trust Advisory Committee

and the Legal Representative, the Trust may add to, change or eliminate the 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 V)	\$350,000.00	(1) Diagnosis <sup>1</sup> of mesothelioma; and (2) credible evidence of exposure to Porter Hayden Asbestos <sup>2</sup> during the period 1924-1989.
Lung Cancer (Level IV)	\$40,000.00	(1) Diagnosis of a primary lung cancer; (2) six months occupational exposure to Porter Hayden Asbestos during the period 1924-1989,(3) Significant Occupational Exposure (as defined in Section 5.7(b)(2) below) and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

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<sup>1</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>2</sup> The term “exposure to Porter Hayden Asbestos” means a meaningful and credible exposure to asbestos containing products installed, sold, distributed, marketed or removed by Porter Hayden; however, the Trust shall be free to contest whether a particular asbestos product was in fact installed, sold, distributed, marketed or removed by Porter Hayden. Established Maryland exposure to Johns-Manville asbestos containing pipe-covering, block and/or cement at any time between 1924 and 1980 shall qualify for exposure to Porter Hayden Asbestos.

Other Cancer (Level III)      \$11,500.00

(1) Diagnosis of a primary colo-rectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease<sup>3</sup>, (2) six months occupational exposure to Porter Hayden Asbestos during the period 1924-1989, (3) Significant Occupational Exposure and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.

Disabling Severe Asbestosis (Level II)    \$40,000.00

(1) Diagnosis of asbestosis with ILO of 2/1 or greater, CT scan, or asbestosis determined by pathological evidence of asbestos<sup>4</sup>, plus (a) TLC less than or equal to 65% or (b) FVC less than or equal to 65% and FEV1/FVC ratio greater than 65%, (2) six months occupational exposure to Porter Hayden Asbestos during the period 1924-1989, (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.

Bilateral Asbestos-Related  
Non-Malignant Disease (Level I)

\$8,750.00    (1) Diagnosis of  
Bilateral Asbestos-Related Non-

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<sup>3</sup> Evidence of "Bilateral Asbestos-Related Nonmalignant Disease" for purposes of meeting the criteria for establishing Disease Levels I and III, means a report submitted by a qualified physician that is a certified B-reader stating that the claimant has or had an X-ray reading of 1/0 or higher on the ILO scale or a chest x-ray reading or a CT scan read by a qualified physician showing bilateral interstitial fibrosis, bilateral interstitial markings, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification consistent with a diagnosis of asbestos-related disease. Results of a chest x-ray on an ILO form qualifies as a chest x-ray report.

<sup>4</sup> 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).

Malignant Disease<sup>5</sup> requires a report submitted by a qualified physician that is a certified B-reader stating that the Claimant has or had an x-ray with a profusion rating of 1/0 or higher on the ILO scale, or bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification, or a chest x-ray reading or a CT scan read by a qualified physician showing bilateral interstitial markings, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification consistent with a diagnosis of asbestos-related disease, provided, however, that results of a chest x-ray on an ILO Form qualifies as a chest-x-ray report, (2) six months occupational exposure to Porter Hayden Asbestos during the period 1924-1989, (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.

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<sup>5</sup> Evidence of "Bilateral Asbestos-Related Nonmalignant Disease" for purposes of meeting the criteria for establishing Disease Levels I and III, means a report submitted by a qualified physician that is a certified B-reader stating that the claimant has or had an X-ray reading of 1/0 or higher on the ILO scale or a chest x-ray reading or a CT scan read by a qualified physician showing bilateral interstitial fibrosis, bilateral interstitial markings, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification consistent with a diagnosis of asbestos-related disease. Results of a chest x-ray on an ILO form qualifies as a chest x-ray report.

**5.3(b) Individual Review Process for All Asbestos Bodily Injury Claims.**

**5.3(b)(1) In General.**

**5.3(b)(1)(A) Review of Medical/Exposure Criteria for Asbestos Bodily Injury Claims.** The Trust's Individual Review Process provides a Claimant with an opportunity for individual consideration and evaluation of an Asbestos Bodily Injury Claim that fails to meet the presumptive Medical/Exposure Criteria for Disease Levels I -V. 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 civil courts, 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 Maximum Extraordinary Value for such a Claim.

