Docket #0324 Date Filed: 9/4/2020

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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

MOTION OF THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS FOR AN ORDER APPOINTING SANDER L. ESSERMAN AS LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS AND OPPOSITION TO THE DEBTORS' MOTION FOR AN ORDER APPOINTING JOSEPH W. GRIER, III, AS LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS

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

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The Official Committee of Asbestos Personal Injury Claimants (the "**Committee**") hereby moves the Court for the entry of an order, pursuant to 11 U.S.C. § 105(a) and 11 U.S.C. § 524(g)(4)(B)(i), appointing Sander L. Esserman as the legal representative for future asbestos claimants ("**FCR**") in the above-captioned chapter 11 cases and states its opposition to the Debtors' nomination of Joseph W. Grier, III for that role. In support of this Motion, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. In a move that is unprecedented in the modern era of asbestos bankruptcies, the Debtors here have *unilaterally* proposed a candidate for FCR after being informed that he was not an appropriate candidate in the view of current asbestos claimants. In proposing Mr. Grier, the Debtors are not only seeking to choose their own preferred adversary, but they are also ignoring years of precedent whereby the independence of the FCR was safeguarded in part by the balancing of the adversarial views of debtors and committees with respect to his nomination.

2. Under any objective measure, the interests of future asbestos claimants in an asbestos bankruptcy are far more closely aligned with current asbestos claimants than with defendants like the Debtors. In fact, the ultimate goal of a resolution under 11 U.S.C. § 524(g) is a plan of reorganization that provides for substantially similar treatment of current and future asbestos claimants. By contrast, the Debtors' views on this bankruptcy and their liability are diametrically opposed to the views of current and future asbestos claimants alike.

3. Indeed, as Mr. Grier revealed in his deposition taken yesterday, a reason the Debtors selected him in this case—as opposed to Mr. Esserman whom the debtors moved for the appointment of in *Bestwall* and *DBMP*—is that Mr. Esserman has taken positions in those cases with which the Debtors do not agree, including opposing the preliminary injunctions sought by the debtors in those cases. Such an agenda has no valid place in this process.

4. Under any standard, Sander Esserman, the current future claimants' representative in the similar cases of *Bestwall* and *DBMP*, is the most qualified here. Not only is Mr. Esserman more experienced, but, as discussed below, Mr. Grier and his counsel suffer from conflicts of interest that would his impair his ability to be an appropriate and effective guardian of the interests of future asbestos claimants in this case.

5. In deliberating over this critical and pivotal decision in an asbestos bankruptcy, the Court should consider whether each candidate is qualified, and ultimately, which candidate the future claimants would choose to represent them in these cases if given the choice. The Committee respectfully submits that Mr. Esserman is that candidate.

BACKGROUND

6. On June 18, 2020 (the "**Petition Date**"), Aldrich Pump LLC and Murray Boiler LLC (the "**Debtors**") commenced their reorganization cases (the "**Chapter 11 Cases**") by filing their respective voluntary petitions for relief under the Bankruptcy Code. The Chapter 11 Cases have been consolidated for procedural purposes only and are being administered jointly.

7. Pursuant to 11 U.S.C. § 1107(a) and 11 U.S.C. § 1108, the Debtors have continued as debtors-in-possession since the Petition Date. No trustee or examiner has been appointed in these Chapter 11 Cases.

8. The Debtors' description of their history, their assets and liabilities, and the events leading to the commencement of these Chapter 11 Cases can be found in the Declaration of Ray Pittard in Support of First Day Pleadings [ECF No. 27] (the "**Pittard Declaration**"), which was filed on the Petition Date. The Debtors also filed an Informational Brief of Aldrich Pump LLC

and Murray Boiler LLC [ECF No. 5] ("**Informational Brief**") to provide their views on the asbestos litigation against them and their goals for these Chapter 11 Cases.[1]

9. At a hearing held on July 6, 2020, this Court appointed the Committee, which appointment the Court memorialized in a July 7, 2020 Order [ECF No. 147]. The Committee is composed of persons holding asbestos personal injury claims against one or both of the Debtors.

10. In August 2020, in telephonic discussions with Committee counsel, the Debtors' counsel stated their desire to have Mr. Grier serve as the FCR in these Chapter 11 Cases. The Committee's counsel expressed the Committee's concerns with Mr. Grier serving as the FCR in these Chapter 11 Cases. In an effort to work cooperatively with the Debtors on the selection, Committee counsel asked the Debtors to consider alternative candidates suggested by the Committee, such as David Levi, a former U.S. Attorney, federal Judge, and Dean of Duke Law School, who also serves as the FCR for several asbestos trusts. The Committee also suggested Sander Esserman, whom this Court has appointed as FCR in two similar pending asbestos bankruptcies.

11. However, the Debtors neither accepted the Committee's suggestions nor proposed alternative candidates, but instead filed on August 21, 2020, the Motion of the Debtors for an Order Appointing Joseph W. Grier, III as Legal Representative for Future Asbestos Claimants [ECF No. 276] (the "**Grier Motion**").

12. The Committee hereby opposes the Grier Motion and cross-moves for the appointment of Mr. Esserman as the FCR in these Chapter 11 Cases.

[1] The Committee's citation of the Pittard Declaration and the Debtors' Informational Brief is not an endorsement of the statements and arguments expressed therein. The Committee reserves all rights to contest any or all statements and arguments made in the Pittard Declaration and the Debtors' Informational Brief.

JURISDICTION

13. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 157 and 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. § 1408 and 28 U.S.C. § 1409.

14. The statutory bases for the relief sought here are 11 U.S.C. § 105(a) and 11 U.S.C. § 524(g)(4)(B)(i).

THE NEED IN THESE CHAPTER 11 CASES FOR A LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS

15. The Debtors and their predecessors have faced "thousands upon thousands of asbestos-related claims" dating back to at least 1983. *See* Pittard Declaration ¶¶ 11-12, ECF No. 27, p. 4. In an attempt to address their asbestos liability, the Debtors' stated goal for these Chapter 11 Cases is "to negotiate and ultimately confirm a plan of reorganization . . . as authorized by section 524(g) of the Bankruptcy Code." *Id.* ¶ 22, ECF No. 27, p. 10.

16. 11 U.S.C. § 524(g) provides for the issuance of a channeling injunction for asbestos-related claims and demands only if certain requirements are met. Among these requirements are "several prerequisites . . . designed to protect the interests of future claimants whose claims are permanently enjoined[, including that] . . . the plan must be approved by a super-majority of current claimants, and must provide substantially similar treatment to present and future claimants[, and] . . . the court must appoint a futures representative to act as fiduciary for the interests of future claimants." *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 237 (3d Cir. 2004), *as amended* (Feb. 23, 2005) (citing 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb), (g)(4)(B)(i), (g)(2)(B)(i)(V)); *see also In re Plant Insulation Co.*, 734 F.3d 900, 906 (9th Cir. 2013) (appointment of an FCR is one of "a number of special requirements a plan must meet for a debtor to obtain § 524(g) injunctive relief"). The FCR is appointed for the purpose of protecting the rights

of persons who might subsequently assert asbestos-related personal injury demands against the Debtors, as defined in 11 U.S.C. § 524(g)(5). *See Combustion Eng'g*, 391 F.3d at 237; 11 U.S.C. § 524(g)(4)(B)(i).

17. Indeed, the appointment of a FCR is a well-established practice in asbestos-related chapter 11 cases in this District and in others.[2] This Court has appointed FCRs in several recent asbestos bankruptcies.[3]

RELIEF REQUESTED

18. By this Motion, pursuant to 11 U.S.C. § 105(a) and 11 U.S.C. § 524(g)(4)(B)(i), the Committee requests that the Court appoint Mr. Esserman as the FCR in these Chapter 11 Cases, to represent the interests of the future claimants in accordance with the terms and conditions described below.[4]

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[2] *See, e.g.*, Order Appointing Sander L. Esserman as Legal Representative for Future Asbestos Claimants, *In re DBMP LLC*, No. 3:20-bk-30080 (Bankr. W.D.N.C. June 1, 2020), ECF No. 310 ("***DBMP* FCR Order**"); Order Appointing Sander L. Esserman as Legal Representative for Future Asbestos Claimants, *In re Bestwall LLC*, No. 3:17-bk-31795 (Bankr. W.D.N.C. Feb. 23, 2018), ECF No. 278 ("***Bestwall* FCR Order**"); Order Appointing Lawrence Fitzpatrick as Legal Representative for Future Claimants, *In re Kaiser Gypsum Co.*, No. 3:16-bk-31602 (Bankr. W.D.N.C. Oct. 19, 2016), ECF No. 99 ("***Kaiser* FCR Order**"); Order Appointing James L. Patton, Jr., as Legal Representative for Future Asbestos Claimants, *Nunc Pro Tunc* to the Petition Date, *In re Paddock Enters., LLC*, No. 20-10028 (Bankr. D. Del. June 18, 2020), ECF No. 377; Order on Appointment of Future Claimants' Representative, *In re Fairbanks Co.*, No. 18-41768 (Bankr. N.D. Ga. Apr. 17, 2019), ECF No. 260; Order Appointing James L. Patton, Jr., Esq. as Legal Representative for Future Asbestos Personal Injury Claimants *Nunc Pro Tunc* to the Petition Date, *In re Yarway Corp.*, No. 13-11025 (Bankr. D. Del. May 28, 2013), ECF No. 88; Order Appointing Lawrence Fitzpatrick, Esq., as Legal Representative for Future Claimants, *In re Metex Mfg. Corp.*, No. 12-14554 (Bankr. S.D.N.Y. Jan. 16, 2013), ECF No. 93; Final Order Granting Debtors' Application to Appoint Legal Representative for Purposes of Sections 105 and 524(g) of the Bankruptcy Code, *In re Mid-Valley, Inc.*, No. 03-35592 (Bankr. W.D. Pa. Feb. 18, 2004), ECF No. 610; Order Granting Application of Debtors Pursuant to 11 U.S.C. §§ 105, 327, and 524(g)(4)(B)(i), for the Appointment of a Legal Representative for Future Asbestos Claimants, *In re W.R. Grace & Co.*, No. 01-01139 (Bankr. D. Del. May 24, 2004), ECF No. 5645.

[3] *See DBMP* FCR Order, No. 3:20-bk-30080, ECF No. 310; *Bestwall* FCR Order, No. 3:17-bk-31795, ECF No. 278; *Kaiser* FCR Order, No. 3:16-bk-31602, ECF No. 99.

[4] Pursuant to 11 U.S.C. § 105(a), the Court may issue an order to assist in carrying out the other provisions of the Bankruptcy Code, including by appointing a Future Claimants' Representative as contemplated by § 524(g)(4)(B)(i). *See In re Forty-Eight Insulations, Inc.*, 58 B.R. 476, 477 (Bankr. N.D. Ill. 1986); *In re Johns-Manville Corp.*, 36 B.R. 743, 757 (Bankr. S.D.N.Y. 1984); *see also DBMP* FCR Order (appointing Mr. Esserman as Future Claimants' Representative pursuant to 11 U.S.C. § 105(a) and § 524(g)(4)(B)(i)). Future Claimants' Representatives have also been appointed pursuant to 11 U.S.C. § 327(a). *See Kaiser* FCR Order; Order Appointing Eric D. Green as Legal Representative for Future Claimants, *In re Specialty Prods. Holding Corp.*, No. 10-11780 (Bankr. D. Del. Oct. 18,

BASIS FOR RELIEF REQUESTED

I. THE COURT SHOULD CONSIDER THE COMMITTEE'S VIEWS OVER THE COMPETING VIEWS OF THE FCR'S LITIGATION ADVERSARY

A. The Committee's Interests Closely Align with Future Claimants

19. It is indisputable that the Committee may nominate a candidate for FCR.[5] And courts, including this Court, have not only considered, but granted motions to appoint FCRs where the asbestos creditors' committee was a movant.[6] It is thus wholly appropriate for the Court to appoint a candidate proposed by the Committee.

20. Of course, the Court need not defer to any party when selecting an FCR; the Court should independently evaluate and select the FCR.[7] However, in the novel situation presented here, where the Debtors and the Committee have proposed competing candidates, the Court's decision should take into account that current and future claimants share nearly indistinguishable interests, while the Debtors are "profoundly adverse"[8] to the interests of future claimants. Indeed, both current and future claimants have identical interests in maximizing the amount that the Debtors

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2010), ECF No. 449. To the extent that the Court determines that § 327(a) is an appropriate basis for the relief sought herein, the Committee also seeks relief under that section.

[5] *In re Fairbanks Co.*, 601 B.R. 831, 838 (Bankr. N.D. Ga. 2019); *see also* Bench Ruling on Motion to Appoint James L. Patton, Jr. as the Legal Representative for Future Talc Personal Injury Claimants, at 6, *In re Imerys Talc America, Inc.*, No. 19-10289 (LSS) (Bankr. D. Del. May 8, 2019), ECF No. 503 ("Who files a motion and whether or not the movant proposes one or more candidates is simply not determinative of the process or of the selection."); *Federal Ins. Co. v. W.R. Grace*, Civil Action Nos. 04-844, 04-845, 2004 WL 5517843, at *4, *8 (D. Del. Nov. 22, 2004) (recognizing that Congress modeled § 524(g) after the procedures and standards employed in the "pioneering cases [*Johns-Manville* and *UNR Industries*]," which both "contemplated and allowed the participation of parties in interest in the process by asking the parties in interest for proposed future claimants' representatives or allowing the parties in interest to offer the motions for appointment of a legal representative" (first alteration in original)).

[6] *See, e.g.*, *Kaiser* FCR Order, No. 3:16-bk-31602, ECF No. 99 (granting joint motion of the debtors and the then-proposed committee of asbestos personal injury claimants to appoint candidate for Future Claimants' Representative); Amended Order Appointing Lawrence Fitzpatrick as Legal Representative for Future Asbestos Claimants *Nunc Pro Tunc* to July 18, 2017, *In re Sepco Corp.*, No. 16-50058 (Bankr. N.D. Ohio Sept. 18, 2017), ECF No. 275 (same).

[7] *See Fairbanks*, 601 B.R. at 838 (finding court should not select FCR by simply deferring to a party's selection, but should rather "exercise its authority and judgment to thoughtfully and thoroughly consider the appointment of a future claims' representative").

[8] *In re Leslie Controls, Inc.*, 437 B.R. 493, 501 (Bankr. D. Del. 2010) (finding all claimants, present and future, are "profoundly adverse" to asbestos debtor's interests "because the 'claimants wish to receive as much as possible' and the . . . debtors 'wish to hold their payment obligations to a minimum'").

and related parties pay to fund any eventual § 524(g) trust, which will be used to pay both present and future claimants alike.

21. Further, because of the requirements of § 524(g), the Committee and the FCR have aligned interests with respect to the structure and procedures under which such a trust will value and pay asbestos claims. Section 524(g) requires that present and future claims be valued and paid "in substantially the same manner," and, therefore, present and future claims must be subject to substantially the same processes and criteria for making and recovering on trust claims.[9]

22. The United States Court of Appeals for the Third Circuit has likewise confirmed that, during an asbestos bankruptcy, the interests of current and future claimants are closely aligned. "The several prerequisites set forth in § 524(g) are designed to protect the interests of *future* claimants whose claims are permanently enjoined. Among these, the plan must be approved by a super-majority of *current* claimants . . . ."[10] Those requirements are "specifically tailored to protect the due process rights of future claimants."[11] In other words, under § 524(g), the interests of current and future claimants are so closely aligned that the votes of current claimants are a proxy for the interests of future claimants, and are in fact necessary to constitutionally channel the claims of future claimants to a § 524(g) trust. The primary occasion when those interests diverge is when setting the payment percentage for a trust,[12] and that frequently happens in asbestos bankruptcies only after a bankruptcy plan has been confirmed.[13]

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[9] 11 U.S.C. § 524(g)(2)(B)(ii)(V).

[10] *Combustion Eng'g*, 391 F.3d at 237 (emphasis added).

[11] *Id.* at 234 n.45.

[12] *In re Duro Dyne Nat'l Corp.*, Civ. Action No. 18-15563 (MAS), Bankr. Action No. 18-27963 (MBK), 2019 WL 4745879, at *12 (D.N.J. Sept. 30, 2019) ("[I]n negotiating the payment percentage in the trust distribution plan, the future claimants' representative is adverse to current claimants, even though both parties seek to treat present claims substantially the same as future claims.").

[13] *See* Sepco Asbestos Personal Injury Trust Distribution Procedures §§ 2.3, 4.2, *In re Sepco Corp.*, No. 16-50058 (Bankr. N.D. Ohio Dec. 15, 2019), Geo. V. Hamilton, Inc. Asbestos Trust Distribution Procedures §§ 2.3, 4.2, *In re Geo. V. Hamilton, Inc.*, No. 15-23704 (Bankr. W.D. Pa. Jan. 5, 2018), The Flintkote Company and Flintkote Mines

23. On the other hand, it cannot be denied that the Debtors are "profoundly adverse" to both the current and future claimants: "[T]he 'claimants wish to receive as much as possible' and the . . . debtors 'wish to hold their payment obligations to a minimum.'"[14] Consequently, the Court should not let the Debtors unilaterally choose their inherent adversary, the fiduciary for all future claimants.

B. The Debtors' Recruitment of Mr. Grier Lays Bare Their Improper Motives for Selecting Him

24. While a debtor's nomination of an FCR candidate is not, in and of itself, improper, the circumstances surrounding the Debtors' selection of Mr. Grier cast doubt on the propriety of the nomination. Mr. Grier testified that on an August 17, 2020 conference call with the Debtors' counsel, Brad Erens of Jones Day explained to Mr. Grier why the Debtors chose to nominate him as FCR.[15] Mr. Erens told Mr. Grier that he was "frustrat[ed] with the way some of the other cases were going."[16] Mr. Grier recalled that Mr. Erens specifically expressed frustration about the DBMP bankruptcy—in which Jones Day is also debtor's counsel—because the FCR in that case—Mr. Esserman—was joining with the current claimants in opposition to DBMP's action for a preliminary injunction, which Mr. Erens "felt . . . was not in the best interests of futures":

> Q. Did he tell you what he meant by being frustrated with how the other cases were going?
>
> [Mr. Grier] A. I want to be careful that I don't speak for Mr. Erens. All I can say is my recollection of the conversation. I remember a reference to the case as being

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Ltd. Amended and Restated Asbestos Personal Injury Trust Distribution Procedures §§ 2.3, 4.2, *In re Flintkote Co.*, No. 04-11300 (Bankr. D. Del. Dec. 14, 2015), Yarway Asbestos Personal Injury Trust Distribution Procedures §§ 2.3, 4.2, *In re Yarway Corp.*, No. 13-11025 (Bankr. D. Del. Aug. 19, 2015), attached hereto as Exhibit C.