**5.3(b)(1)(B) Review of Liquidated Value for All**

**Asbestos Bodily Injury Claims.** Claimants holding Asbestos Bodily Injury Claims involving Disease Levels I-V shall also be eligible to seek Individual Review of the liquidated value of their Claims. The Individual Review Process is intended to result in payments equal to the liquidated value of an Asbestos Bodily Injury Claim multiplied by the applicable Payment Percentage; however, the liquidated value of any Asbestos Bodily Injury 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 an Asbestos Bodily Injury Claim 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 Extraordinary Value set forth in Section 5.4(a) for such Claims. Because the detailed examination and valuation process pursuant to Individual Review requires substantial time and effort, Claimants that elect to undergo the Individual Review Process will necessarily be paid the liquidated value of their Asbestos Bodily Injury Claims later than would have been the case had the Claimant elected the Expedited Review Process.

### **5.3(b)(2) Valuation Factors to be Considered in Individual**

**Review.** The Trust shall liquidate the value of each Asbestos Bodily Injury Claim that undergoes Individual Review based on the historic liquidated values of other similarly situated claims in the civil courts for the same Disease Level. The Trust will thus take into consideration the factors that affect the severity of damages and values within the civil courts 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 to Porter Hayden Asbestos (for example, alternative causes, alternative sources of exposure, strength of documentation of injuries, and the extent of Porter Hayden's legal culpability if the exposure occurred after 1924 but before 1989); (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 Porter Hayden in the civil courts prior to the Petition Date. If the Claim was not filed against Porter Hayden in the civil courts prior to the Petition Date, the Claimant may elect as the

Claimant’s Jurisdiction the jurisdiction where the Claimant would litigate the Claim; provided, however, that the Trust as successor to Porter Hayden’s liability for Asbestos Bodily Injury Claims retains all objections to the exercise of jurisdiction and venue that Porter Hayden could assert, for the purpose of Individual Review and otherwise, and may assert such objections in the process of considering a Claim in Individual Review.

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 arising under the Alabama Wrongful Death Statute with respect to which the Claimant’s Jurisdiction as defined above could only be the State of Alabama, the Claimant’s Jurisdiction for such Claim shall be the State of Maryland, and such Claimant’s damages shall be determined pursuant to the statutory and common laws of the State of Maryland without regard to Maryland’s choice of law principles.

**5.3(b)(3) Scheduled, Average and Maximum Values for Asbestos**

**Bodily Injury Claims.** The Scheduled, Average and Maximum Values for Asbestos Bodily Injury Claims involving the Disease Levels compensable under this TDP are the following:

<u>Scheduled Disease</u>	<u>Scheduled Value</u>	<u>Average Value</u>	<u>Maximum Value</u>
Mesothelioma (Level V)	\$350,000	\$400,000	\$750,000
Lung Cancer (Level IV)	\$40,000	\$45,000	\$60,000
Other Cancer (Level III)	\$11,500	\$13,000	\$17,000
Disabling Severe Asbestosis (Level II)	\$40,000	\$45,000	\$60,000
Bilateral Asbestos-Related Non-Malignant Disease (Level I)	\$8,750	\$9,500	\$14,000

These Scheduled Values, Average Values, and Maximum Values shall apply to all Asbestos Bodily Injury Claims filed with the Trust on or before the Initial Claims Filing Date as provided in Section 5.1 above. Thereafter, the Trust, with the consent of the Trust Advisory Committee and the Legal Representative pursuant to Sections 5.7(b) and 6.6(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 an Asbestos Bodily Injury Claim that is held by a Claimant whose exposure to asbestos (i) occurred predominately as the result of working with or around products installed, sold, distributed, marketed or removed by Porter Hayden or (ii) was at least 75% the result of exposure to an asbestos-containing product installed, sold, distributed, marketed or removed by Porter Hayden, and 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 Extraordinary Value” of five times the Scheduled Value for Claims qualifying for Disease Levels I – V, multiplied by the applicable Payment Percentage (subject to the applicable Maximum Annual Payment, and Maximum Available Payment limitations that are in effect at the time of payment).