[14] *Leslie Controls*, 437 B.R. at 501; *see also In re Pittsburgh Corning Corp.*, 308 B.R. 716, 736 (Bankr. W.D. Pa. 2004) (For purposes of examining attorney's potential conflict of interest, the court found that the debtor, on the one hand, and the present and Future Claimants, on the other hand, "have materially adverse interests, . . . notwithstanding . . . [the debtor's] agreement to contribute to the Asbestos PI Trust in order to obtain the benefits of an injunction through the plan confirmation process.").

[15] Grier Dep. 35:10-11, Sept. 3, 2020 (Mr. Grier: "Mr. Erens gave me some background of the decision by Aldrich to nominate me as FCR."), attached hereto as Exhibit D.

[16] Grier Dep. 35:22-23.

> mired in litigation and that to at least one FCR taking the position jointly with the ACC that he felt like was not in the interest . . . of futures.
>
> Q. . . . [W]hat case was he referring to?
>
> A. I think he was referring to the DBMP case.
>
> . . . .
>
> Q. And when he said that the FCR was taking a position jointly with the ACC, did he explain to you what position that was?
>
> A. Had something to do . . . with the FCR opposing the preliminary injunction. But . . . he didn't go into detail and I didn't ask him to go into detail.[17]

25. Counsel for the Debtors expressly noted to Mr. Grier that Mr. Esserman was unacceptable to the Debtors as an FCR in these cases because of the "frustration with Mr. Esserman" that Mr. Erens described on the August 17, 2020 conference call.[18]

26. Particularly given the "profound[] advers[ity]"[19] that exists between a debtor and future asbestos claimants, it is simply inappropriate for the Debtors to condition their support for an FCR on his taking positions with which they agree. This Court should deny the Grier Motion.

II. THE COMMITTEE'S CANDIDATE, MR. ESSERMAN, IS QUALIFIED TO SERVE AS THE FCR

27. The Committee submits that Mr. Esserman is an independent and well-qualified candidate, whom this Court has recently found to possess the independence, experience, and qualifications necessary to serve as the FCR in two similar cases.[20] A copy of Mr. Esserman's *curriculum vitae* is attached hereto as Exhibit A. As set forth in his *curriculum vitae* and the

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[17] Grier Dep. 37:3-38:4.

[18] Grier Dep. 48:8-13 ("[Mr. Grier] A. At some point they said that the ACC had proposed Sandy Esserman . . . as a FCR. Q. And what did they say about Mr. Esserman? A. That he was not acceptable to the debtors."); *id.* at 49:9-13 ("Q. Okay. And . . . why did they say Mr. Esserman was unacceptable? [Mr. Grier] A. They . . . did not say to me anything other than the conversation I already related about frustration with Mr. Esserman.").

[19] *Leslie Controls*, 437 B.R. at 501 (finding all claimants, present and future, are "profoundly adverse" to asbestos debtor's interests).

[20] *See supra* note 3.

Declaration of Sander L. Esserman submitted in support of this Motion and attached hereto as Exhibit B (the "**Esserman Declaration**"), Mr. Esserman has broad experience in financial reorganizations and disputes, and has had significant roles in major bankruptcy cases across the country, including numerous mass tort and asbestos cases.

28. In particular, Mr. Esserman has more than 25 years of experience handling asbestos-related and mass tort-related issues in various capacities, including by serving as a FCR and acting as counsel to FCRs and counsel to mass tort trusts. He currently serves as the FCR in the chapter 11 cases of DBMP LLC and Bestwall LLC pending before this Court, as well as for the NGC Bodily Injury Trust. He has served as counsel to FCRs in the bankruptcy cases of National Gypsum Company (before being appointed as its FCR), General Motors, and T. H. Agricultural and Nutrition, L.L.C. Mr. Esserman is currently counsel to 17 mass tort trusts, most of which are asbestos-related trusts. *See generally* Esserman Declaration.

29. The Committee believes that Mr. Esserman's many years of experience and involvement in a substantial number of large and complex cases involving asbestos-related issues make him highly qualified to represent the interests of the future claimants.

30. In addition to being qualified, a candidate for FCR must also be a disinterested person, as defined in 11 U.S.C. § 101(14). As shown by the Esserman Declaration, which is incorporated herein by reference, the Committee believes that Mr. Esserman is such a "disinterested person."

31. Further, the Committee understands that neither Mr. Esserman nor his law firm represents interests adverse to current or future asbestos claimants, including those of asbestos defendants or insurance companies, or has any adverse interest that would prevent Mr. Esserman from serving as the FCR. Indeed, Mr. Esserman's legal career has been largely devoted to representing the interests of asbestos and other mass tort claimants, including future claimants.

The Committee anticipates that, as set forth in the Esserman Declaration, Mr. Esserman's undivided focus will be on vigorously representing the interests of the future claimants in these Chapter 11 Cases, recognizing that those interests, at times, may be adverse to the Committee, the Debtors, or both.

32. Accordingly, the Committee respectfully requests that the Court appoint Mr. Esserman to serve as the FCR in these Chapter 11 Cases.

III. MR. ESSERMAN IS THE BETTER CANDIDATE TO SERVE AS THE FCR IN THESE CHAPTER 11 CASES

33. A candidate for FCR must be qualified and disinterested to be appointed to the role. And, as one court put it, the ultimate question is: "Who would future claimants want to hire to represent them in this case?"[21] As explained below, Mr. Esserman is the best choice here.

A. Mr. Esserman Is More Experienced than Mr. Grier

34. In any asbestos bankruptcy, "negotiations among the various interested parties will be complex and will require an individual who can bring a level of expertise and experience to the table on behalf of future claimants."[22] Consequently, courts faced with deciding among multiple candidates for the role of FCR tend to select the candidate with greater experience representing future claimants and FCRs.[23]

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[21] *Fairbanks*, 601 B.R. at 838; *see also id.* at 843 (selecting James Patton as FCR over Mr. Grier and two other candidates because his "experience and expertise make him the best choice"); Transcript of Hearing at 4:21-23; 5:18-19, *In re Paddock Enters., LLC*, No. 20-10028 (Bankr. D. Del. June 17, 2020), ECF No. 376 (selecting candidate with "significant experience as a future claims representative and representing future claims representatives" over candidate who "lacks any experience as future claims representative" and whose law firm previously represented the debtor in asbestos litigation).

[22] *Fairbanks*, 601 B.R. at 844.

[23] *See, e.g.*, *id.*; Transcript of Hearing at 4:21-23, 5:18-19, *In re Paddock Enters., LLC*, No. 20-10028 (Bankr. D. Del. June 17, 2020), ECF No. 376 (selecting candidate with "significant experience as a future claims representative and representing future claims representatives" over candidate who "lacks any experience as future claims representative"). *Cf.* Transcript of Hearing at 102:11-13, *In re Maremont Corp.*, No. 19-10118 (Bankr. D. Del. Mar. 8, 2019), ECF No. 126 (selecting candidate, in part, because of his "more than 30 years of experience with asbestos litigation, bankruptcies and settlement trust[s]").

35. As set forth above and in the Esserman Declaration, Mr. Esserman has significant experience representing future claimants and FCRs in many asbestos-related and other mass tort bankruptcies, including serving as the FCR in the *DBMP* and *Bestwall* bankruptcies currently pending before this Court. Mr. Esserman also has substantial experience representing future claimants and FCRs for asbestos and other mass tort trusts.

36. In contrast, Mr. Grier's experience is limited to his lone service as the FCR in *Garlock*. While there is no doubt that Mr. Grier is an accomplished bankruptcy practitioner, it is clear that his experience in mass tort bankruptcies is limited, especially when compared against Mr. Esserman's.

37. Moreover, Mr. Esserman's experience as FCR in the *DBMP* and *Bestwall* bankruptcies makes him especially qualified to serve as FCR here as those cases bear important similarities to these Chapter 11 Cases. For example, just as in *DBMP* and *Bestwall*, the Debtors here engaged in a prepetition "divisional merger" under Texas law[24] and have initiated an adversary proceeding to seek a preliminary injunction to stay asbestos claims against their affiliates.[25]

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[24] Declaration of Tyler L. Woolson in Support of First Day Pleadings, ¶ 17, *In re Bestwall LLC*, No. 3:17-bk-31795 (Bankr. W.D.N.C. Nov. 2, 2017), ECF No. 2; Declaration of Robert J. Panaro in Support of First Day Pleadings, ¶ 17, *In re DBMP LLC*, No. 3:20-bk-30080 (Bankr. W.D.N.C. Jan. 23, 2020), ECF No. 24.

[25] Debtor's Complaint for Injunctive and Declaratory Relief (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or (II) in the Alternative, Declaring That the Automatic Stay Applies to Such Actions and (III) Granting a Temporary Restraining Order Pending a Full Hearing on the Motion, *Bestwall LLC v. Those Parties Listed on Appendix A to Complaint*, No. 3:17-ap-03105 (Bankr. W.D.N.C. Nov. 2, 2017), ECF No. 1; Debtor's Complaint for Injunctive and Declaratory Relief (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or (II) in the Alternative, Declaring That the Automatic Stay Applies to Such Actions and (III) Granting a Temporary Restraining Order Pending a Full Hearing on the Motion, *DBMP LLC v. Those Parties Listed on Appendix A to Complaint*, No. 3:20-ap-03004 (Bankr. W.D.N.C. Jan. 23, 2020), ECF No. 1.

38. Mr. Grier, however, has not followed the *DBMP* and *Bestwall* bankruptcies[26] and has no familiarity with the preliminary injunction proceedings in those cases.[27] Nor has he taken the time to become familiar with the details of the preliminary injunction proceeding in these Chapter 11 Cases.[28] Mr. Grier also is not familiar with the details of the prepetition restructurings in *DBMP* and *Bestwall*,[29] and does not have any familiarity with divisional mergers under Texas law.[30]

39. In addition, the Debtors here represent that they hold potentially billions of dollars in insurance coverage.[31] Mr. Esserman's broad mass tort experience includes negotiating with and litigating against dozens of asbestos insurers, which has resulted in the recovery of hundreds of millions of dollars of insurance coverage for the benefit of personal injury victims. *See* Esserman Declaration ¶ 14. Mr. Grier, on the other hand, has no experience negotiating with or litigating against insurers in an asbestos bankruptcy.[32]

40. In a preemptive attempt to promote Mr. Grier over more experienced candidates, the Debtors state, without evidence or citation, that those like Mr. Esserman, who have represented the interests of future claimants in multiple cases, are inherently "beholden to the asbestos plaintiff

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[26] Grier Dep. 60:3-5, 15-16 ("Q. Mr. Grier, have you followed the *Bestwall* and *DBMP* cases? A. Not in great detail. Occasionally. . . . I'm not following them at the level of reading briefs right now.")

[27] Grier Dep. 62:6-9 ("Q. Are you familiar with the adversary proceedings in the *DBMP* case and the *Bestwall* case? [Mr. Grier] A. I'm not.").

[28] Grier Dep. 79:9-12 ("Q. What do you know about the injunction proceeding here? [Mr. Grier] A. I -- I don't know anything about it. I've not looked at the papers.").

[29] Grier Dep. 62:10-20 ("Q. Are you aware of a prepetition restructuring that formed the Bestwall debtor? [Mr. Grier] A. I do remember, I think, reading about that somewhere. . . . I remember that there was such a restructuring. Q. Are you aware of the prepetition restructuring that formed the DBMP debtor? A. I'm aware that there was a prepetition restructuring. I couldn't tell you any details about it.").

[30] Grier Dep. 76:7-11 ("Q. Are you familiar at all with divisional mergers under Texas law? [Mr. Grier] A. I am not. Q. Do you know what a divisional merger is? A. I do not.").

[31] Pittard Declaration ¶ 16, ECF No. 27, p. 7.

[32] Grier Dep. 103:18-21 ("Q. Do you have any experience engaging with insurers in asbestos bankruptcy? [Mr. Grier] A. No, other than the experience with Truck which we've already discussed.").

law firm industry" because such representations "depend upon recommendations from repeat players potentially adverse to the future claimants constituency, such as the law firms . . . who sit on numerous asbestos creditors' committees."[33] Courts have, however, flatly rejected this argument. *See, e.g.*, *Fairbanks*, 601 B.R. at 841 ("It is true that the same professionals regularly appear in the same roles in many mass tort cases, . . . [but e]xperience and expertise should not be discarded unless the facts of the case, as developed in a thorough appointment process, raise concerns about the capabilities of particular candidates."); Transcript of Hearing at 20:3-6, *In re Duro Dyne Nat'l Corp.*, No. 18-27963 (Bankr. D.N.J. Oct. 16, 2018), ECF No. 189 (finding that "nothing about . . . [the candidate's] service as an FCR in other matters gives rise to a material adverse interest").

41. For example, in the *Fairbanks* bankruptcy, the court selected a very experienced FCR, James Patton, over three other candidates, including Mr. Grier. There, the United States Trustee unsuccessfully objected to Mr. Patton's appointment using the same premise that the Debtors rely on in the Grier Motion. The United States Trustee argued that because Mr. Patton had served as a FCR in other bankruptcies, he was part of a "closed group [of asbestos bankruptcy professionals] and [therefore] ha[d] an incentive to advocate (or to limit advocacy) so . . . [he] remains in the group at the expense of future claimants."[34] The court rejected this premise, explaining that repeat appearances in a certain role in mass tort bankruptcy cases is indicative of "[e]xperience and expertise," and found that "Mr. Patton's experience and expertise make him the best choice" for FCR.[35]

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[33] Grier Motion ¶ 17, ECF No. 267, p. 7.

[34] *Fairbanks*, 601 B.R. at 841.

[35] *Id.* at 841, 843.

42. Not only did the *Fairbanks* court find Mr. Patton's experience was not problematic, but it in fact found Mr. Patton's greater experience to be determinative. The court appointed Mr. Patton as FCR specifically because of his "significant experience in mass tort bankruptcy cases" and, "[i]n particular, . . . [his service] as a future claimants' representative in five other cases."[36] The court reasoned that such experience and expertise made the court "confident that future claimants, if asked who they would hire in this case, would select Mr. Patton."[37]

43. In light of the comparative experience of the candidates, it should be clear that future claimants, if asked whom they would hire in this case, would select Mr. Esserman.

B. The *Garlock* Case Should Not Be the Template for these Cases

44. The Debtors highlight Mr. Grier's experience as the FCR in *Garlock*, claiming that "[d]espite the highly contested nature of that case, Mr. Grier was able to represent effectively the interests of future claimants while working with the debtors and the official committee of asbestos claimants to achieve a plan of reorganization under section 524(g) and establish a trust to pay present and future claimants."[38] But *Garlock* is a case that took seven years and hundreds of millions of dollars in professionals' fees to resolve.

45. Moreover, while *Garlock* culminated in a consensual plan, the resulting § 524(g) trust is governed by a set of "Claims Resolution Procedures" containing unproven and potentially unworkable terms for which Mr. Grier advocated. Indeed, Mr. Grier himself has admitted that those procedures are "to some extent . . . an experiment" and that he was anxious to see "how it works out."[39]

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[36] *Id.* at 842.

[37] *Id.* at 844.

[38] Grier Motion ¶ 13, ECF No. 267, p. 6.

[39] Deposition of Joseph W. Grier at 63:11-21, *In re Fairbanks Co.*, No. 18-41768 (Bankr. N.D. Ga. Mar. 18, 2019) ("**Fairbanks Grier Dep.**") ("Q: Do you think there are any problems with the Garlock CRP? [Mr. Grier] A: I'm

46. It does not appear to have worked out. In fact, the GST trust took almost two years to pay out a single claim.[40] As of the end of 2019—the last period for which information about the trust is publicly available—the GST trust had received 3,345 claims, but paid only 279.[41] That is, of all claimants who have filed claims—some of whom were undoubtedly future claimants and, thus, members of Mr. Grier's constituency during the course of the *Garlock* bankruptcy—less than 9% have received payment. At the end of 2019, the GST trust held over $500 million in assets, but had paid out less than $3.7 million in claims.[42]

C. At His Deposition, Mr. Grier Refused to Answer Questions Concerning His Proposed Role as FCR

47. Section 524(g) requires that the Court appoint "a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands."[43] The Grier Motion, however, proposes a more expansive role for Mr. Grier if he were appointed FCR here: "The Future Claimants' Representative shall represent the interests of, appear *and act* on behalf of, and be a fiduciary to Future Claimants to protect the rights and interests of such Future Claimants."[44]

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anxious to find out. Q: So would you agree that it's currently unproven whether the Garlock CRP is going to work or not? . . . A: It's -- to some extent it's an experiment, and it's one I'm anxious to see what works, doesn't work, how it works out."), attached hereto as Exhibit E.

[40] GST Settlement Facility's Notice of Filing of Annual Report for the Year Ended December 31, 2019, *In re Garlock Sealing Techs.*, No. 3:10-bk-31607 (Bankr. W.D.N.C.), ECF No. 6309, p. 7 ("The Trust extended its first offers on unliquidated claims in June 2019 and began issuing payments on accepted offers shortly thereafter.").

[41] *Id.*, No. 3:10-bk-31607, ECF No. 6309-2.

[42] *Compare id.*, No. 3:10-bk-31607, ECF No. 6309-1, p. 8 (showing trust assets of over $502 million at year-end 2019) *with id.*, No. 3:10-bk-31607, ECF No. 6309-2 (showing only $3,678,625 in paid claims).

[43] 11 U.S.C. § 524(g)(4)(B)(i).

[44] Grier Motion ¶ 21(a), ECF No. 267, p. 9 (emphasis added).