Any dispute as to Extraordinary Claim status shall be submitted to arbitration by a special Extraordinary Claims Panel established by the Trust with the consent of the Trust Advisory Committee and the Legal Representative. All decisions of the Extraordinary Claims Panel shall be final and not subject to any further administrative or judicial review, including appellate

review. An Extraordinary Claim, following its liquidation, shall be placed in the FIFO Payment Queue ahead of all other liquidated Claims payable from the Trust except Exigent Hardship Claims, which shall be first in the FIFO Payment Queue, based on its date of liquidation and shall be subject to the applicable Payment Percentage, Maximum Annual Payment, and Maximum Available Payment limitations described above. Any Extraordinary Claim that exits to the civil courts shall be bound by the Maximum Values for such Disease Levels set forth in Section 5.3(b)(3).

**5.4(b) Exigent Hardship Claims.** At any time, the Trust may liquidate and pay certain Asbestos Bodily Injury 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 Claims payable from the Trust, and shall be subject to the applicable Payment Percentage, Maximum Annual Payment, and Maximum Available Payment limitations described above. An Asbestos Bodily Injury Claim qualifies for payment as an Exigent Hardship Claim if the Claim meets the relevant Medical/Exposure Criteria for Disabling Severe Asbestosis (Disease Level II) or an asbestos-related malignancy (Disease Levels III-V), 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.** 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 Trust. In addition, the Claimant with secondary exposure must establish that he or she is suffering from one of the five (5) Disease Levels described in Section 5.3(a)(3) above, 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 Porter Hayden, and that such secondary exposure to Porter Hayden products was a cause of the claimed disease. The proof of claim form shall contain an additional section for Secondary Exposure Claims. All other liquidation and payment rights and limitations under this TDP shall be applicable to such Claims.

**5.6 Indirect Asbestos Bodily Injury Claims.** Indirect Asbestos Bodily Injury Claims, as defined by the Plan, that are asserted against the Trust based upon theories of contribution or indemnification under applicable law, may not be processed or paid by the Trust unless (a) such Claim satisfied the requirements of the Bar Date established by the Bankruptcy Court for such Claim, if applicable, and is not otherwise discharged by Confirmation of the Plan or by operation of the Code, and (b) the holder of such Claim (the “Indirect Claimant”) establishes to the satisfaction of the Trust that (i) the Indirect Claimant has paid in full the liability and obligations of the Trust to the individual Claimant to whom the Trust would otherwise have had a liability or obligation under the Plan (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 Asbestos Bodily Injury Claim satisfied by the Indirect Claimant; and (iii) the Indirect Claimant has a legal right derived from applicable law that is not barred by a statute of limitations or by 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 Claimant shall 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 Bodily Injury 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 by a Final Order, provided that such Indirect 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 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 Trust.

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.

The Trust may develop and approve a separate proof of claim form for such Indirect Asbestos Bodily Injury Claims. The Trust may consult with the Direct Claimant to determine whether the Direct Claimant agrees that the Trust's potential liability to the Direct Claimant has been fully extinguished by the payment and/or release of the Indirect Claimant. If the Indirect Claimant has satisfied or extinguished the existing liability of the Trust for the Claim of a Direct Claimant, the Indirect Claimant shall execute, in a form satisfactory to the Trust, an agreement to hold harmless, indemnify, and defend the Trust from claims of liability to any other person for the Asbestos Bodily Injury Claim. Indirect Asbestos Bodily Injury Claims shall be substituted in

the FIFO Processing Queue or in the FIFO Payment Queue, as applicable, for any pending Claim which is satisfied or extinguished by the Indirect Claimant. If the Indirect Claimant satisfies or extinguishes the liability of the Trust for a Claim which has not been asserted against the Trust, the Indirect Asbestos Bodily Injury Claim shall be placed in the FIFO Processing Queue and the FIFO Payment Queue according to the provisions for those Queues set forth in this TDP.