48. It is Mr. Grier who insisted that the proposed FCR role include the authority to "act" on behalf of future claimants.[45] When Mr. Grier was asked why he insisted on this enhancement of the FCR role at his deposition, Mr. Grier refused to answer on instruction of his counsel:

> [MR. GUY]: I'm instructing the witness not to answer. You're asking his work product and it will probably also implicate attorney-client privilege communications in the context of what would be his future appointment in a future case. We're not going to talk about what if, he could do or couldn't do or why he couldn't do it and the support for it in a future case.[46]

49. This question was not, however, about a future case or about what Mr. Grier intends to do if appointed FCR; it was about the scope of authority that Mr. Grier is attempting to wield if selected as FCR in these Chapter 11 Cases. And, Mr. Grier's insistence on the authority to "act" for future claimants appears to be an attempt to create support for an unfounded argument he made in *Garlock*. Specifically, Mr. Grier argued that he, as FCR, could vote on behalf of future claimants to accept the *Garlock* Debtors' Second Amended Plan of Reorganization, which Mr. Grier described as "discharg[ing] present and future asbestos claims, without relying on section 524(g) of the Bankruptcy Code."[47] Such an argument is, however, contrary to the interests of future claimants and to law: FCRs cannot bind future claimants[48] and have no statutory authority outside of a § 524(g) plan.[49]

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[45] *See* Email from Jonathan Guy to Debtors' Counsel (Aug.17, 2020 11:25 ET) (GRIER00084), attached hereto as Exhibit F.

[46] Grier Dep. 113:19-114:3.

[47] Future Claimants' Representative's Response to the Preliminary Confirmation Objections of the Official Committee of Asbestos Personal Injury Claimants to the Debtors' Second Amended Plan of Reorganization, at 1, *In re Garlock Sealing Techs.*, No. 3:10-bk-31607 (Bankr. W.D.N.C. May 22, 2015), ECF No. 4618.

[48] *Manville Corp. v. Equity Sec. Holders' Comm.* (*In re Johns-Manville Corp.*), 60 B.R. 842, 845 (S.D.N.Y. 1986) (appointing FCR "without power to bind" the claimants that it represents), *rev'd on other grounds*, 801 F.2d 60 (2d Cir. 1986); *In re G-I Holdings, Inc.*, 328 B.R. 691, 697-98 (D.N.J. 2005) ("[T]he . . . [FCR] is not a guardian ad litem with the power to bind future claimants.").

[49] *See* 11 U.S.C. § 524(g)(4)(B)(i) (providing that the court must appoint a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands to issue an injunction under § 524(g)). *See also G-I Holdings*, 328 B.R. at 697-98.

D. Unlike Mr. Esserman, Mr. Grier and His Proposed Counsel Suffer from Conflicts of Interest

50. Mr. Grier, and his law firm, Grier Wright Martinez, PA, currently represent Truck Insurance Exchange ("**Truck**"), an asbestos insurance company, in the heavily contested *Kaiser Gypsum* bankruptcy, now pending before this Court.[50] It is black letter law that, as with asbestos defendants, the interests of insurance companies in a bankruptcy are in direct conflict with those of asbestos claimants, current and future.[51] And future claimants, because they are unknown, cannot waive this conflict.[52] As Mr. Grier acknowledged in his deposition in *Fairbanks*: "[T]he insurance company wants to pay as little money as possible. The claimants want as much money as possible. That's about as adverse as you can get."[53]

51. In the *Kaiser Gypsum* case, Mr. Grier's firm—and, under black letter law, Mr. Grier by imputation[54]—has taken positions and engaged in litigation not only directly adverse to those debtors' present and future asbestos claimants, but adverse to virtually all present and future

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[50] *See, e.g.*, Objection of Truck Insurance Exchange to Confirmation of the Third Amended Joint Plan of Reorganization, *In re Kaiser Gypsum Co.*, No. 3:16-bk-31602 (Bankr. W.D.N.C. Feb. 24, 2020), ECF No. 2070 ("**Truck Plan Objection**") (executed and filed by Grier Wright Martinez, PA).

[51] *See, e.g.*, *In re Mid-Valley, Inc.*, 305 B.R. 425, 433 (Bankr. W.D. Pa. 2004) (explaining that insurers "interests are adverse to *all* asbestos creditors' interests, present and future"); *Chicago Ins. Co. v. Thorpe Insulation Co.*, No. CV 08-1020 DSF, 2008 WL 11338766, at *4 n.6 (C.D. Cal. July 14, 2008) (explaining that insurers could "have no interest in a plan of reorganization that better favors future claimants, as . . . [insurers'] interests are adverse to those of the future claimants").

[52] *C.f. Fairbanks*, 601 B.R. at 833 ("Present claimants can protect their rights in a chapter 11 case themselves and participate in the bankruptcy process; future claimants cannot."); *In re Johns-Manville Corp.*, 551 B.R. 104, 114 (S.D.N.Y. 2016) (recognizing that future claimants are "unknown" and thus cannot receive notice). Mr. Grier has previously acknowledged that future claimants cannot waive conflicts. Transcript of Hearing at 136:18-22, *In re Fairbanks Co.*, No. 18-41768 (Bankr. N.D. Ga. Mar. 28, 2019), ECF No. 256, attached hereto as Exhibit G.

[53] Fairbanks Grier Dep. 76:20-77:1.

[54] An attorney's conflicting interests are imputed to all of those in his or her firm under North Carolina law, meaning that Mr. Grier's firm's representation of Truck is a conflict for him even if he does not directly participate in the representation. *K.C. v. Cansler*, No. 5:11-CV-354-FL, 2012 WL 12914654, at *6 n.16 (E.D.N.C. Jan. 10, 2012) ("There is no dispute that a conflict of one attorney within the Firm may be imputed to another."); *Ferguson v. DDP Pharmacy, Inc.*, 621 S.E.2d 323, 328 (N.C. Ct. App. 2005) (imputing the conflict of interest that existed between a law firm's partner and his former client to the entire law firm); *see also* N.C. R. PROF'L CONDUCT R. 1.10 cmt. 2 ("[E]ach lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated.").

asbestos claimants. Truck sought—unsuccessfully—to defeat the plan proposed jointly by the debtors, the committee, and the FCR in that case,[55] and filed a competing plan of reorganization that sought to cap Truck's liabilities to current and future asbestos victims.[56] This Court found Truck's plan patently unconfirmable for several reasons, including that it failed to provide due process to future claimants.[57]

52. What is more, Mr. Grier's firm has not only actively litigated against the interests of Kaiser Gypsum's future asbestos claimants, it has also participated in advocating the position that virtually all asbestos claimants and their counsel engage in fraud. For example, Mr. Grier's client, Truck, has stated that the many asbestos victims' cases against the *Kaiser Gypsum* debtors are "of dubious merit, if not outright fraudulent."[58] Indeed, Truck has argued that the *Kaiser Gypsum* plan's "*raison d'etre* is to enable asbestos claimants to obtain fraudulently inflated recoveries in the tort system."[59] Truck did not base these arguments on any specific evidence of fraud against the *Kaiser Gypsum* debtors, but rather on alleged "rampant evidence suppression

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[55] *See generally* Truck Plan Objection, No. 3:16-bk-31602, ECF No. 2070.

[56] Fourth Amended Chapter 11 Plan of Reorganization for Kaiser Gypsum Co., Inc. and Hanson Permanente Cement, Inc. Proposed by Truck Insurance Exchange, *In re Kaiser Gypsum Co.*, No. 3:16-bk-31602 (Bankr. W.D.N.C. Jan. 4, 2019), ECF No. 1413.

[57] Order Denying Fifth Amended Disclosure Statement for Fifth Amended Chapter 11 Plan of Reorganization for Kaiser Gypsum Co., Inc. and Hanson Permanente Cement, Inc., Proposed By Truck Insurance Exchange, *In re Kaiser Gypsum Co.*, No. 3:16-bk-31602 (Bankr. W.D.N.C. Oct. 7, 2019), ECF No. 1834; Transcript of Hearing at 80:18-81:20, *In re Kaiser Gypsum Co.*, No. 16-31602 (Bankr. W.D.N.C. Sept. 4, 2019), ECF No. 1785 ("There is also an objection about, and a question of whether due process is violated by a plan such as this as to future claimants. . . . 524(g) was designed for claims where you didn't know whether you were sick, even though the exposure was prepetition, if you had not yet been affected. So bottom line is that I, I think you've got a due process issue that might make this plan unfeasible, as well.").

[58] Truck Insurance Exchange's Memorandum of Law in Support of Its Opposition to the Motion of the Debtors, the Official Committee of Asbestos Personal Injury Claimants, and the Future Claims Representative to Lift the Stay Under 11 U.S.C. § 362 as to Certain Asbestos Personal Injury Claims, *In re Kaiser Gypsum Co.*, No. 3:16-bk-31602 (Bankr. W.D.N.C. May 4, 2018), ECF No. 916, p. 20.

[59] Truck Plan Objection, No. 3:16-bk-31602, ECF No. 2070, p. 4.

fraud in the tort system" generally; thus, levelling its accusations against present and future asbestos claimants of any asbestos defendant, including those of the Debtors.[60]

53. An FCR must be "loyally committed to protecting the interests of future claimants."[61] Those interests include, as Mr. Grier has acknowledged, making "as much money as possible" available to pay their claims.[62] It is difficult to comprehend how Mr. Grier can be loyally committed to that interest in these Chapter 11 Cases when his law firm is contemporaneously making arguments that asbestos claim values are artificially inflated through fraud in the tort system. And here, the Debtors have made the same argument as Truck: that alleged widespread evidence suppression in the tort system is evidence that their asbestos liability has been inflated by fraud.[63]

54. Consequently, there is a significant risk that Mr. Grier's representation of Truck will limit his ability to represent future claimants here; this is a textbook positional conflict.[64] Indeed, courts have disqualified lawyers from representations that would require the firm to take legal positions contradicting those it took on similar factual allegations in another case and where successfully arguing such legal positions in one case would "directly prejudice" the firm's client in the other.[65] Mr. Grier is in the same situation and, thus, should be similarly disqualified here.

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[60] *See* Consolidated Response of Truck Insurance Exchange to the Briefs in Support of Confirmation Filed by Plan Proponents, *In re Kaiser Gypsum Co.*, No. 3:16-bk-31602, (Bankr. W.D.N.C. July 7, 2020) ECF No. 2359, p. 4.

[61] *See Fairbanks*, 601 B.R. at 834.

[62] *See* Fairbanks Grier Dep. 76:24-25.

[63] *See* Informational Brief, ECF No. 5, p. 12 (describing claims of evidence suppression in *Garlock* and stating "[t]he Debtors are confident that they were subject to similar practices").

[64] N.C. R. PROF'L CONDUCT R. 1.7 cmt. 24 ("[A] conflict of interest exists . . . if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case."); *see also Cansler*, 2012 WL 12914654, at *6 (disqualifying law firm from representation where there was "a significant risk that the Firm's action on behalf of [its clients] in the instant matter will materially limit its effectiveness in representing [its clients in another matter]").

[65] *Cansler*, 2012 WL 12914654, at *7-8 (disqualifying firm from representing defendant Medicaid contractor against claims by minor children where firm, in another case, already represented another set of minor children bringing similar claims against a different Medicaid contractor).

55. Exacerbating this conflict, Mr. Grier has also indicated that if selected as FCR, he intends to hire the law firm Orrick, Herrington, & Sutcliffe to serve as his counsel. However, the Orrick firm is conflicted here because it currently represents major asbestos defendants in the tort system.[66] For example, according to Orrick's website:

- Orrick partner James Stengel is "the leader of the Orrick team serving as National Counsel for Union Carbide in asbestos litigation,"[67]
- Orrick partner Lisa Simpson "serves as national and trial counsel to Johnson & Johnson, defending the company's talcum powder products against claims that those products cause mesothelioma, ovarian cancer and contain asbestos,"[68]
- Orrick partner Laurie Strauch Weiss "acts as counsel to Union Carbide in connection with asbestos-related personal injury lawsuits [and] . . . developed and coordinated a national scientific and medical defense for Union Carbide,"[69] and
- Orrick partner Christopher Vejnoska is "[a]cting as first chair trial counsel for [Johnson & Johnson] in its asbestos-related talc litigation" and "[s]erving as counsel and first chair trial counsel in the defense of asbestos personal injury claims [for Union Carbide Corporation]."[70]

56. Future claimants would be unlikely to select attorneys with such positional conflicts as their fiduciary representatives.

57. While the Debtors may view nominating Mr. Grier as FCR as a canny litigation tactic in a case they expect to aggressively litigate, the selection of an FCR as an estate fiduciary to represent the interests of future claimants—who cannot protect their own interests in this bankruptcy—is not an appropriate circumstance for gamesmanship.

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[66] *See, e.g.*, *Orrick – Practices, Mass Torts & Product Liability*, https://www.orrick.com/en/Practices/Mass-Torts-and-Product-Liability (last visited Aug. 27, 2020) ("We successfully defend companies in mass torts involving thousands of plaintiffs nationwide, in some of the most plaintiff-friendly jurisdictions in the country. . . . Orrick 'stands out for its asbestos exposure and personal injury litigation expertise.'").

[67] Orrick Bio for James Stengel (as of September 4, 2020), attached hereto as Exhibit H.

[68] Orrick Bio for Lisa T. Simpson (as of September 4, 2020), attached hereto as Exhibit I.

[69] Orrick Bio for Laurie Strauch Weiss (as of September 4, 2020), attached hereto as Exhibit J.

[70] Orrick Bio for Christopher Vejnoska (as of September 4, 2020), attached hereto as Exhibit K.

TERMS AND CONDITIONS OF MR. ESSERMAN'S APPOINTMENT

58. The Committee requests that the appointment of Mr. Esserman be approved on the following terms and conditions, which are substantively identical to those that the Debtors have requested for Mr. Grier with the exception of the inappropriate use of the word "act" in the scope of his appointment:

a. Appointment. Mr. Esserman will be appointed as the FCR to represent and protect the rights of future claimants. As FCR, Mr. Esserman shall represent the interests of, appear on behalf of, and be a fiduciary to future claimants to protect the rights and interests of such future claimants and shall be entitled to compensation in connection therewith from the date of the filing of this Motion. However, Mr. Esserman shall not be obligated to perform the duties of FCR until the Court has entered an order appointing him as FCR, nor shall he be liable to any party on account of services performed prior to entry of such order. Mr. Esserman will have no other obligations except those that may be prescribed by orders of the Court and accepted by Mr. Esserman.

b. Party in Interest. The FCR shall be a party in interest in these cases and shall have standing under 11 U.S.C. § 1109(b) to be heard on any issue in these cases in the Bankruptcy Court, the District Court, or any other court affecting the rights of future claimants. The FCR shall have the powers and duties of a committee set forth in 11 U.S.C. § 1103 as are appropriate for an FCR.[71]

c. Engagement of Professionals. Mr. Esserman may employ attorneys and other professionals consistent with 11 U.S.C. §§ 105, 327, 1103, subject to prior approval of this Court. Such attorneys and other professionals will be subject to the terms of the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Retained Professionals [ECF No. 171] (the "**Interim Compensation Order**"). In addition, without further Court approval, Mr. Esserman may utilize the services of his firm, Stutzman, Bromberg, Esserman & Plifka, P.C. ("**Stutzman Bromberg**"), for primarily administrative matters and other specific assignments. Payment of Stutzman Bromberg's fees or the reimbursement of any of Stutzman Bromberg's expenses will be subject to the terms of the Interim Compensation Order and Mr. Esserman will include the services provided

[71] *See In re Johns-Manville Corp.*, 52 B.R. 940, 942 (S.D.N.Y. 1985) (legal representative for future claimants was authorized to exercise powers and perform duties of a committee under 11 U.S.C. § 1103); *In re UNR Indus., Inc.*, 71 B.R. 467, 478 (Bankr. N.D. Ill. 1987) (stating that the future claimants' representative was granted the powers and responsibilities of a committee).

by Stutzman Bromberg in his applications for payment, pursuant and subject to the orders and procedures of this Court.

d. Compensation. Compensation, including professional fees and reimbursement of expenses, shall be payable to Mr. Esserman and his professionals from the Debtors' estates, subject to approval of this Court, and in accordance with the terms, conditions and procedures set forth in the Interim Compensation Order. Mr. Esserman will be compensated at the rate of $850 per hour for calendar year 2020, subject to periodic adjustment (generally annually) in the ordinary course of Mr. Esserman's business, plus reimbursement of reasonable and documented out-of-pocket expenses.

e. Liability Insurance. Mr. Esserman will be covered by his own firm's liability insurance without any additional cost to the Debtors' estates.

f. Indemnification. The FCR shall not be liable for any damages, or have any obligation other than as prescribed by order of the Court; provided, however, that the FCR may be liable for damages caused by willful misconduct or gross negligence. The FCR shall not be liable to any person as a result of any action or omission taken or made in good faith. The Debtors jointly and severally shall indemnify, defend and hold harmless Mr. Esserman, his partners, associates, principals, employees and professionals (individually an "**Indemnified Party**") from all claims against any of them, and all losses, claims, damages, or liabilities (or actions in respect thereof) to which any of them may become subject, as a result of or in connection with such party rendering services pursuant to any order approving this Motion or to the FCR, unless and until it is finally judicially determined that such losses, claims, damages or liabilities were caused by willful misconduct or gross negligence on the part of such Indemnified Party. If before the earlier of (i) the entry of an order confirming one or more plans of reorganization in these cases, and such order(s) having become final and no longer subject to appeal, and (ii) the entry of an order closing these Chapter 11 Cases, an Indemnified Party believes that he, she or it is entitled to payment of any amount by the Debtors on account of the Debtors' obligations to indemnify, defend, and hold harmless as set forth herein, including, without limitation, the advancement of defense costs, the Indemnified Party must file an application for such amounts with the Court, and the Debtors may not pay any such amounts to the Indemnified Party before the entry of an order by the Court authorizing such payments. The preceding sentence is intended to specify the period of time during which the Court has jurisdiction over the Debtors' obligations to indemnify, defend and hold harmless as set forth herein, and is not a limitation on the duration of the Debtors' obligation to indemnify any Indemnified Party. In the event that a cause of action is asserted against any Indemnified Party arising out of or relating to the performance of his, her or its duties pursuant to any order.

g. Right to Receive Notices. Mr. Esserman and any Court-approved counsel retained by Mr. Esserman will be deemed members of the "Master Service

List" for purposes of the Order Establishing Certain Notice, Case Management and Administrative Procedures [ECF No. 123] (the "**Case Management Order**").

h. Termination of Appointment. Unless otherwise ordered by the Court or provided for in any confirmed plan of reorganization, Mr. Esserman's appointment as FCR will terminate upon the effective date of a plan of reorganization in these Chapter 11 Cases or otherwise by written resignation or incapacity to serve.

59. The Committee believes that the proposed terms of Mr. Esserman's employment are consistent with the terms typically approved by bankruptcy courts for such appointments.

60. For all of the foregoing reasons, the Committee submits that the appointment of Mr. Esserman as FCR is in the best interests of the Debtors' estates, the future claimants, and all other parties in interest.