## **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 Petition Date that a Claimant's disease is "consistent with" or "compatible with" asbestosis will not alone be treated by the Trust as a diagnosis.

**5.7(a)(1)(A). Disease Levels I-II.** Except for Asbestos Bodily Injury Claims filed against Porter Hayden, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I and II) shall be based (i) 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 non-malignant asbestos-related disease. All living Claimants must also provide: (i) for Claims involving Disease Level I, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as referenced defined in Footnotes 3 and 5); (ii) for

Claims involving Disease Level II,<sup>6</sup> an ILO reading of 2/1 or greater or CT scan or pathological evidence of asbestosis and 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-II) shall be based on 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) (a) in the case of Disease Level I, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 5 above) or (b) for Disease Level II, an ILO reading of 2/1 or greater or pathological evidence of asbestosis; and (iv) pulmonary function testing.

**5.7(a)(1)(B). Disease Levels III-V.** All diagnoses of an asbestos-related malignancy (Disease Levels III-V) shall be based upon either (i) a physical examination of the Claimant by the physician providing the diagnosis of the malignant asbestos-related disease, or (ii) on 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”). Further, all diagnosis of an asbestos-related malignancy (Disease Levels III-V) must include a pathological or post-operative report which identifies the primary location of the cancer or malignancy. Claimants with Claims for Disease Levels III-V who do not include such pathological or post-operative report are only eligible to recover from the Trust through the Individual Review Process and are

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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 Asbestos Trust may rebut such presumptions.

<sup>7</sup> “Pulmonary Function Testing” shall mean spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society (“ATS”) and is performed on equipment that is in material compliance with ATS standards for technical quality and calibration.



required to provide a statement to the Trust explaining why no such report is provided and the Trust has the discretion to deny the Claim of such a Claimant based on the absence of credible evidence establishing the primary location of the cancer or malignancy.

**5.7(a)(1)(C). Certain Pre-Petition Claims.** If the holder of an Asbestos Bodily Injury Claim that was filed against Porter Hayden or another defendant in the civil courts prior to the Petition Date has not provided the Trust with a diagnosis of the asbestos-related disease by a physician who conducted a physical examination of the Claimant described in Sections 5.7(a)(1)(A) and 5.7(a)(1)(B), but the Claimant has available such a diagnosis by an examining physician engaged by the Claimant, the Claimant shall provide such diagnosis to the Trust notwithstanding the exceptions in Sections 5.7(a)(1)(A) and 5.7(a)(1)(B).

**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 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 that is (i) of a kind shown to have been received in evidence by a state or federal judge at trial, (ii) consistent with evidence submitted to Porter Hayden to settle for payment of similar disease cases prior to Porter Hayden'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 rebut the presumption. In addition, Claimants

who otherwise meet the requirements of this TDP for payment of an Asbestos Bodily Injury Claim shall be paid irrespective of the results in any litigation at any time between the Claimant and any other defendant in the civil courts. However, any relevant evidence submitted in a proceeding in the civil courts 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) 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 in Section 5.3(a)(3) above, to qualify for any Disease Level, the Claimant must demonstrate exposure to an asbestos-containing product for which Porter Hayden has legal responsibility. The term “exposure to Porter Hayden Asbestos” means a meaningful and credible exposure to asbestos containing products installed, sold, distributed, marketed or removed by Porter Hayden; however, the Trust shall be free to contest whether a particular asbestos product was in fact installed, sold, distributed, marketed or removed by Porter Hayden. Established Maryland exposure to Johns-Manville asbestos containing pipe-covering, block and/or cement at any time between 1924 and 1980 shall qualify for exposure to Porter Hayden Asbestos. Claims based on conspiracy theories that involve no exposure to Porter Hayden Asbestos are not recoverable hereunder.

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, exposure to Porter Hayden Asbestos between 1924 - 1989; (ii) for Bilateral Asbestos-Related Non-Malignant (Disease Level I), Disabling Severe Asbestosis (Disease Level II), Other Cancer (Disease Level III) or Lung Cancer 1 (Disease Level IV), the Claimant must show six (6) months occupational

exposure to Porter Hayden Asbestos during 1924 -1989, plus Significant Occupational Exposure to asbestos as defined below. If a Claimant holding an Asbestos Bodily Injury Claim 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 Porter Hayden pursuant to Section 5.3(b) above.

**5.7(b)(2) Significant Occupational Exposure.** "Significant Occupational Exposure" means employment for a cumulative period of at least three (3) years, with a minimum of two of the years between 1924 -1989 such that 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 proximity to workers engaged in the activities described in (a), (b) and/or (c).

**5.7(b)(3) Sufficiency of Evidence.** The Claimant must demonstrate meaningful and credible exposure to Porter Hayden Asbestos, in accordance with the exposure requirements described in Sections 5.7(b)(1) and (2) above. That 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 the 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 answer, 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, and, with the consent of the Trust Advisory Committee and the Legal Representative, may develop a worksite list to be used in connection with the Trust's evidentiary requirements. Evidence submitted to establish proof of exposure to Porter Hayden Asbestos is for the sole benefit of the Trust, not third parties or defendants in the civil 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 Porter Hayden has legal responsibility, except to the extent such evidence is required elsewhere in this TDP.

**5.8 Claims Audit Program.** The Trust with the consent of the Trust Advisory Committee and the Legal 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 Porter Hayden Asbestos during the period 1924 - 1989. In the event that the Trust reasonably determines by Claims audit or otherwise that any individual or entity has engaged in a pattern or practice of providing unreliable medical 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 Asbestos Bodily Injury 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 Bodily

Injury 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 Bodily Injury Claim involving a non-malignant asbestos-related disease (Disease Levels I and II) may file a new Asbestos Bodily Injury Claim against the Trust for a malignant disease (Disease Levels III-V) 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 original Claim involving the non-malignant disease was paid, or in the case of a Pre-Petition Liquidated Claim, the malignant disease had not been diagnosed by the time the original Claim involving the non-malignant disease was liquidated and the Claim for such malignant disease had not been previously released by prior settlement.

**5.10 Arbitration.**

**5.10(a) Establishment of Arbitration Procedures.** The Trust, with the consent of the Trust Advisory Committee and the Legal Representative, shall institute binding and non-binding arbitration procedures in accordance with the Arbitration Rules included in Attachment A hereto for resolving disputes concerning whether a pre-petition settlement agreement with Porter Hayden, 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 an Asbestos Bodily Injury Claim involving Disease Levels I

– V. Binding and non-binding arbitration shall also be available for resolving disputes over the liquidated value of an Asbestos Bodily Injury Claim involving Disease Levels I – V.

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 any Asbestos Bodily Injury Claim, the arbitrator shall consider the same valuation factors that are set forth in Section 5.3(b)(2) above. With respect to all Claims eligible for arbitration, the Claimant, but not the Trust, may elect either non-binding or binding arbitration. The Arbitration Rules shall be established (and may be further modified from time to time) by the Trust with the consent of the Trust Advisory Committee and the Legal 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 with respect to the disputed issue(s). 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 in writing that the Claimant rejects the offer of the liquidated value, if any, and that the Claimant wants to arbitrate. Individual Review will also be treated as completed if the Trust has rejected the claim. A Claimant who submits to arbitration and who accepts the arbitral award will receive payments in the same manner as one who accepts the Trust's liquidated value, subject to the applicable Payment Percentage and Maximum Annual Payment limitations described herein.

**5.10(c) Limitations on and Payment of Arbitration Awards.** In the case of a non-Extraordinary Claim involving Disease Levels I – V, 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)(4) 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.