NOTICE

61. Consistent with the Case Management Order, notice of this Motion has been provided to: (a) the Office of the United States Bankruptcy Administrator for the Western District of North Carolina (the "**Bankruptcy Administrator**"); (b) counsel to the Debtors; (c) counsel to the Debtors' non-debtor affiliates, Trane Technologies Company LLC and Trane U.S. Inc.; (d) the Debtors' proposed FCR, Joseph W. Grier, III; and (e) the other parties on the Service List established by the Case Management Order. The Committee submits that, in light of the nature of the relief requested, no other or further notice need be provided.

NO PRIOR REQUEST

62. No prior request for the relief sought in this Motion has been made to this Court or any other court in connection with these Chapter 11 Cases.

WHEREFORE, the Committee respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit L, granting (a) the relief requested herein and

(b) such other and further relief to the Debtors as the Court may deem just and proper, and that the Court deny the Grier Motion.

Dated: September 4, 2020

/s/ Glenn C. Thompson

Glenn C. Thompson (Bar No. 37221)
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Charlotte, North Carolina 28202
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-and-

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Fax: (302) 516-1699
nramsey@rc.com
dwright@rc.com

Co-Counsel for the Official Committee of Asbestos Personal Injury Claimants

EXHIBIT A

Sander L. Esserman *Curriculum Vitae*

SANDER L. ESSERMAN

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, A PROFESSIONAL CORPORATION
2323 BRYAN STREET, SUITE 2200
DALLAS, TEXAS 75201
EMAIL: esserman@sbep-law.com

EDUCATION:

1969 - 1973	DePauw University, B.A., 1973, cum laude in economics, Omicron Delta Epsilon honorary for economics, Gold Key Award recipient.
1973 - 1976	Southern Methodist University School of Law, J.D., 1976, student editor for *Human Rights Law Journal*, an ABA sponsored publication, Dean's List, "M" Award recipient.

EMPLOYMENT:

1976 - 1977	Law Clerk for the Honorable Nauman S. Scott, Chief Judge for the United States District Court for the Western District of Louisiana.
1977 - 1983	Associate and partner in Freytag, Marshall, LaForce, Rubinstein & Stutzman.
1984 - Present	Partner, then Shareholder in Stutzman Bromberg Esserman & Plifka, A Professional Corporation.
1997 - Present	President of Stutzman Bromberg Esserman & Plfika, A Professional Corporation.
1999 - Present	Adjunct Faculty member at Southern Methodist University School of Law teaching Creditors' Rights and Advanced Bankruptcy.

PROFESSIONAL ACTIVITIES:

Published numerous articles in the debtor-creditor area, including Creditor and Consumer Rights in 45 *Southwestern Law Journal* 1553 (1992), Annual Survey of Texas Law, and 46 *SMU Law Review* 1187 (1993). Contributing author in *Creditors' Rights Handbook*, a guide to the Debtor-Creditor Relationship, a Clark Boardman Callaghan Publication; Contributing Author in *Bankruptcy: Essential Legal and Business Strategies* (1991); co-author, *Course Materials for Advanced Bankruptcy* (2000); and co-author, *Collier Handbook for Trustees and Debtors In Possession (2001-2017 Editions)*, a Matthew Bender & Company publication; and co-author, New York University Annual Survey of American Law: "The Case for Broad Access to 11 U.S.C. 524(g) in Light of the Third Circuit's Ongoing Business Requirement Dicta in Combustion Engineering" (2006).

Lecturer and panel member in numerous seminars on Bankruptcy, Mass Torts, Creditors Rights, Corporate Trust, and the Trust Indenture Act.

Past Chairman of the ABA Business Bankruptcy Section Subcommittee of Mass Tort and Environmental Claims.

Advisor to the ALI on Restatement of Torts: Economic Loss.

Southern Methodist University School of Law Executive Board (2009 - present).

Duke University School of Law Board of Visitors (2017 appointment).

PROFESSIONAL REPRESENTATIONS:

My experience in financial reorganizations and disputes covers the waterfront, including legal representative for future claimants in asbestos cases ("FCR"), counsel to FCRs, lead counsel to debtors, secured creditors, trustees, indenture trustees, and various creditors' committees. I currently serve as FCR for DBMP LLC (affiliate of CertainTeed LLC) in Chapter 11 in Charlotte, NC, Bestwall LLC (affiliate of Georgia Pacific) in Chapter 11 in Charlotte, NC, NGC Settlement Trust and Asbestos Claims Management Corporation (2000), and subsequently for NGC Bodily Injury Trust. I have also served as counsel to the FCRs in National Gypsum Company (subsequently appointed FCR), General Motors (SDNY), and T H Agricultural and Nutrition, L.L.C. (SDNY) while in Chapter 11 proceedings. I also represent the Public Entities (including Town of Paradise and various cities and counties) in the PG&E Chapter 11.

I have also served as lead bankruptcy counsel to various corporations and committees. I have served or am serving as special bankruptcy counsel to the MDLs in General Motors, Takata (TK Holdings, et al.), Cook Medical, and Chinese Drywall, pending in New Orleans. I am currently counsel to 14 mass tort trusts, mostly asbestos related, but also some silica and drywall trusts. I am also counsel to the Futures Representative in 4 mass tort trusts.

EXHIBIT B

Declaration of Sander L. Esserman

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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

DECLARATION OF SANDER L. ESSERMAN

Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Sander L. Esserman declares:

1. I submit this declaration in support of the Motion of the Official Committee of Asbestos Personal Injury Claimants for an Order Appointing Sander L. Esserman as Legal Representative for Future Asbestos Claimants (the "**Motion**").[2]

2. My professional qualifications to serve as the FCR in these Chapter 11 Cases are set forth in my *curriculum vitae*, attached to the Motion as Exhibit A.

3. As set forth in my *curriculum vitae*, I have broad experience in financial reorganizations and disputes, and have held significant roles in major bankruptcy cases across the country, including numerous mass tort and asbestos cases. In particular, I have more than 25 years of experience handling asbestos-related and mass tort-related issues in various capacities, including by serving as a FCR and acting as counsel to FCRs and counsel to mass tort trusts. I currently serve as the FCR in the chapter 11 cases of DBMP LLC (No. 20-30080 (JCW) (Bankr. W.D.N.C.)) and Bestwall LLC (No. 17-31795 (LTB) (Bankr. W.D.N.C.)) and for the NGC Bodily

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

[2] Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

Injury Trust. I have also served as counsel to FCRs in the bankruptcy cases of National Gypsum Company (before being appointed as FCR), General Motors and T. H. Agricultural and Nutrition, L.L.C. And, as set forth in further detail below, I am currently counsel to 17 mass tort trusts, most of which are asbestos-related trusts, with the remaining being silica- and drywall-related trusts. Finally, I participate in an informal discussion group of FCRs, which meets quarterly to discuss a variety of issues.

4. I have expressed to the Committee my willingness to serve as the FCR in these Chapter 11 Cases pursuant to 11 U.S.C. § 524(g)(4)(B)(i) and the terms of any order that this Court may enter concerning the appointment of such a FCR.

5. For primarily administrative matters and other specific assignments, I may utilize the services of my firm, Stutzman, Bromberg, Esserman & Plifka, P.C. ("**Stutzman Bromberg**"), subject to the terms of the Interim Compensation Order with respect to the payment of any of the firm's fees or the reimbursement of any of the firm's expenses. I will include the services provided by Stutzman Bromberg in my applications for payment, pursuant and subject to the orders and procedures of this Court. For additional matters that may be assigned to Stutzman Bromberg, I will file a separate application to retain Stutzman Bromberg as my counsel.

6. I submit this declaration in compliance with and to provide disclosure pursuant to Fed. R. Bankr. P. 2014(a). Unless otherwise stated in this declaration, I have personal knowledge of the facts hereinafter set forth. To the extent that any information disclosed herein may require amendment or modification upon further analysis by me or as additional creditor information becomes available or if any new relevant facts or relationships are discovered by me or made known to me, I will submit a supplemental declaration. The Committee has provided me with a

list of names (collectively, the "**Interested Parties**"), a copy of which is attached hereto as Schedule 1.

7. I have reviewed the list of Interested Parties. My firm has searched its conflicts database and prepared a summary of the results of the aforementioned searches, which is set forth below. To the best of my knowledge, information and belief, insofar as I have been able to ascertain after reasonable inquiry, my firm and I do not represent, and have not represented, any entity in matters related to these Chapter 11 Cases. Other than in connection with my appointment as FCR in these Chapter 11 Cases, my firm and I have no connection with any Interested Parties, other than as set forth below.

8. In the *Motors Liquidation Company* bankruptcy case in the Southern District of New York, Stutzman Bromberg has an ongoing representation of Lead Counsels for the MDL Litigation relating to ignition switch matters. In particular, Stutzman Bromberg serves in the role of Co-Designated Counsel for the Ignition Switch Plaintiffs and Certain Non-Ignition Switch Plaintiffs. Stutzman Bromberg does not represent the Plaintiffs' Steering Committee in the MDL litigation, which works with the various Lead Counsel groups. Certain members of the Plaintiffs' Steering Committee, including representatives of Baron & Budd, P.C., may represent claimants with asbestos claims against the Debtors.

9. Stutzman Bromberg represented as bankruptcy counsel the Plaintiffs' Steering Committee, Plaintiffs' Personal Injury Track Lead Counsel, Plaintiffs' Economic Damages Track Co-Lead Counsel and the Chair Lead Counsel for the MDL plaintiffs and proposed classes (collectively, the "**MDL Plaintiffs**") in the MDL action against Takata Corporation and affiliates in *In re Takata Airbag Product Liability Litigation* (MDL No. 2599, 15-MD 2599-FAM (S.D. Fla.)), which concerned liability from defective airbag systems. In particular, Stutzman Bromberg

represented the interests of the MDL Plaintiffs in the pending bankruptcy cases of Takata Corporation and certain affiliates. A lawyer from Baron & Budd, P.C. was on the MDL Plaintiffs' Steering Committee. Certain members of that Steering Committee may represent claimants with asbestos claims against the Debtors.

10. I also report that in past matters that have ended, Stutzman Bromberg has represented or has been consulted by a number of asbestos law firms and other asbestos-related creditor groups in various asbestos-related bankruptcy proceedings around the country. Stutzman Bromberg represented these law firms in connection with various bankruptcy-related legal issues, including discovery issues, insurance issues, confirmation issues, contested lift stay issues, proofs of claim, section 363 sales, plans of reorganization, fee issues and appellate work. While many of these law firms may now represent clients who have or had claims against the Debtors, Stutzman Bromberg no longer represents these law firms in any current matter and does not represent and has not represented individual asbestos claimants in their capacity as asbestos claimants against asbestos defendants (including the Debtors) in the tort system.[3]

11. Stutzman Bromberg has also represented the WCI Chinese Drywall Property Damage and Personal Injury Settlement Trust, which is not an asbestos-related trust. At one point, a lawyer from Baron & Budd, P.C., who subsequently resigned from Baron & Budd, P.C., served on the advisory board of that WCI trust. The WCI trust was terminated in 2017, all its assets distributed and Stutzman Bromberg's representation ended.

[3] Some of the law firms that have been Stutzman Bromberg clients (but more than three years ago) include Provost Umphrey Law Firm, LLP; Reaud Morgan & Quinn, LLP; Baron & Budd, P.C.; Law Offices of Peter G. Angelos, P.C.; Brayton Purcell LLP; Shepard Law; Ryan A. Foster Law Firm; Hissey Kientz Herron; Lipman Law; and Weitz & Luxenberg PC. Again, Stutzman Bromberg no longer represents these law firms in any current matter.

12. I was co-counsel with Baron & Budd, P.C. to the State of New Mexico in a matter in the opioid-related chapter 11 case *In re Insys Therapeutics, Inc.* (No. 19-11292 (Bankr. D. Del.)), which matter lasted only two months and has terminated.

13. In addition to the foregoing, I currently serve in the following roles in other chapter 11 cases or in connection with mass tort trusts:

- the FCR in the chapter 11 case of DBMP LLC (No. 20-30080 (JCW) (Bankr. W.D.N.C.));
- the FCR in the chapter 11 case of Bestwall LLC (No. 17-31795 (LTB) (Bankr. W.D.N.C.));
- counsel for David F. Levi in his capacity as FCR for the Western Asbestos Settlement Trust, the Plant Insulation Settlement Asbestos Trust, the Thorpe Insulation Settlement Trust and the J.T. Thorpe Settlement Trust;
- counsel to the Plaintiffs' Co-Lead Counsel[4] in the matter of *In re Cook Medical Inc.* (No. 1:14-ml-2570 (S.D. Ind.)) regarding allegedly defective vein filters;
- co-counsel with the Calwell Luce Ditrapano PLLC firm in a mass tort case unrelated to asbestos;
- co-counsel with Baron & Budd, P.C. and Nuti Hart LLP to the Public Entities Impacted by the Wildfires in the chapter 11 case of PG&E Corporation (No. 19-30088 (Bankr. N.D. Cal.));
- counsel to the following 17 mass tort trusts:[5] (i) ABB Lummus Global Inc. 524(g) Asbestos PI Trust; (ii) ASARCO Asbestos Personal Injury Settlement Trust; (iii) Clemtex Silica Settlement Trust; (iv) Combustion Engineering 524(g) Asbestos PI Trust; (v) Congoleum Plan Trust; (vi) J.T. Thorpe Company Successor Trust; (vii) Leslie Controls, Inc. Asbestos Personal Injury Trust; (viii) Maremont Asbestos Personal Injury Trust; (ix) Metex Asbestos PI Trust; (x) M.H. Detrick Company Asbestos Trust; (xi) North American Refractories Company Asbestos Personal

[4] The Plaintiffs' Co-Lead Counsel in *In re Cook Medical Inc.* are (i) Ben C. Martin, Law Offices of Ben C. Martin; (ii) David P. Matthews, Matthews & Associates; and (iii) Michael W. Heaviside, Heaviside Reed Zaic. The leadership structure of MDL in this proceeding has Plaintiffs' Liaison Counsel & State/Federal Liaison Counsel, Plaintiffs' Executive Committee consisting of eight firms, and a Plaintiffs' Steering Committee ("**PSC**") consisting of fifteen firms. Certain members of the PSC represent claimants with asbestos claims against the Debtors.

[5] Stutzman Bromberg serves as general outside counsel to these trusts. As general outside counsel to each of these trusts, Stutzman Bromberg provides various legal analysis and advice to assist the respective Trustees in fulfilling their fiduciary responsibilities.

Injury Settlement Trust;[6] (xii) Rock Wool Manufacturing Company Asbestos Trust; (xiii) Rutland Fire Clay Company Asbestos Trust; (xiv) Sepco Asbestos Personal Injury Trust (xv) T H Agriculture & Nutrition, L.L.C., Asbestos Personal Injury Trust; (xvi) United Gilsonite Laboratories Asbestos Personal Injury Trust; and (xvii) Utex Industries, Inc. Successor Trust; and

- Legal Representative for Unknown Claimants of the NGC Bodily Injury Trust, where Stutzman Bromberg serves as counsel to the Legal Representative.

14. My mass tort experience includes negotiating with and litigating against dozens of asbestos insurers, which has resulted in the recovery of hundreds of millions of dollars of insurance coverage for the benefit of personal injury victims.

15. Caplin & Drysdale, Chartered, co-lead counsel to the Committee, represents the Trust Advisory Committees for the ASARCO Asbestos Personal Injury Settlement Trust, Congoleum Plan Trust, M H Detrick Company Asbestos Trust, Rutland Fire Clay Company Asbestos Trust, Rock Wool Manufacturing Company Asbestos Trust, Metex Asbestos PI Trust, Sepco Asbestos Personal Injury Trust, and the North American Refractories Company Asbestos Personal Injury Trust. The Committee's other co-lead counsel, Robinson & Cole, LLP, represents the Trust Advisory Committees for the Leslie Controls, Inc. Asbestos Personal Injuries Trust, Maremont Asbestos Personal Injury Trust and the United Gilsonite Laboratories Asbestos Personal Injury Trust. FTI Consulting, Inc., the financial advisor to the Committee in these Chapter 11 Cases, advises me in my capacity as the FCR in the chapter 11 cases of DBMP, LLC and Bestwall, LLC.

16. In addition, in 2018, my son, Mark Esserman, served as a summer law clerk for Haynes and Boone, LLP ("**Haynes and Boone**") and Baron & Budd, P.C., and now is employed as an associate at Haynes and Boone. Haynes and Boone has performed defense work in mass tort

[6] The North American Refractories Company Asbestos Personal Injury Settlement Trust is funded by Honeywell International, Inc., one of the Debtors' significant co-defendants in asbestos-related litigation identified on the list of Interested Parties.

cases and is general counsel to the National Gypsum Settlement Trust (where I serve as FCR). Although these relationships are wholly unrelated to the services I would provide pursuant to my appointment as the FCR in these Chapter 11 Cases, I am nevertheless making this disclosure out of an abundance of caution.

17. Finally, Stutzman Bromberg has in the past represented JP Morgan Chase in other matters that are wholly unrelated to these Chapter 11 Cases.

18. To the best of my knowledge and belief, insofar as I have been able to ascertain after reasonable inquiry based on the list of Interested Parties set forth on Schedule 1, my firm and I do not hold or represent any interest adverse to the Debtors or their estates, and my firm and I are each a "disinterested person," as defined in 11 U.S.C. § 101(14), in that, except as set forth in this Declaration: (a) my firm and I have no connection with the Debtors, their creditors, the Bankruptcy Administrator, any person employed in the office of the Bankruptcy Administrator or any other party with an actual interest in these Chapter 11 Cases or their respective attorneys or accountants; (b) my firm and I are not creditors, equity security holders or insiders of the Debtors; (c) my firm and I are not and were not, within two years of the Petition Date, a director, officer or employee of the Debtors; and (d) my firm and I do not have an interest materially adverse to the Debtors, its estate or any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with or interest in the Debtors, or for any other reason.

19. To be clear, if appointed here, my undivided focus will be on representing vigorously the interests of the Future Claimants in these Chapter 11 Cases, recognizing that those interests, at times, may be adverse to the Committee, the Debtors, or both.

20. I have no agreement with any other entity to share with such entity any compensation received by me in connection with the Debtors' Chapter 11 Cases, other than with respect to my law firm.

21. Except as set forth in the Motion and this Declaration, I have not received compensation in this case, nor has an agreement been made as to compensation to be paid.

22. I have agreed to charge a rate of $850 per hour for calendar year 2020 for my incurred time, subject to periodic adjustment (generally annually) in the ordinary course of my business, plus reimbursement of actual, necessary and documented out-of-pocket expenses. I will file a supplement to this Declaration to reflect any changes in my billing rate.

23. In my role as the FCR, I will be covered by my own firm's liability insurance without any additional cost to the Debtors' estates.

24. I have reviewed the Interim Compensation Order, and I agree to comply with the provisions thereof and with any other orders that may be entered by the Court with respect to the compensation of professionals in this case.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: September 4, 2020

By: */s/Sander L. Esserman*
Sander L. Esserman

SCHEDULE 1

Interested Parties

Debtors
Aldrich Pump LLC
Murray Boiler LLC

Direct Equity Owner of Debtor
Murray Boiler Holdings LLC
Trane Technologies Holdco, Inc.

Debtor's Direct Non-Debtor Subsidiary
200 Park, Inc.
ClimateLabs LLC

Managers and Officers of the Debtor
Marc Dufour
Ray Pittard
Amy Roeder
Allan Tananbaum
Manlio Valdes
Robert Zafari

Other Non-Debtor Affiliates
Airco Limited
Alliance Compressors LLC
Amair Limited
Aro De Venezuela, C.A.
Artic Cool Chillers Limited
BEST MATIC INTERNATIONAL LIMITED
BEST MATIC VERMOGENSVERWALTUNGS GmbH
Best-Matic International AB
Calmac Corp.
Climate ETC Technology Services Private Limited
Compagnie Trane Technologies SAS
Cool Energy Limited
Dallah Trane for Manufacturing Air Conditioners
DiaSorin International B.V.
Dradnats, Inc.
EBB Holdings Limited
Filairco Technical Services Co., Inc.
Filairco, Inc.
Flowcool Limited
Frigoblock GmbH
FRIGOBLOCK UK LIMITED
Hermann Trane Harrisburg, Inc.
ICS Cool Energy (SAS)
ICS Cool Energy AG
ICS Cool Energy B.V.
ICS Cool Energy GmbH
ICS Cool Energy Investments Limited
ICS COOL ENERGY LIMITED
ICS GROUP HOLDINGS LIMITED
ICS Heat Pumps Limited
ICS RENEWABLE ENERGY LIMITED
ICS SERVICING LIMITED
Industrial Chill Servicing Private Ltd.
Ingersoll-Rand Climate Solutions Private Limited
Ingersoll-Rand Company of Peru S.A.C.
Ingersoll-Rand Latin America, S. de R.L. de C.V.
Ingersoll-Rand Manufactura, S. de R.L de C.V.
INGERSOLL-RAND ZIMBABWE (PRIVATE) LIMITED
Mitsubishi Electric Trane HVAC US LLC
Murray Boiler Holdings LLC
Nexia Intelligence LLC
Perfect Pitch, L.P.
Prime Air Limited
PT Trane Indonesia
R&O Immobilien GmbH
REFTRANS, S.A.
Société Trane SAS

SPANASHVIEW UNLIMITED COMPANY
Standard Centennial Property, LLC
Standard Compressors, Inc.
Standard Industrial Mineral Products Corp.
Standard Resources and Development Corporation
Standard Trane Insurance Company
Standard Trane Insurance Ireland Designated Activity Company
Standard Trane Warranty Company
T.I. Solutions (Israel) Ltd.
Tast Limited
The Trane Company
Thermo King (Hong Kong) Company Limited
Thermo King (Shanghai) Co., Ltd.
THERMO KING CONTAINER TEMPERATURE CONTROL (SUZHOU) CORPORATION LTD.
THERMO KING CONTAINER-DENMARK A/S
Thermo King Corporation
Thermo King De Puerto Rico, Inc.
THERMO KING EUROPEAN MANUFACTURING LIMITED
THERMO KING INDIA PRIVATE LIMITED
THERMO KING IRELAND LIMITED
Thermo King Japan Limited
Thermo King Manufacturing s.r.o.
THERMO KING PUERTO RICO MANUFACTURA, INC.
Thermo King Rodamientos, S.L.
THERMO KING SERVICES LIMITED
THERMO KING SOUTH AFRICA (PTY) LTD.
Thermo King SVC, Inc.
Thermo King Sverige AB
Thermo King Trading Company
THERMO KING TRANSPORTKOELING B.V.
TK Puerto Rico Aire, Inc.
TK Puerto Rico Comercial, Inc.
TK Puerto Rico Ensamblaje, Inc.
TK Puerto Rico Fabricacion, Inc.
TK Puerto Rico Logistica, Inc.
TK Puerto Rico Operaciones Industriales, Inc.
TK Puerto Rico Produccion, Inc.
TK Puerto Rico Soluciones Climaticas, Inc.
TK Puerto Rico Tecnologias, Inc.
TM Air Conditioning Sdn. Bhd.
Trane (Europe) Limited
Trane (Ireland) Limited
Trane (Schweiz) GmbH / Trane (Suisse) S.à.r.l.
Trane (Thailand) Limited
Trane Air Conditioning Products Limited
Trane Air Conditioning Systems (China) Co. Ltd.
Trane Air Conditioning Systems and Service Co., Limited
Trane Air Conditioning Pte. Ltd.
Trane Aire Acondicionado S.L.
Trane Bermuda Ltd.
Trane Brands, Inc.
Trane Buford LLC
Trane BVBA
Trane Canada, L.P.
Trane Canada ULC
Trane Central America, Inc.
Trane China Holdings Limited
TRANE CLIMATE MANUFACTURING S.R.L.
Trane CR Spol sro.
Trane Croatia d.o.o. za trgovinu
Trane de Argentina S.A.
Trane de Chile S.A.
Trane de Colombia S.A.
Trane Deutschland GmbH
Trane Distribution Pte. Ltd.
Trane do Brasil Indústria e Comércio de Produtos para Condicionamento de Ar Ltda.
Trane Dominicana, S.R.L.
Trane Egypt LLC
Trane Energy Choice LLC
Trane Energy Services LLC
Trane Energy-Saving Services (Shanghai) Co., Ltd.
Trane Europe Holdings B.V.

Trane Export LLC
Trane Finance SPRL
Trane Foundation of New York
TRANE FRANCE SAS
Trane GmbH
Trane GP, Inc.
Trane Grid Services LLC
Trane Hellas S.A.
Trane Holding Co.
Trane Holding Limited
Trane Holdings Company YK
Trane Hungary KFT
Trane Inc.
Trane Inc. Of Delaware
Trane India Ltd.
Trane International, Inc.
Trane IP, Inc.
Trane Italia S.r.L
Trane Japan, Ltd.
Trane Klima Ticaret AS
Trane Korea, Inc.
Trane Kuwait Airconditioning Co. WLL
Trane Malaysia Sales & Services SDN. BHD.
Trane Maroc S.A.R.L. AU
Trane Netherlands B.V.
Trane NY, Inc.
Trane Poland sp. z o.o.
Trane Portugal
Trane Puerto Rico LLC
Trane Qatar LLC
Trane Romania S.R.L.
Trane S.A.
Trane S.A.E.
Trane Servicefirst, C.A.
Trane Services Limited
Trane Singapore Enterprises Pte. Ltd.
Trane Sistemas Integrales, S. de R. L. de C. V.
TRANE SUPPORT SAS
Trane Sweden AB
Trane Systems Solutions of Panama, Inc.
Trane Taiwan Distribution Ltd.
Trane Technologies Charitable Foundation
Trane Technologies Company LLC
Trane Technologies Costa Rica Sociedad Anonima
Trane Technologies European Holding Company B.V.
Trane Technologies Financial Services Corporation
Trane Technologies Financing Limited
Trane Technologies Finland Oy
Trane Technologies Funding Ltd.
Trane Technologies Global Holding Company Limited
Trane Technologies GmbH
Trane Technologies Holdco, Inc.
Trane Technologies Holdings B.V.
TRANE TECHNOLOGIES INDÚSTRIA, COMÉRCIO E SERVIÇOS DE ARCONDICIONADO LTDA.
Trane Technologies International Finance Limited
Trane Technologies International Limited
Trane Technologies Irish Holdings Unlimited Company
Trane Technologies Latin America B.V.
Trane Technologies Lux Euro III Financing S.à.r.l.
Trane Technologies Lux Holdings II Company S.à.r.l.
Trane Technologies Lux International Holding Company S.à.r.l.
Trane Technologies Luxembourg Finance S.A.
Trane Technologies Luxembourg United S.à.r.l.
Trane Technologies PLC
Trane Technologies Rus LLC
Trane Technologies S.A.
Trane Technologies s.r.o.
Trane Technologies Sales Company LLC
TRANE TECHNOLOGIES SERVIÇOS LTDA.
Trane Technologies Worldwide Capital S.à r.l.
Trane Thermo King (Shanghai) Enterprise Management Co., Ltd.
Trane Thermo King Pty Ltd.
Trane U.S., Inc.
Trane UK Limited

Trane Vidalia LLC
Trane Vietnam Services Company Limited
Trane, S.A. de C.V.
TRICOOL THERMAL LIMITED
TSI Anstalt Ltd.
TUI Holdings Inc.
TwentyThreeC LLC
TYS Limited
World Standard Ltd.

Depository and Disbursement Banks
J.P. Morgan Chase

Parties to Material Contracts, Unexpired Leases and License Agreements with the Debtor
National Economic Research Associates, Inc. (NERA)
Navigant Consulting, Inc.
PACE Claim Services
The Claro Group

Significant Co-Defendants in Asbestos-Related Litigation
3M Company
A.O. Smith Corporation
Carborundum Company
CBS Corporation
Crane Company
Foster Wheeler Energy Corporation
General Electric Company
Honeywell International Inc.
Industrial Holdings Inc.
Ingersoll Rand Company
JM Manufacturing Company Inc.
Metropolitan Life Insurance Company
Union Carbide Corporation
Westinghouse Electric Corporation

Debtor's Retained Professionals and Claims Agent
AlixPartners LLP
Bates White LLC
Evert Weathersby Houff
Jones Day
K&L Gates LLP
Kurtzman Carson Consultants LLC
Rayburn Cooper & Durham, P.A.

Debtor's Significant Ordinary Course Professionals, Consultants and Service Providers
Adler Cohen Harvey Wakeman & Guekguezian LLP
Belin McCormick PC
Cardno Chemrisk
Christopher Shea Goodwin, Attorney at Law LLLC
Courington Kiefer & Sommers LLC
Dentons Bingham Greenebaum LLP
Foley & Lardner LLP
Fox Rothschild LLP
Frantz McConnell and Seymour LLP
Frilot LLC
Gordon Rees Scully Mansukhani, LLP
Kemp Smith LLP
Kenny Shelton Liptak and Nowak LLP
Kitch, Drutchas, Wagner, Valitutti & Sherbrook
Kuchler Polk Weiner, LLC
Law Offices of Timothy Clark, P.A.
Litchfield Cavo LLP
Maron Marvel Bradley Anderson & Tardy LLC
Marshall Dennehey Warner Coleman and Goggin

McAfee & Taft
Meagher & Geer P.L.L.P.
Nelson Mullins Riley and Scarborough LLP
Parker Poe Adams & Bernstein LLP
Parsons Behle
Pascarella Divita PLLC
Prindle Goetz Barnes & Reinholtz
Rasmussen, Dickey & Moore LLC
Snell & Wilmer LLP
Spotts Fain, PC
The Roberts Litigation Group
Tucker Ellis LLP
Ugrin Alexander Zadick PC
Verrill Dana LLP

Known Professionals for Certain Non-Debtor Parties in Interest
McCarter & English, LLP

Law Firms on the Debtors' List of 20 Law Firms with Significant Representations of Asbestos Claimants [Dkt. 1]

Creditors Listed on the Debtors' Consolidated Master Creditors List [Dkt. No. 31]

Contractually Indemnified Parties
Ansaldo S.p.A.
ASD Acquisition Corp.
Dresser-Rand Company
Flowserve Corporation
Flowserve Red Corporation
FRC Acquisitions LLC
Ideal Standard International Holding Sarl
Ingersoll-Dresser Pump Company
Ingersoll-Rand U.S. HoldCo., Inc
Murray Turbomachinery Corporation
Rail Acquisition Corp.
Tuthill Energy Systems
Tuthill Pump Company
WABCO Holdings Inc.
Westinghouse Air Brake Company (or WABCO)

Major Suppliers of Goods and Services
Trane Technologies Company LLC
Trane U.S., Inc.

Members of the Official Committee of Asbestos Personal Injury Claimants and Their Counsel
Steven W. Bomzer, c/o Weitz & Luxenberg, P.C.
Jerry Lynn Fowles, c/o Brayton Purcell LLP
John Talmage Gambill, c/o Motley Rice LLC
Ray Hager c/o Dean Omar Branham Shirley LLP
Joseph Hamlin, c/o Maune Raichle Hartley French & Mudd, LLC
Barbara Korte o.b.o Donald Korte, c/o SWMW Law, LLC
Robert Overton, c/o Shepard Law
Pete Panagiotopoulos, c/o Cooney & Conway
Richard J. Shiel, Sr., c/o Goldberg Persky White, P.C.
Richard and Calvena Sisk, c/o Kazan, McClain, Satterly & Greenwood PLC
Richard R. Villanueva, c/o Simmons Hanly Conroy

ACC Professionals
Caplin & Drysdale, Chartered
Robinson & Cole LLP
Winston & Strawn
Hamilton Stephens Steele + Martin, PLLC
FTI Consulting, Inc.

Material Insurers
Affiliated FM Insurance Company
AIG Property Casualty Company
AIU Insurance Company
Allianz Underwriters Insurance Company
Allstate Insurance Company
Employers Insurance Company of Wausau
Fireman's Fund Insurance Company
Granite State Insurance Company
Hudson Insurance Company
Landmark Insurance Company
Lexington Insurance Company
National Union Fire Insurance Company of Pittsburgh, PA
TIG Insurance Company
Travelers Casualty and Surety Company

Bankruptcy Administrator's Office for the Western District of North Carolina
Shelley K. Abel
Alexandria Kenny
Anne Whitley

David Shepherd
Katrina Adams
Sarah Scholz

Bankruptcy Judges for the Western District of North Carolina
Judge George Hodges (Charlotte)
Judge J. Craig Whitley (Charlotte)
Judge Laura T. Beyer (Charlotte)

"Certain Asbestos Creditors"
Jack Atkinson
Jerry Fowles
Bill E. Glass
Earl Gross
Ray Hager
Joseph Hamlin
Lillian Ann Holt
Louise Kelly, individually and as special administrator of the estate of William Kelly
Donald Korte
Charles Martier
Robert Overton
Jesus Perez
Arthur W. Rosenkeimer III
Richard Shiel, Sr.
Estate of John Sullivan
Timothy Thomas
Edward Travers
Richard R. Villanueva
Estate of Ross Wells Westbrook
David White

EXHIBIT
C

SEPCO ASBESTOS PERSONAL INJURY TRUST DISTRIBUTION PROCEDURES

SEPCO ASBESTOS PERSONAL INJURY TRUST DISTRIBUTION PROCEDURES

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SEPCO ASBESTOS PERSONAL INJURY TRUST DISTRIBUTION PROCEDURES

The Sepco Asbestos Personal Injury Trust Distribution Procedures (the "**TDP**") contained herein provide for resolving all Asbestos Personal Injury Claims ("**Asbestos Claims**") as defined in the Second Amended Plan of Reorganization for Sepco Corporation Under Chapter 11 of the Bankruptcy Code, dated as of October 4, 2019 (as it may be amended or modified, the "**Plan**"),[1] as provided in and required by the Plan and the Sepco Asbestos Personal Injury Trust Agreement (the "**Trust Agreement**"). The Plan and Trust Agreement establish the Sepco Asbestos Personal Injury Trust (the "**Asbestos Trust**"). The Trustee of the Asbestos Trust (the "**Trustee**") shall implement and administer this TDP in accordance with the Trust Agreement.

SECTION 1.

INTRODUCTION

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

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

SECTION 2.

OVERVIEW

2.1 Asbestos Trust Goals. The goal of the Asbestos Trust is to treat all claimants equitably. This TDP furthers that goal by setting forth procedures for processing and paying the

[1] Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan and the Trust Agreement.

Debtor's several share of the unpaid portion of the liquidated value of Asbestos Claims generally on an impartial, first-in-first-out ("**FIFO**") basis, with the intention of paying all claimants over time as equivalent a share as possible of the value of their claims based on historical values for substantially similar claims in the tort system.[2] To this end, the TDP establishes a schedule of five asbestos-related diseases ("**Disease Levels**") that have presumptive medical and exposure requirements ("**Medical/Exposure Criteria**") and specific liquidated values ("**Scheduled Values**"). The Disease Levels, Medical/Exposure Criteria, and Scheduled Values, which are set forth in Section 5.3(a)(3) below, have all been selected and derived with the intention of achieving a fair allocation of the Asbestos Trust funds as among claimants suffering from these different disease processes in light of the best available information considering the settlement history of the Debtor and the rights claimants would have in the tort system absent the bankruptcy. Except as set forth in Section 5.10 below, a claimant may not assert more than one Asbestos Claim hereunder.

Because of the specialized nature of the Debtor's products and the very limited resources of the Asbestos Trust, this TDP provides for the payment by the Asbestos Trust of Asbestos Claims based only on certain diseases. The Trustee shall supervise the review of filed Asbestos Claims with the goal of limiting approval of Asbestos Claims to those claims that provide evidence of the type of exposure patterns that were typically required by the Debtor for payment of claims in the tort system. To that end, the Asbestos Trust may make reasonable inquiries of claimants and/or co-workers as to the nature and extent of their exposure to the Debtor's asbestos-containing products.

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[2] As used in this TDP, the phrase "in the tort system" shall **not** include claims asserted against a trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) and/or section 105 of the Bankruptcy Code or any other applicable law.

2.2 Claims Liquidation Procedures. Asbestos Claims shall be processed based on their place in the FIFO Processing Queue to be established pursuant to Section 5.1(a)(1) below. The Asbestos Trust shall take all reasonable steps to resolve Asbestos Claims as efficiently and expeditiously as possible at each stage of claims processing and arbitration, which steps may include, in the Asbestos Trust's sole discretion, 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 evaluated pursuant to the valuation factors set forth herein. The Asbestos Trust shall also make every effort to resolve each year at least that number of Asbestos Claims required to exhaust the Maximum Annual Payment as that term is defined in Section 2.4 below.

The Asbestos Trust shall liquidate all Asbestos Claims under the Expedited Review Process described in Section 5.3(a) below.