**5.11 Litigation of Asbestos Bodily Injury Claims.** Claimants who elect non-binding arbitration and then reject the arbitral awards retain the right to institute a lawsuit against the Trust in the Claimant's Jurisdiction as defined in Section 5.3(b)(2) above; provided, however, that the Trust as successor to Porter Hayden's liability for Asbestos Bodily Injury Claims retains all objections to the exercise of jurisdiction and venue that Porter Hayden could assert. Any such lawsuit 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.

Notwithstanding any law or rules of the Claimants' Jurisdiction to the contrary, any service of process necessary to obtain jurisdiction over the Trust shall be by certified mail to the Trust at the Trust's business address, requesting: "Restricted Delivery – show to whom, date, address of delivery". Failure of the Trust to maintain a resident agent or otherwise qualify to do business in the Claimants' Jurisdiction shall not deprive the Trust of any defense available to businesses qualified to do business in the Claimants' Jurisdiction. All defenses (including, with respect to the Trust, all defenses which could have been asserted by Porter Hayden), shall be available to both sides at trial; however, the Trust may waive any defense and/or concede any issue of fact or law. Each party shall have the rights of appeal applicable in the Claimants Jurisdiction. A Claimant shall be eligible for payment of a judgment for monetary damages obtained in the civil courts from the Trust's available cash only as provided in Section 7.7 below. A judgment against

the Trust obtained by litigation, except for judgments on Pre-Petition Liquidation Claims, shall not be placed in the Payment Queue until all appeal rights have been exercised.

## SECTION VI

### Claims Materials

**6.1 Claims Materials.** The Trust shall prepare suitable and efficient claims materials (“Claims Materials”) for all Asbestos Bodily Injury Claims, and shall provide to a Claimant such Claims Materials upon a written request for such materials. The proof of claim form to be submitted to the 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 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 may be modified by the Trust with the consent of the Trust Advisory Committee and the Legal Representative.

**6.2 Content of Claims Materials.** The Claims Materials shall include a copy of this TDP, such instructions as the Trust 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 defendants and claims resolution organizations.



**6.3 Withdrawal or Deferral of Claims.** A Claimant can withdraw an Asbestos Bodily Injury 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 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 Bodily Injury 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.

Except for Asbestos Bodily Injury Claims held by representatives of deceased or incompetent Claimants for which court or probate approval of the 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 Trust's 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 additional six month periods.

**6.4 Filing Requirements and Fees.** The Trust shall have the discretion to determine, with the consent of the Trust Advisory Committee and the Legal Representative, whether a filing fee should be required for any Asbestos Bodily Injury Claims.

**6.5 Confidentiality of Claimants' Submissions.** All submissions to the Trust by a holder of an Asbestos Bodily Injury 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, or to such other persons as authorized by the holder. Furthermore, the Trust shall provide counsel for the holder a copy of any such subpoena immediately upon being served.

## SECTION VII

### **General Guidelines for Liquidating and Paying Claims**

**7.1 Showing Required.** To establish a valid Asbestos Bodily Injury 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 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.

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

accept medical evidence from sources that the Trust has 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, as well as the Maximum Annual Payment, the Maximum Available Payment, and Payment Percentage requirements set forth above, the Trust shall proceed as quickly as possible to liquidate valid Asbestos Bodily Injury 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 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 Trust shall use its best efforts to treat similar Claims in substantially the same manner, consistent with the purposes of the Trust, the established allocation of funds to Asbestos Bodily Injury Claims 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 Trust may, with the consent of the Trust Advisory Committee and the Legal Representative, suspend the normal order of payment and may temporarily limit or suspend payments altogether.

**7.4 Non-Compensatory Damages.** Except for holders of Asbestos Bodily Injury Claims arising under the Alabama Wrongful Death Statute as provided herein and in Section 5.3(b)(2) above, in determining the value of any liquidated or unliquidated Asbestos Bodily Injury Claim, Non-Compensatory Damages Claims shall not be considered or allowed,

notwithstanding their availability in the civil courts. The only damages that may be awarded pursuant to the TDP to Alabama Claimants who are deceased and whose personal representatives pursue their Claims against the Trust under the Alabama Wrongful Death Statute shall be compensatory damages determined pursuant to the statutory and common law of the State of Maryland, without regard to Maryland's choice of law principles.