Based upon the Debtor's claims settlement history in light of applicable tort law, and current projections of present and future unliquidated claims, the Scheduled Values for all Disease Levels have been established as set forth in Section 5.3(a)(3).

All unresolved disputes over a claimant's medical condition or exposure history shall be subject to binding or non-binding arbitration as set forth in Section 5.8 below, at the election of the claimant, under the ADR Procedures that are to be established by the Asbestos Trust. Asbestos Claims that are the subject of a dispute with the Asbestos Trust that cannot be resolved by non-binding arbitration may enter the tort system as provided in Sections 5.9 and 7.6 below. However, if and when a claimant obtains a judgment in the tort system, the judgment shall be payable as provided in Section 7.7 below (subject to the Payment Percentage, as defined in Section 4.1 below, and the Maximum Annual Payment provisions set forth below).

2.3 Establishment and Application of the Payment Percentage. The Payment Percentage for Asbestos Claims shall be established by the Trustee with the consent of the Trust Advisory Committee ("**TAC**") and the Future Claimants' Representative ("**FCR**"). After the liquidated value of an Asbestos Claim as defined in Section 5.3(a)(3) below is determined pursuant to the procedures set forth herein for Expedited Review, arbitration, or litigation in the tort system, the claimant shall ultimately receive a pro rata share of that value based on the Payment Percentage described in Section 4.2 below. The Payment Percentage shall also apply to all Pre-Petition Liquidated Claims as provided in Section 5.2 below and to all sequencing adjustments paid pursuant to Section 7.5 below.

The Payment Percentage may be adjusted upwards or downwards from time to time by the Asbestos Trust with the consent of the TAC and the FCR to reflect then-current estimates of the Asbestos Trust's assets and its liabilities, as well as the then-estimated value of then-pending and future claims. If the Payment Percentage is increased over time, claimants whose claims were liquidated and paid in prior periods under the TDP shall receive additional payments only as provided in Section 4.3 below. Because there is uncertainty in the prediction of both the number and severity of future Asbestos Claims, and the amount of the Asbestos Trust's assets, no guarantee can be made of any Payment Percentage of an Asbestos Claim's liquidated value.

2.4 Asbestos Trust's Determination of the Maximum Annual Payment. After calculating the Payment Percentage, the Asbestos Trust shall model the cash flow, principal and income year-by-year to be paid over its entire life to ensure that all present and future holders of Asbestos Claims are compensated at the Payment Percentage. In each year, based upon the model of cash flow, the Asbestos Trust shall be empowered to pay out the portion of its funds payable for that year according to the model (the "**Maximum Annual Payment**"). The Asbestos

Trust's distributions to all claimants for that year shall not exceed the Maximum Annual Payment. The Payment Percentage and the Maximum Annual Payment figures are based on projections over the lifetime of the Asbestos Trust. If such long-term projections are revised, the Payment Percentage may be adjusted accordingly, which would result in a new model of the Asbestos Trust's anticipated cash flow and a new calculation of the Maximum Annual Payment figures.

However, year-to-year variations in the Asbestos Trust's flow of claims or the value of its assets, including earnings thereon, will not mean necessarily that the long-term projections are inaccurate; they may simply reflect normal variations, both up and down, from the smooth curve created by the Asbestos Trust's long-term projections. If, in a given year, however, asset values, including earnings thereon, are below projections, the Asbestos Trust may need to distribute less in that year than would otherwise be permitted based on the original Maximum Annual Payment derived from long-term projections. Accordingly, the original Maximum Annual Payment for a given year may be temporarily decreased if the present value of the assets of the Asbestos Trust as measured on a specified date during the year is less than the present value of the assets of the Asbestos Trust projected for that date by the cash flow model described in the foregoing paragraph. The Asbestos Trust shall make such a comparison whenever the Trustee becomes aware of any information that suggests that such a comparison should be made. If the Asbestos Trust determines that as of the date in question, the present value of the Asbestos Trust's assets is less than the projected present value of its assets for such date, then it will remodel the cash flow year-by-year to be paid over the life of the Asbestos Trust based upon the reduced value of the total assets as so calculated and identify the reduced portion of its funds to be paid for that year, which will become the Temporary Maximum Annual Payment (additional reductions in the

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

2.5 Indirect Asbestos Claims. As set forth in Section 5.5 below, any Indirect Asbestos Claim shall be subject to the same categorization, evaluation, and payment provisions of this TDP as all other Asbestos Claims.

SECTION 3.

TDP ADMINISTRATION

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

consult with the TAC and the FCR on such matters as are provided below and in Section 2.2(e) of the Trust Agreement. The initial Trustee, the initial members of the TAC and the initial FCR are identified in the Trust Agreement.

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

SECTION 4.

PAYMENT PERCENTAGE; PERIODIC ESTIMATES

4.1 Uncertainty of Debtor's Personal Injury Asbestos Liabilities. As discussed above, there is inherent uncertainty regarding the Debtor's total asbestos-related tort liabilities, as well as the total value of the assets available to the Asbestos Trust to pay Asbestos Claims. Consequently, there is inherent uncertainty regarding the amounts that holders of Asbestos Claims shall receive. To seek to ensure substantially equivalent treatment of all present and future Asbestos Claims, the Trustee must determine from time to time the percentage of full liquidated value that holders of present and future Asbestos Claims shall be likely to receive, *i.e.*, the "**Payment Percentage**" described in Section 2.3 above and Section 4.2 below.

4.2 Computation of Payment Percentage. As provided in Section 2.3 above, the Payment Percentage shall be established by the Trustee with the consent of the TAC and the FCR, and shall apply to all Asbestos Claims.

The Payment Percentage shall be subject to change pursuant to the terms of this TDP and the Trust Agreement if the Trustee with the consent of the TAC and FCR determines that an adjustment is required. No less frequently than once every three (3) years, commencing with the first day of January occurring after the Effective Date, the Trustee shall reconsider the then-applicable Payment Percentage to assure that it is based on accurate, current information and may, after such reconsideration, change the Payment Percentage if necessary with the consent of the TAC and the FCR. The Trustee shall also reconsider the then-applicable Payment Percentage at shorter intervals if he or she deems such reconsideration to be appropriate or if requested to do so by the TAC or the FCR. In any event, no less frequently than once every twelve (12) months, commencing on the date that the Asbestos Trust first makes available the proof of claim forms and other claims materials required to file a claim with the Asbestos Trust (the six-month anniversary of the date the Asbestos Trust first makes available the proof of claim form and other claims materials required to file a claim being referred to herein as the "**Initial Claims Filing Date**"), the Trustee shall compare the liability forecast on which the then applicable Payment Percentage is based with the actual claims filing and payment experience of the Asbestos Trust to date. If the results of the comparison call into question the ability of the Asbestos Trust to continue to rely upon the current liability forecast, the Trustee shall undertake a reconsideration of the Payment Percentage.

The Trustee must base his or her determination of the Payment Percentage on current estimates of the number, types, and values of present and future Asbestos Claims, the value of the assets then available to the Asbestos 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 value to all holders of Asbestos

Claims. When making these determinations, the Trustee shall exercise common sense and flexibly evaluate all relevant factors.

4.3 Applicability of the Payment Percentage. Except as otherwise provided (a) in Section 5.1(b) below for Asbestos Claims involving deceased or incompetent claimants for which approval of the Asbestos Trust's offer by a court or through a probate process is required and (b) in the paragraph below with respect to Released Claims, no holder of any other Asbestos Claim shall receive a payment that exceeds the liquidated value of the claim times the Payment Percentage in effect at the time of payment; provided, however, that if there is a reduction in the Payment Percentage, the Trustee, in his or her sole discretion, may cause the Asbestos Trust to pay an Asbestos Claim based on the Payment Percentage that was in effect prior to the reduction if such Asbestos Claim was filed and actionable with the Asbestos Trust ninety (90) days or more prior to the date the Trustee proposed the new Payment Percentage in writing to the TAC and the FCR (the "**Proposal Date**") and the processing of such claim was unreasonably delayed due to circumstances beyond the control of the claimant or the claimant's counsel, but only if such claim had no deficiencies for the ninety (90) days prior to the Proposal Date.

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

Notwithstanding anything contained herein, if the proposed Payment Percentage is lower than the current Payment Percentage, a claimant whose Asbestos Claim was liquidated prior to the Proposal Date and who either (a) transmitted[3] an executed release to the Asbestos Trust prior to the Proposal Date or (b) with respect to those claimants who had received releases fewer than thirty (30) days prior to the Proposal Date, transmitted an executed release to the Asbestos Trust within thirty (30) days of the claimant's receipt of the release (the claims described in (a) and (b) are collectively referred to herein as the "**Released Claims**") shall be paid based on the current Payment Percentage (the "**Released Claims Payment Percentage**"). For purposes hereof, (a) a claimant represented by counsel shall be deemed to have received a release on the date that the claimant's counsel receives the release, (b) if the Asbestos Trust transmits a release electronically, the release shall be deemed to have been received on the date the Asbestos Trust transmits the offer notification, and (c) if the Asbestos Trust places the release in the U.S. mail, postage prepaid, the release shall be deemed to have been received three (3) business days after such mailing date. A delay in the payment of the Released Claims for any reason, including delays resulting from limitations on payment amounts in a given year pursuant to Section 2.4 or Section 2.5 hereof, shall not affect the rights of the holders of the Released Claims to be paid based on the Released Claims Payment Percentage.

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

If the Trustee, with the consent of the TAC and the FCR, makes a determination to increase the Payment Percentage, the Trustee shall make supplemental payments to all claimants

[3] For purposes of this sentence, "transmitted" is defined as the date/time postmarked if submitted by mail or the date/time uploaded if submitted electronically.

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

The Trustee's obligation to make a supplemental payment to a claimant shall be suspended in the event the payment in question would be less than $250, 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 $250. However, the Trustee's obligation shall resume and the Trustee shall pay any such aggregate supplemental payments due the claimant at such time that the total exceeds $250.

SECTION 5.

RESOLUTION OF ASBESTOS CLAIMS.

5.1 Ordering, Processing and Payment of Asbestos Claims.

5.1(a) Ordering of Claims.

5.1(a)(1) Establishment of the FIFO Processing Queue. The Asbestos Trust shall order claims that are sufficiently complete to be reviewed for processing purposes on a FIFO basis except as otherwise provided herein (the "**FIFO Processing Queue**"). The claimant's position in the FIFO Processing Queue shall be determined by the date the claim is filed with the Asbestos Trust. If any claims are filed on the same date, the claimant's position in the FIFO Processing Queue shall be determined by the date of the diagnosis of the asbestos-related disease for which the claim was filed. If any claims are filed and diagnosed on the same

date, the claimant's position in the FIFO Processing Queue shall be determined by the claimant's date of birth, with older claimants given priority over younger claimants.

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

If an Asbestos Claim meets any of the tolling provisions described in the preceding sentence and the claim was not barred by the applicable federal or state statute of limitation at the time of the tolling event, it shall be treated as timely filed if it is actually filed with the Asbestos Trust within three (3) years after the Initial Claims Filing Date, or within three (3) years after the date of the diagnosis of the disease for which the claim is filed, whichever occurs later. In addition, any Asbestos Claims that were first diagnosed after the Petition Date, irrespective of the application of any relevant federal or state statute of limitation or repose, may be filed with the Asbestos Trust within three (3) years after the date of diagnosis or within three (3) years after the Initial Claims Filing Date, whichever occurs later. However, the processing of

any Asbestos Claim by the Asbestos Trust may be deferred at the election of the claimant pursuant to Section 6.3 below.

5.1(b) Payment of Claims. Asbestos Claims that have been liquidated by the Expedited Review Process as provided in Section 5.3(a) below, by arbitration as provided in Section 5.8 below, or by litigation in the tort system provided in Section 5.9 below, shall be paid in FIFO order based on the date their liquidation became final (the "**FIFO Payment Queue**"), all such payments being subject to the applicable Payment Percentage, the Maximum Annual Payment, and the sequencing adjustment provided for in Section 7.5 below, except as otherwise provided herein. Pre-Petition Liquidated Claims, as defined in Section 5.2 below, shall be subject to the Maximum Annual Payment and Payment Percentage limitations.

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 Asbestos Trust on the claim shall remain open so long as proceedings before that court or in that probate process remain pending, provided that the Asbestos Trust has been furnished with evidence that the settlement offer has been submitted to such court or is in the probate process for approval. If the offer is ultimately approved by the court or through the probate process and accepted by the claimant's representative, the Asbestos Trust shall pay the claim in the amount so offered, multiplied by the Payment Percentage in effect at the time the offer was first made.

If any claims are liquidated on the same date, the claimant's position in the FIFO Payment Queue shall be determined by the date of the diagnosis of the claimant's asbestos-related disease for which the claim was filed. If any claims are liquidated on the same date and the respective holders' asbestos-related diseases were diagnosed on the same date, the position of

those claims in the FIFO Payment Queue shall be determined by the Asbestos Trust based on the dates of the claimants' birth, with older claimants given priority over younger claimants.

5.2 Resolution of Pre-Petition Liquidated Claims.

5.2(a) Processing and Payment. As soon as practicable after the Effective Date, the Asbestos Trust shall pay, upon submission by the claimant of the appropriate documentation, all Asbestos 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 tort system obtained prior to the Petition Date, or (iii) 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 Asbestos Trust, the holder of a Pre-Petition Liquidated Claim must submit all documentation necessary to demonstrate to the Asbestos Trust that the claim was liquidated in the manner described in the preceding sentence, which documentation shall include (A) a copy of the settlement agreement (if applicable), a court-authenticated copy of the jury verdict (if applicable), a non-final judgment (if applicable) or a final judgment (if applicable) and (B) the name, social security number, and date of birth of the claimant, and the name and address of the claimant's lawyer; provided, however, that if a Pre-Petition Liquidated Claim is listed on the schedule of such claims that the Debtor provides to the Asbestos Trust and the claimant confirms the information provided by the Debtor, the claimant shall not be required to provide any additional documentation.

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 that amount in accordance

with the terms of the agreement, if any, or under applicable state law for settlements or judgments as of the Petition Date; however, except as otherwise provided in Section 7.4 below, the liquidated value of a Pre-Petition Liquidated Claim shall not include any punitive or exemplary damages. In addition, the amounts payable with respect to such claims shall be subject to the Maximum Annual Payment and Payment Percentage provisions. In the absence of a Final Order of the Bankruptcy Court determining whether a settlement agreement is binding and judicially enforceable, a dispute between the claimant and the Asbestos Trust over this issue shall be resolved pursuant to the same procedures in this TDP that are provided for resolving the validity and/or liquidated value of an Asbestos Claim (*i.e.*, arbitration and litigation in the tort system as set forth in Sections 5.8 and 5.9 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 Asbestos Trust based on the date the Asbestos Trust received all required documentation for the particular claim. If any Pre-Petition Liquidated Claims were filed on the same date, the claimant's position in the FIFO queue for such claims shall be determined by the dates of the claimants' birth, with older claimants given priority over younger claimants.

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

5.3 Resolution of Unliquidated Asbestos Claims. As soon as possible after the establishment of the Asbestos Trust, the Trustee, with the consent of the TAC and the FCR, shall

adopt procedures for reviewing and liquidating all unliquidated Asbestos Claims, which shall include deadlines for processing such claims. Such procedures shall also require that claimants seeking resolution of unliquidated Asbestos Claims must first file a proof of claim form, together with the required supporting documentation, in accordance with the provisions of Sections 6.1 and 6.2 below. It is anticipated that the Asbestos Trust shall provide an initial response to the claimant within three (3) months of receiving the proof of claim form.

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

Upon filing of a valid proof of claim form with the required supporting documentation, the claimant shall be placed in the FIFO Processing Queue in accordance with the ordering criteria described in Section 5.1(a)(1) above.

5.3(a) Expedited Review Process.

5.3(a)(1) In General. The Asbestos Trust's Expedited Review Process is designed primarily to provide an expeditious, efficient and inexpensive method for liquidating all Asbestos Claims eligible for payment under this TDP. Expedited Review is also intended to provide qualifying claimants a fixed and certain claims payment.

Thus, claims that undergo Expedited Review and meet the presumptive Medical/ Exposure Criteria for the relevant Disease Level shall be paid the Scheduled Value for such Disease Level set forth in Section 5.3(a)(3) below. All claims liquidated by Expedited Review

shall be subject to the applicable Payment Percentage and Maximum Annual Payment limitations set forth above.

Subject to the provisions of Section 5.7, the claimant's eligibility to receive the Scheduled Value for his or her Asbestos Claim pursuant to the Expedited Review Process shall be determined solely by reference to the Medical/Exposure Criteria set forth below.

5.3(a)(2) Claims Processing Under Expedited Review. All claimants seeking liquidation of their claims pursuant to Expedited Review shall file the Asbestos Trust's proof of claim form. As a proof of claim form is reached in the FIFO Processing Queue, the Asbestos Trust shall determine whether the claim described therein meets the Medical/Exposure Criteria for one of the Disease Levels, and shall advise the claimant of its determination. If a Disease Level is determined, the Asbestos 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 Asbestos 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 Asbestos Trust shall disburse payment subject to the limitations of the Maximum Annual Payment.

5.3(a)(3) Disease Levels, Scheduled Values and Medical/Exposure Criteria. The five Disease Levels covered by this TDP, together with the Medical/Exposure Criteria and the Scheduled Values for each are set forth below. These Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all Asbestos Claims filed with the Asbestos Trust (except Pre-Petition Liquidated Claims) on or before the Initial Claims Filing Date provided in Section 4.2. Thereafter, for purposes of administering the Expedited Review Process and with the consent of the TAC and the FCR, the Trustee may add to, change, or eliminate

Disease Levels, Scheduled Values, or Medical/Exposure Criteria; develop subcategories of Disease Levels, Scheduled Values or Medical/Exposure Criteria; or determine that a novel or exceptional asbestos personal injury claim is compensable even though it does not meet the Medical/Exposure Criteria for any of the then-current Disease Levels. In addition, commencing on January 1, 2021, the Asbestos Trust shall increase these valuation amounts by one percent (1%) per annum. Any such increases shall be applicable to offers made following the dates of such increases.

Disease Level	**Scheduled Value**	**Medical/Exposure Criteria**
Mesothelioma (Level V)	$50,000	(1) Diagnosis[4] of mesothelioma, and (2) Debtor Exposure as defined in Section 5.6(b)(3).
Lung Cancer 1 (Level IV)	$17,000	(1) Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease,[5] (2) six months Debtor Exposure, (3) Significant Occupational Exposure[6] to asbestos, and (4) supporting

[4] 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 5.6 below.

[5] Evidence of "Bilateral Asbestos-Related Nonmalignant Disease," for purposes of meeting the criteria for establishing Disease Levels II and IV, means either (i) a chest X-ray read by a qualified B reader of 1/0 or higher on the ILO scale or (ii)(x) a chest X-ray read by a qualified B reader or other Qualified Physician, (y) a CT scan read by a Qualified Physician, or (z) pathology, in each case showing either bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification. Evidence submitted to demonstrate (i) or (ii) above must be in the form of a written report stating the results (*e.g.*, an ILO report, a written radiology report or a pathology report). Solely for asbestos claims filed against the Debtor or another defendant in the tort system prior to the Petition Date, if an ILO reading is not available, either (i) a chest X-ray or a CT scan read by a Qualified Physician, or (ii) pathology, in each case showing bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification consistent with or compatible with a diagnosis of asbestos-related disease, shall be evidence of a Bilateral Asbestos-Related Nonmalignant Disease for purposes of meeting the presumptive medical requirements of Disease Levels II and IV. Pathological proof of asbestosis may be based on the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, "Asbestos-associated Diseases," Vol. 106, No. 11, App. 3 (October 8, 1982). For all purposes of this TDP, a "Qualified Physician" is a physician who is board-certified in one or more relevant specialized fields of medicine such as pulmonology, radiology, internal medicine or occupational medicine; provided, however, subject to the provisions of Section 5.6, that the requirement for board certification in this provision shall not apply to otherwise qualified physicians whose X-ray and/or CT scan readings are submitted for deceased holders of Asbestos Claims. In addition, for all purposes of this TDP, if the diagnostic images being interpreted in such regard are digital images, then a written report by a Qualified Physician confirming that the images reviewed are with reasonable medical certainty equivalent to those that would qualify for the required ILO grade shall be acceptable as well.

[6] The term "Significant Occupational Exposure" is defined in Section 5.6(b)(2) below.

Disease Level	Scheduled Value	Medical/Exposure Criteria
		medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.
Lung Cancer 2 (Level III)	$5,000	(1) Diagnosis of a primary lung cancer, (2) six months Debtor Exposure, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.
Other Cancer (Level II)	$7,000	(1) Diagnosis of a primary colo-rectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, (2) six months Debtor Exposure, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.
Severe Asbestosis (Level I)	$12,000	(1) Either (a) a diagnosis of asbestosis with ILO of 2/1 or greater, or asbestosis determined by pathological evidence of asbestosis, plus (x) TLC less than 65%, or (y) FVC less than 65% and FEV1/FVC ratio greater than 65%,[7] (b) an "Asbestosis Death," which is defined to mean a death where (x) asbestosis is listed as the cause or a significant contributing cause of death on the death certificate or (y) a report from a Qualified Physician who is a pathologist, a pulmonologist or an occupational medicine physician states that asbestosis was a significant contributing cause of death, or (c) a diagnosis of asbestosis with ILO of 2/1 or greater, or asbestosis determined by pathological evidence of asbestosis, plus (x) a Qualified Physician who is a pulmonologist or an occupational medicine physician prescribes oxygen to the injured party, (y) the treating Qualified Physician states that the predominant cause of the need for oxygen is asbestosis, and (z) the oxygen is needed by the

[7] This must be the actual measured value as opposed to the percentage of predicted.

Disease Level	Scheduled Value	Medical/Exposure Criteria
		injured party to perform activities of daily life (e.g., not oxygen that is prescribed only for comfort care, at night, for surgery, or on occasion), (2) six months Debtor Exposure, (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.

5.3(a)(4) Extraordinary Claim Review Process.

5.3(a)(4)(i) In General.

"Extraordinary Claim" means an Asbestos Claim that otherwise satisfies the presumptive Medical Criteria for the relevant Disease Level and that is held by a claimant whose exposure to asbestos (i) occurred predominantly as a result of working in a manufacturing facility of the Debtor during a period in which the Debtor was manufacturing asbestos-containing product at that facility or (ii) was at least 75% the result of exposure to an asbestos-containing product or to conduct for which the Debtor has legal responsibility, and in either case there is little likelihood of a substantial recovery elsewhere. All such Extraordinary Claims shall be presented for Extraordinary Claim Review and, if valid shall be entitled to an award of up to a maximum value of five (5) times the Scheduled Value set forth in Section 5.3(a)(3) for the relevant Disease Level, multiplied by the applicable Payment Percentage.

Any dispute as to Extraordinary Claim status shall be submitted to a special Extraordinary Claims Panel established by the Asbestos Trust with the consent of the TAC and the FCR. All decisions of the Extraordinary Claims Panel shall be final and not subject to any further administrative or judicial review.

5.3(a)(4)(ii) Additional Documentation and Information for Extraordinary Claim Review. To be eligible for a payment under this TDP, the holder of an Asbestos Claim submitted for Extraordinary Claim Review must provide the following additional information:

5.3(a)(4)(ii)(A) Requirement to Identify Other Claims. A claimant seeking Extraordinary Claim Review must submit the information described in Section 5.3(a)(4)(ii)(B) about all other claims asserted by the claimant that relate in any way to the alleged injuries for which the claimant seeks compensation. Other claims about which information must be submitted include claims by the claimant, the claimant's decedent, and any present or past holder of the Asbestos Claim. Other claims include, but are not limited to, the following: (a) lawsuits filed in any court, arbitration proceedings before any panel or tribunal, and administrative proceedings (such as workers' compensation claims) before any governmental or quasi-governmental body; (b) claims that were resolved or settled without the institution of litigation (such as pre-filing settlements reached after notification of the existence of a claim without the need to file a lawsuit); and (c) claims that have been submitted in bankruptcy proceedings or to other asbestos trusts or claim resolution facilities that resulted from bankruptcy proceedings.

5.3(a)(4)(ii)(B) Information Required About Other Claims. A claimant seeking Extraordinary Claim Review shall submit the following information for each other claim: (a) the name of the entity against whom the other claim was made, (b) the date of the other claim, and (c) the amounts of all payments received or to be received from the entity to whom the other claim was submitted. The claimant must also submit copies of any documents submitted to or served upon any such entity containing information regarding the alleged injured party's contact with or exposure to asbestos or asbestos-containing products, including without

limitation any claim forms submitted to other asbestos trusts or claim resolution facilities that resulted from bankruptcy proceedings (along with any attachments), ballots submitted by or on behalf of the claimant in any bankruptcy case, and any discovery response filed or served in tort litigation. The claimant shall also certify that, to the best of his or her knowledge, at that time, with the exception of the other claims that have been expressly disclosed and identified by the claimant, no other entity is known to the claimant to be potentially responsible for the alleged injuries that are the basis of the Extraordinary Claim.

5.3(a)(4)(ii)(C) Authorization for Release of Information. Any claimant seeking Extraordinary Claim Review shall execute a release of information form in favor of the Asbestos Trust, in the form attached as Appendix I, authorizing all other asbestos trusts and claim resolution facilities against whom any such other claim has been made or asserted based on the injured party's injury to release to the Asbestos Trust all information submitted to it by such claimant or entity who made such other claim and to disclose the status of any such claim and the amount and date of any payment on the claim. The release of information form shall authorize the Asbestos Trust to obtain all submissions made by the claimant or his or her heirs, executors, successors, or assigns in the future to any other asbestos trust or claim resolution facility. The Asbestos Trust may amend the form attached as Appendix I from time to time to add newly established asbestos trusts or claim resolution facilities. These authorizations will be used not only to verify information provided in connection with particular Extraordinary Claims but also in connection with the Asbestos Trust's periodic audits for fraud.

5.3(a)(4)(ii)(D) Claimant Certification. If the claimant seeking Extraordinary Claim Review is or has been represented by an attorney in any litigation or in the filing of other asbestos trust claims based on the injury that forms the basis for the Extraordinary

Claim, the claimant's attorney shall provide a certification under penalty of perjury. The certification shall affirm that the attorney has fully investigated the alleged injuries that are the basis of the Extraordinary Claim, including conferring with any other attorneys who represent the claimant asserting the Extraordinary Claim with respect to claims against other asbestos trusts or any other entity, and that no good-faith basis exists, at the time the certification is executed, to bring a claim against any entity that is not identified in the proof of claim form submitted to the Asbestos Trust by the claimant asserting the Extraordinary Claim.If the claimant seeking Extraordinary Claim Review has not been represented by an attorney in any litigation or in the filing of other asbestos trust claims based on the injury that forms the basis for the Extraordinary Claim, the claimant shall provide a certification under penalty of perjury that he or she has fully investigated the alleged injuries that are the basis of the Extraordinary Claim, and that no good-faith basis exists, at the time the certification is executed, to bring a claim against any entity that is not identified in the proof of claim form submitted to the Asbestos Trust by the claimant.

5.4 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 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 Asbestos Trust. In addition, the claimant with secondary exposure must establish that he or she is suffering from one of the five 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, asbestos-containing products, or conduct for which the Asbestos Trust has legal responsibility, and that such

secondary exposure was a cause of the claimed disease. All other liquidation and payment rights and limitations under this TDP shall be applicable to such claims.

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

To establish a presumptively valid Indirect Asbestos 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 Asbestos Trust) or a Final Order (as defined in the Plan) provided that such claim is valid under the applicable state law. In any case where the Indirect Claimant has satisfied the claim of a

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

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

Any dispute between the Asbestos Trust and an Indirect Claimant over whether the Indirect Claimant has a right to reimbursement for any amount paid to a Direct Claimant shall be subject to the ADR Procedures provided in Section 5.8 below. If such dispute is not resolved by said ADR Procedures, the Indirect Claimant may litigate the dispute in the tort system pursuant to Sections 5.9 and 7.6 below.

The Trustee may develop and approve a separate proof of claim form for Indirect Asbestos Claims. Indirect Asbestos Claims that have not been disallowed, discharged, or otherwise resolved by prior order of the Bankruptcy Court shall be processed in accordance with procedures to be developed and implemented by the Trustee consistent with the provisions of this Section 5.5, which procedures (a) shall determine the validity, acceptability and enforceability of such claims; and (b) shall otherwise provide the same liquidation and payment procedures and rights to the holders of such claims as the Asbestos Trust would have afforded the holders of the underlying valid Asbestos Claims.

5.6 Evidentiary Requirements.

5.6(a) Medical Evidence.

5.6(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.

5.6(a)(1)(A) Disease Level I. All diagnoses of Severe Asbestosis (Disease Level I) shall be based, in the case of a claimant who was living at the time the claim was filed, upon a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease. All living claimants must also provide (i) an ILO reading of 2/1 or greater or pathological evidence of asbestosis and (ii) pulmonary function testing (unless the

claimant is able to meet the requirements in (1)(c) of the Medical/Exposure Criteria for Severe Asbestosis in Section 5.3(a)(3) above).[8]

In the case of a claimant who was deceased at the time the claim was filed, all diagnoses of Severe Asbestosis (Disease Level I) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis along with an ILO reading of 2/1 or greater, (ii) pathological evidence of asbestosis, or (iii) the medical documentation required for an "Asbestosis Death" in Section 5.3(a)(3) above. In the case of a diagnosis based on (i) or (ii), the claimant must also provide pulmonary function testing (unless the claimant is able to meet the requirements in (1)(c) of the Medical/Exposure Criteria for Severe Asbestosis in Section 5.3(a)(3) above).

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

5.6(a)(2) Credibility of Medical Evidence. Before making any payment to a claimant, the Asbestos Trust must have reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical

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[8] "Pulmonary function testing" or "PFT" shall mean testing that is in material compliance with the quality criteria established by the American Thoracic Society ("ATS") and is performed on equipment which is in material compliance with ATS standards for technical quality and calibration. PFT performed in a hospital accredited by the Joint Commission ("**JC**"), or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician shall be presumed to comply with ATS standards, and the claimant may submit a summary report of the testing. If the PFT was not performed in a JC-accredited hospital, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician, the claimant must submit the full report of the testing (as opposed to a summary report); provided, however, that if the PFT was conducted prior to the Effective Date of the Plan and the full PFT report is not available, the claimant must submit a declaration signed by a Qualified Physician or other qualified party, in the form provided by the Asbestos Trust, certifying that the PFT was conducted in material compliance with ATS standards.

standards. The Asbestos Trust may require the submission of X-rays, CT scans, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examination or reviews of other medical evidence, and may require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods and procedures to assure that such evidence is reliable. Medical evidence (i) that is of a kind shown to have been received in evidence by a state or federal judge at trial, (ii) that is consistent with evidence submitted to the Debtor to settle for payment similar disease cases prior to the Debtor's bankruptcy, or (iii) that is a diagnosis by a physician shown to have previously qualified as a medical expert with respect to the asbestos-related disease in question before a state or federal judge, is presumptively reliable, although the Asbestos Trust may seek to rebut the presumption. In addition, claimants who otherwise meet the requirements of this TDP for payment of an Asbestos Claim shall be paid irrespective of the results in any litigation at any time between the claimant and any other defendant in the tort system. However, any relevant evidence submitted in a proceeding in the tort system, other than any findings of fact, a verdict, or a judgment, involving another defendant may be introduced by either the claimant or the Asbestos Trust in any arbitration proceeding conducted pursuant to Section 5.8.

5.6(a)(3) Reliance by Asbestos Trust on Finding of another Asbestos Trust. The Trustee may review the governing documents of another asbestos trust or claims facility and, with the consent of the TAC and the FCR, determine to accept the disease level classifications as found by such other asbestos trust or claims facility in lieu of the medical evidence claimants are required to submit under this TDP.

5.6(a)(4) Exemption from Filing Medical Evidence. The Trustee, with the consent of the TAC and the FCR, may exempt claimants from the obligation to submit medical evidence or certain types of medical evidence.

5.6(b) Exposure Evidence.

5.6(b)(1) In General. As set forth above in Section 5.3(a)(3), to qualify for any Disease Level, the claimant must demonstrate a minimum exposure to asbestos, asbestos-containing products, or conduct for which the Asbestos Trust has legal responsibility. Claims based on conspiracy theories that involve no exposure to asbestos, asbestos-containing products, or conduct for which the Asbestos Trust has legal responsibility are not compensable under this TDP. To meet the presumptive exposure requirements of Expedited Review set forth in Section 5.3(a)(3) above, the claimant must show (i) for all Disease Levels, Debtor Exposure as defined in Section 5.6(b)(3) below; and (ii) for Severe Asbestosis (Disease Level I), Other Cancer (Disease Level II), or Lung Cancer 1 or 2 (Disease Levels III and IV), the claimant must show six (6) months Debtor Exposure plus Significant Occupational Exposure to asbestos.

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

5.6(b)(3) Debtor Exposure. The claimant must demonstrate meaningful and credible exposure to asbestos, asbestos-containing products, or conduct for which the Asbestos Trust has legal responsibility as described in this Section 5.6(b)(3) ("**Debtor Exposure**"). 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 Asbestos Trust finds such evidence reasonably reliable), by invoices, employment, construction or similar records, or by other credible evidence. In order for a claim to be approved by the Asbestos Trust, the injured party must demonstrate to the Asbestos Trust's satisfaction that he or she regularly worked with the Debtor's asbestos gaskets, asbestos packing, asbestos tubing, asbestos thermal insulation for tubing and/or piping, and/or asbestos insulation blankets in settings where those products were being ground, scraped, brushed, cut, removed, or physically manipulated in such a manner as to cause the release of asbestos fibers.[9] The specific exposure information required by the Asbestos Trust to process a claim shall be set forth on the proof of claim form to be used by the Asbestos Trust. The Asbestos Trust can also require submission of other or additional evidence of exposure when it deems such to be necessary.

Evidence submitted to establish proof of Debtor Exposure is for the sole benefit of the Asbestos Trust, not third parties or defendants in the tort system. The Asbestos Trust has no need for, and therefore claimants are not required to furnish the Asbestos Trust with, evidence of exposure to specific asbestos products other than those for which the Debtor has legal responsibility, except to the extent such evidence is required elsewhere in this TDP. Similarly,

[9] Based on the Debtor's history, the Asbestos Trust believes that those are the only asbestos-containing products for which the Asbestos Trust has legal responsibility. A claimant may seek to prove that other such products exist, in which case the Asbestos Trust shall review the evidence and make a determination. If the Asbestos Trust determines that the Asbestos Trust is responsible for other asbestos-containing products, the Trustee, the TAC and the FCR shall amend this TDP to add references to such products to the relevant provisions of this TDP.

failure to identify the Debtor's products in the claimant's underlying tort action, or to other bankruptcy trusts, does not preclude the claimant from recovering from the Asbestos Trust, provided the claimant otherwise satisfies the medical and exposure requirements of this TDP.

5.7 Claims Audit Program. The Asbestos Trust, with the consent of the TAC and the FCR, shall develop a Claims Audit Program. Such Program may include methods for auditing the reliability of medical evidence, including additional reading of X-rays, CT scans and verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including exposure to asbestos-containing products for which the Asbestos Trust has legal responsibility. In the event that the Asbestos Trust reasonably determines that any individual or entity has engaged in a pattern or practice of providing unreliable medical evidence to the Asbestos Trust, it may decline to accept additional evidence from such provider in the future.

The Asbestos Trust shall utilize the services of a third-party claims processing facility (the "**Claims Processor**") to assist in the evaluation of claims submitted to the Asbestos Trust and shall participate in a cross-trust audit program (the "**Cross-Trust Audit Program**"). The Cross-Trust Audit Program shall include a comparison of claims filed with the Asbestos Trust against claims filed with all other asbestos trusts administered by the Claims Processor that participate in the Cross-Trust Audit Program, but shall include no fewer than four other trusts. The filing of any claim with the Asbestos Trust, regardless of the treatment sought, shall constitute consent for each other asbestos trust participating in the Cross-Trust Audit Program to release to the entity overseeing the Cross-Trust Audit Program (the "**Auditor**") all information submitted to such other asbestos trust by or on behalf of the claimant pursuant to the provisions

of the Cross-Trust Audit Program and to disclose the status of any such claim and the amount and date of any payment on the claim to the Auditor.

To the extent that the Asbestos Trust or the Auditor believes that it is relevant, nothing herein shall preclude the Asbestos Trust or the Auditor, in the Asbestos Trust's sole discretion, from reviewing or taking into consideration other claims filed against asbestos trusts in addition to those asbestos trusts involved in the Cross-Trust Audit Program. Any claimant subject to the Asbestos Trust's Claims Audit Program or the Cross-Trust Audit Program shall cooperate and, if requested, provide the Asbestos Trust or the Auditor with authorization to obtain from other asbestos trusts any information such claimant has submitted to such other asbestos trusts.