**7.5 Interest.** Interest shall not be payable on any Asbestos Bodily Injury Claim, except to the extent allowed under Section 5.2 (a).

**7.6 Suits in the Civil Courts.** If the holder of a disputed Claim disagrees with the 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(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 Porter Hayden), 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 was filed, 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 Money Judgments Relating to Asbestos Bodily Injury Claims.** If and when a Claimant obtains a judgment in the civil courts relating to an Asbestos Bodily Injury Claim, the Claim shall be placed in the FIFO Payment Queue established by the Trust 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 Available Payment, and Maximum Annual Payment provisions set forth above) of an amount equal to the lesser of (a) the judgment amount, or (b) one-hundred percent (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. 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 Maximum Annual Payment provisions set forth above).

In the case of non-Extraordinary Asbestos Bodily Injury Claims involving Disease Levels I - V, 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)(4). In the case of Extraordinary Claims, the total amounts paid with respect to such Claims shall not exceed the Maximum Extraordinary Value for such Claims set forth in Section 5.4(a) above. Except with respect to judgments entered prior to the Petition Date as more particularly set forth in Section 5.2(a) above and except as otherwise provided in Section 7.4 above, under no circumstances shall interest or Non-Compensatory Damages be paid on any judgments obtained in the civil courts with respect to Asbestos Bodily Injury Claims.

**7.8 Releases.** The Trust shall, with the consent of the Trust Advisory Committee and the Legal Representative, 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 or other law. 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. The holder of an Asbestos Bodily Injury Claim involving a non-malignant asbestos-related disease (Disease Levels I and II) does not release his or her right to assert a new Asbestos Bodily Injury Claim against the Trust for a malignant disease (Disease Levels III-V) that is subsequently diagnosed.

**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 Asbestos Bodily Injury 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 Expedited Review Process, the Individual Review Process and by arbitration as well as by litigation in the civil courts, indicating the amounts of the awards and the averages of the awards by jurisdiction. The Trust may satisfy the this requirement with the reports filed with the Court and served upon the Trust Advisory Committee and Legal Representative pursuant to Section 2.2 of the Trust Agreement.

## **SECTION VIII**

### **Miscellaneous**

**8.1 Amendments.** Except as otherwise provided herein, the Trust 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 the Trust first obtains the consent of the Trust Advisory Committee and the Legal Representative pursuant to the consent process set forth in Sections 5.7(b) and 6.6(b) of the Trust Agreement, except that the right to adjust the Payment Percentage is governed by Section 4.2 above. Nothing herein is intended to preclude the Trust Advisory Committee or the Legal Representative from proposing to the Trust, in writing, amendments to this TDP. Any amendment proposed by the Trust Advisory Committee or the Legal Representative shall remain subject to Section 7.3 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 Porter Hayden's obligations to any insurance company providing insurance coverage to Porter Hayden in respect of Claims for personal injury based on exposure to asbestos-containing products manufactured, produced, or distributed by Porter Hayden, the Trust may, with the consent of the Trust Advisory Committee and the Legal Representative, amend this TDP and/or the Trust Agreement to make the provisions of either or both documents consistent with the duties and obligations of Porter Hayden to said insurance company.

**8.3 Governing Law.** Except for purposes of determining the liquidated value of any Asbestos Bodily Injury Claim, administration of this TDP shall be governed by, and construed in accordance with, the laws of the State of Maryland. Except as provided in Section 7.4 above with respect to Asbestos Bodily Injury Claims subject to the Alabama Wrongful Death Statute, the law governing the liquidation of Asbestos Bodily Injury Claims in the case of Expedited

Review, Individual Review, arbitration or litigation in the civil courts shall be the law of the Claimant's Jurisdiction as described in Section 5.3(b)(2) above.

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