Further, in the event that an audit reveals that fraudulent information has been provided to the Asbestos Trust, the Asbestos Trust may penalize any claimant or claimant's attorney by rejecting the Asbestos 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 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.

5.8 Arbitration.

5.8(a) Establishment of ADR Procedures. The Asbestos Trust, with the consent of the TAC and the FCR, shall institute binding and non-binding arbitration procedures in accordance with Alternative Dispute Resolution ("**ADR**") Procedures to be established by the

Trustee, with the consent of the TAC and the FCR, for resolving disputes concerning whether a pre-petition settlement agreement with the Debtor is binding and judicially enforceable in the absence of a Final Order of the Bankruptcy Court determining the issue, whether the Asbestos Trust's outright rejection or denial of a claim was proper, or whether the claimant's medical condition or exposure history meets the requirements of this TDP for purposes of categorizing a claim involving Disease Levels I-V. Binding and non-binding arbitration shall also be available for resolving disputes over the Debtor's share of the unpaid portion of a Pre-Petition Liquidated Claim described in Section 5.2 above and disputes over the validity of an Indirect Asbestos Claim.

In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in Section 5.6 above. With respect to all claims eligible for arbitration, the claimant, but not the Asbestos Trust, may elect either non-binding or binding arbitration. The ADR Procedures may be modified by the Asbestos Trust with the consent of the TAC and the FCR.

5.8(b) Limitations on and Payment of Arbitration Awards. The arbitrator shall not return an award in excess of the Scheduled Value for any claim. A claimant who submits to arbitration and who accepts the arbitral award shall receive payments in the same manner as one who accepts the Asbestos Trust's original valuation of the claim.

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

5.10 Second Disease Claims. The holder of a Severe Asbestosis (Disease Level I) claim may assert a new Asbestos Claim against the Asbestos Trust for a Lung Cancer 1 (Disease Level IV) or Mesothelioma (Disease Level V) claim that is subsequently diagnosed. Any additional payments to which such claimant may be entitled with respect to the Lung Cancer 1 (Disease Level IV) or Mesothelioma (Disease Level V) claim shall be reduced by the amount paid to the claimant for the Severe Asbestosis (Disease Level I) claim

SECTION 6.

CLAIMS MATERIALS

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

6.2 Content of Claims Materials. The Claims Materials shall include a copy of this TDP, such instructions as the Trustee shall approve, and a detailed proof of claim form. This TDP has been prepared with the goal of simplifying the filing of claims, reducing paperwork by

claimants, and reducing the cost of reviewing claims in an effort to maximize distribution to claimants. Accordingly, instead of collecting some or all of the claims information from a claimant or the claimant's attorney, the Asbestos Trust may, with the consent of the claimant or the claimant's attorney, obtain such information from electronic databases maintained by any other asbestos claims resolution organization. If requested by the claimant, the Asbestos Trust shall accept information provided electronically. The claimant may, but shall not be required to, provide the Asbestos 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 Claim at any time upon written notice to the Asbestos Trust and file another claim subsequently without affecting the status of the claim for statute of limitations purposes, but any such claim filed after withdrawal shall be given a place in the FIFO Processing Queue based on the date of such subsequent filing. A claimant can also request that the processing of his or her Asbestos Claim by the Asbestos Trust be deferred for a period not to exceed two (2) years without affecting the status of the claim for statute of limitations purposes, in which case the claimant shall also retain his or her original place in the FIFO Processing Queue. During the period of such deferral, a sequencing adjustment on such claimant's Asbestos Claim as provided in Section 7.5 hereunder shall not accrue and payment thereof shall be deemed waived by the claimant. Except for Asbestos Claims held by representatives of deceased or incompetent claimants for which court or probate approval of the Asbestos Trust's offer is required, or an Asbestos Claim for which deferral status has been granted, a claim shall be deemed to have been withdrawn if the claimant neither accepts, rejects, nor initiates arbitration within one (1) year of the Asbestos Trust's

written offer of payment or rejection of the claim. Upon written request and good cause, the Asbestos Trust may extend the withdrawal or deferral period for an additional six (6) months.

6.4 Filing Requirements and Fees. Each claimant must submit a filing fee of $50 to have an Asbestos Claim processed by the Asbestos Trust. The fee shall be refunded in full to claimants who receive and accept payment of a settlement offer from the Asbestos Trust.

6.5 Confidentiality of Claimants' Submissions. All submissions to the Asbestos Trust by a holder of an Asbestos Claim, including 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 Asbestos Trust, and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including but not limited to those directly applicable to settlement discussions. The Asbestos Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only, with the permission of the holder, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) of the Bankruptcy Code or other applicable law, to such other persons as authorized by the holder, or in response to a valid subpoena of such materials issued by the Bankruptcy Court, a Delaware State Court, or the United States District Court for the District of Delaware. Furthermore, the Asbestos Trust shall provide counsel for the holder a copy of any such subpoena immediately upon being served; provided, however, that if a subpoena seeks records or information pertaining to more than fifty (50) claimants, the Asbestos Trust may instead first provide a copy of the subpoena to counsel for the TAC and the FCR and delay providing a copy of the subpoena to counsel for individual holders of Asbestos Claims until, in the Trustee's judgment, it appears likely that information or records relating to the holders may have to be produced in response to the subpoena. In such a case, the Asbestos Trust shall ensure that the

notice that is provided to counsel for the holders allows such counsel sufficient time to object to the production. The Asbestos Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privileges before the Bankruptcy Court, a Delaware State Court, or the United States District Court for the District of Delaware and before those courts having appellate jurisdiction related thereto. Notwithstanding anything in the foregoing to the contrary, with the consent of the TAC and the FCR, the Asbestos Trust may, in specific limited circumstances, disclose information, documents or other materials reasonably necessary in the Asbestos Trust's judgment to preserve, litigate, resolve, or settle coverage, or to comply with an applicable obligation under an insurance policy or settlement agreement within the Asbestos Personal Injury Trust Assets; provided, however, that the Asbestos Trust shall take any and all steps reasonably feasible in its judgment to preserve the further confidentiality of such information, documents and materials, and prior to the disclosure of such information, documents or materials to a third party, the Asbestos Trust shall receive from such third party a written agreement of confidentiality that (a) ensures that the information, documents and materials provided by the Asbestos Trust shall be used solely by the receiving party for the purpose stated in the agreement and (b) prohibits any other use or further dissemination of the information, documents and materials by the third party except as set forth in the written agreement of confidentiality. Nothing in this TDP, the Plan or the Trust Agreement expands, limits or impairs the obligation under applicable law of a claimant to respond fully to lawful discovery in any underlying civil action regarding his or her submission of factual information to the Asbestos Trust for the purpose of obtaining compensation for asbestos-related injuries from the Asbestos Trust.

SECTION 7.

GENERAL GUIDELINES FOR LIQUIDATING AND PAYING CLAIMS

7.1 Showing Required. To establish a valid Asbestos Claim, a claimant must meet the requirements set forth in this TDP.

7.2 Costs Considered. Notwithstanding any provisions of this TDP to the contrary, the Trustee shall always give appropriate consideration to the cost of investigating and uncovering invalid Asbestos Claims so that the payment of valid Asbestos Claims is not further impaired by such processes with respect to issues related to the validity of the medical evidence supporting an Asbestos Claim. The Trustee shall also have the latitude to make judgments regarding the amount of transaction costs to be expended by the Asbestos Trust so that valid Asbestos Claims are not unduly further impaired by the costs of additional investigation. Nothing herein shall prevent the Trustee, in appropriate circumstances, from contesting the validity of any claim against the Asbestos Trust whatever the costs, or declining to accept medical evidence from sources that the Trustee has determined to be unreliable pursuant to the Claims Audit Program described in Section 5.7 above, or otherwise.

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 and the Maximum Annual Payment requirements set forth above, the Trustee shall proceed as quickly as possible to liquidate valid Asbestos 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 Asbestos Trust's income over time remains uncertain, and decisions about payments must be based on estimates that cannot be done precisely and may have to be revised in light of experiences over time, there can be no guarantee of any specific level of payment to claimants. However, the Trustee shall use his or her best efforts to treat similar claims in substantially the same manner, consistent with his or her duties as Trustee, the purposes of the Asbestos Trust, and the practical limitations imposed by the inability to predict the future with precision.

In the event that the Asbestos Trust faces temporary periods of limited liquidity, the Trustee may, with the consent of the TAC and the FCR, (a) suspend the normal order of payment, (b) temporarily limit or suspend payments altogether, (c) offer a Reduced Payment Option as described in Section 2.5 above and/or (d) commence making payments on an installment basis.

7.4 Punitive Damages. Except as provided below for claims asserted under the Alabama Wrongful Death Statute, in determining the value of any liquidated or unliquidated Asbestos Claim, punitive or exemplary damages, *i.e.*, damages other than compensatory damages, shall not be considered or paid, notwithstanding their availability in the tort system. Similarly, no punitive or exemplary damages shall be payable with respect to any claim litigated against the Asbestos Trust in the tort system pursuant to Sections 5.9 above and 7.6 below. The only damages that may be awarded pursuant to this TDP to Alabama claimants who are deceased and whose personal representatives pursue their claims only under the Alabama Wrongful Death Statute shall be compensatory damages determined pursuant to the statutory and common law of the Commonwealth of Pennsylvania, without regard to the choice of law principles.

7.5 Sequencing Adjustment.

7.5(a) In General. Subject to the limitations set forth below, a sequencing adjustment shall be paid on all Asbestos Claims with respect to which the claimant has had to wait a year or more for payment, provided, however, that no claimant shall receive a sequencing adjustment for a period in excess of seven (7) years, or for a period when the claim was deferred or withdrawn at the claimant's request. The sequencing adjustment factor shall be the one-year U.S. Treasury bill interest rate in effect on January 1 of the year in which the accrual of the sequencing adjustment commences. The rate of the sequencing adjustment shall be adjusted each January 1 to correspond to the one-year Treasury bill interest rate then in effect. The applicable sequencing adjustment shall be calculated based only on the value of the claim specified in Section 7.5(b) or (c) below, subject to the Payment Percentage; any accrued but unpaid sequencing adjustment shall not be included in such calculation.

7.5(b) Unliquidated Asbestos Claims. A sequencing adjustment shall be payable on the Scheduled Value of any unliquidated Asbestos Claim, whether the claim is liquidated under Expedited Review or by arbitration. No sequencing adjustment shall be paid on any claim liquidated in the tort system pursuant to Section 5.9 above and Section 7.6 below. Sequencing adjustments on all such unliquidated claims shall be measured from the date of payment back to the earliest of the date that is one year after the date on which (a) the claim was filed against the Debtor prior to the Petition Date; (b) the claim was filed against another defendant in the tort system on or after the Petition Date but before the Effective Date; (c) the claim was filed with the Bankruptcy Court during the pendency of the Chapter 11 proceeding; or (d) the claim was filed with the Asbestos Trust after the Effective Date.

7.5(c) Liquidated Pre-Petition Claims. A sequencing adjustment shall also be payable on the liquidated value of all Pre-Petition Liquidated Claims described in Section 5.2(a)

above. In the case of Pre-Petition Liquidated Claims liquidated by verdict or judgment, the sequencing adjustment shall be measured from the date of payment back to the date that is one (1) year after the date that the verdict or judgment was entered; provided, however, that in no event shall the sequencing adjustment be measured from a date prior to the Petition Date if the liquidated value of the Pre-Petition Liquidated Claim includes pre-petition interest. In the case of Pre-Petition Liquidated Claims liquidated by a binding, judicially enforceable settlement, the sequencing adjustment shall be measured from the date of payment back to the date that is one (1) year after the Petition Date.

7.6 Suits in the Tort System. If the holder of a disputed claim disagrees with the Asbestos Trust's determination regarding the Disease Level of the claim or the claimant's exposure history, and if the holder has first submitted the claim to non-binding arbitration as provided in Section 5.8 above, the holder may file a lawsuit against the Asbestos Trust in the Claimant's Jurisdiction as defined in Section 8.3 below. 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 Asbestos Trust, all defenses which could have been asserted by the Debtor) shall be available to both sides at trial; however, the Asbestos Trust may waive any defense and/or concede any issue of fact or law. If the claimant was alive at the time the initial pre-petition complaint was filed or on the date the proof of claim form was filed with the Asbestos Trust, the case shall be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim.

7.7 Payment of Judgments for Money Damages. If and when a claimant obtains a judgment in the tort system, the claim shall be placed in the FIFO Payment Queue based on the

date on which the judgment became final. Thereafter, the claimant shall receive from the Asbestos Trust an initial payment (subject to the applicable Payment Percentage and the Maximum Annual Payment provisions set forth above) of an amount equal to the greater of (i) the Asbestos Trust's last offer to the claimant or (ii) the award that the claimant declined in non-binding arbitration; provided, however, that in no event shall such payment amount exceed the amount of the judgment obtained in the tort system. The claimant shall receive the balance of the judgment, if any, in five (5) equal installments in years six (6) through ten (10) following the year of the initial payment (also subject to the applicable Payment Percentage and the Maximum Annual Payment provisions above in effect on the date of the payment of the subject installment).

The total amounts paid with respect to such claims shall not exceed the relevant Scheduled Values for such Disease Levels as set forth in Section 5.3(a)(3) above. Under no circumstances shall (a) a sequencing adjustment be paid pursuant to Section 7.5 or (b) interest be paid under any statute on any judgments obtained in the tort system.

7.8 Releases. As a condition to making a payment to a claimant, the Asbestos Trust shall obtain from such claimant a Release in the form attached hereto as Exhibit 1. The Trustee may modify the provisions of the Release so long as he or she obtains the consent of the TAC and the FCR. If allowed by state law, the endorsing of a check or draft for payment by or on behalf of a claimant may, in the discretion of the Asbestos Trust, constitute such a release.

7.9 Third-Party Services. Nothing in this TDP shall preclude the Asbestos Trust from contracting with another asbestos claims resolution organization to provide services to the Asbestos Trust so long as decisions about the categorization and liquidated value of Asbestos

Claims are based on the relevant provisions of this TDP, including the Disease Levels, Scheduled Values, and Medical/Exposure Criteria set forth above.

SECTION 8.

MISCELLANEOUS

8.1 Amendments. Except as otherwise provided herein, the Trustee 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 he or she first obtains the consent of the TAC and the FCR 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 TAC or the FCR from proposing to the Trustee, in writing, amendments to this TDP. Any amendment proposed by the TAC or the FCR 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 the Debtor's obligations to any insurance company providing insurance coverage to the Debtor in respect of claims for personal injury based on exposure to an asbestos-containing product or to conduct for which the Debtor has legal responsibility, the Asbestos Trust with the consent of the TAC and the FCR may amend this TDP and/or the Trust Agreement to make the provisions of either or both documents consistent with the duties and obligations of the Debtor to said insurance company.

8.3 Governing Law. Except for purposes of determining the liquidated value of any Asbestos Claim, administration of this TDP shall be governed by, and construed in accordance with, the laws of the State of Delaware. The law governing the liquidation of Asbestos Claims in the case of arbitration or litigation in the tort system shall be the law of the Claimant's Jurisdiction as described below.

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

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EXHIBIT 1

Asbestos Personal Injury Claimant Release

SEPCO ASBESTOS PERSONAL INJURY TRUST

RELEASE AND INDEMNITY AGREEMENT

NOTICE: THIS IS A BINDING DOCUMENT THAT AFFECTS YOUR LEGAL RIGHTS. PLEASE CONSULT YOUR ATTORNEY IN CONNECTION WITH EXECUTING THIS DOCUMENT. IF YOU DO NOT PRESENTLY HAVE AN ATTORNEY, YOU MAY WISH TO CONSIDER CONSULTING ONE.

All capitalized terms not defined herein shall have the respective meanings ascribed to them in either the First Amended Plan of Reorganization for Sepco Corporation under Chapter 11 of the Bankruptcy Code, dated as of February 28, 2019, as confirmed by order of the United States Bankruptcy Court for the Northern District of Ohio in *In re Sepco Corporation*, Case No. 16-50058, which confirmation was affirmed by an order of the United States District Court for the Northern District of Ohio (the "Plan"), or the Sepco Asbestos Personal Injury Trust Distribution Procedures (the "TDP", which may be amended from time to time) adopted pursuant to the Plan.

WHEREAS, the undersigned, who is either the "Injured Party" or the/an "Official Representative"* (either being referred to herein as the "Claimant"), has filed a claim (the "Claim") with the Sepco Asbestos Personal Injury Trust (the "Trust") pursuant to the TDP and such Claim asserts an Asbestos Personal Injury Claim for which Sepco Corporation (the "Debtor") is alleged to have legal responsibility; and

WHEREAS, the Claimant has agreed to settle and compromise the Claim, for and in consideration of the allowance of the Claim by the Trust and its payment pursuant to the TDP in accordance with the terms set forth therein and herein.

NOW, THEREFORE, the Claimant hereby agrees as follows:

1. On behalf of the Injured Party, the Injured Party's estate, the Injured Party's legal and personal representatives, heirs and/or anyone else claiming rights through the Injured Party, now and in the future, the Claimant hereby fully and finally RELEASES, ACQUITS, and FOREVER DISCHARGES (a) the Trust, the Trust Advisory Committee, the Future Claimants' Representative, and their respective trustees, members, directors, officers, agents, consultants, financial advisors, servants, employees, attorneys, heirs, legal and personal representatives, and executors, and (b) the Debtor, Reorganized Sepco, and any other Protected Party (collectively "Releasees") from any and all Asbestos Personal Injury Claims (and any claims related thereto), except as expressly provided herein.

2. Notwithstanding the paragraph immediately above or anything to the contrary contained herein, if the Claim involves a non-malignant asbestos-related disease (Disease Level I under the TDP), the Injured Party may, pursuant to Section 5.10 of the TDP, file a new Asbestos Claim against the Trust for a Lung Cancer 1 (Disease Level IV under the TDP) or Mesothelioma (Disease Level V under the TDP) that is diagnosed after the date of the Claimant's original submission of a proof of claim form to the Trust with respect to the Claim.

3. The Claimant expressly covenants and agrees forever to refrain from bringing any suit or proceeding at law or in equity, against the Releasees with respect to any Asbestos Personal Injury Claim released herein.

4. The Claimant intends this Release and Indemnity Agreement to be as broad and comprehensive as possible so that the Releasees shall never be liable, directly or indirectly, to the Injured Party or the Injured Party's heirs, legal or personal representatives, successors or assigns, or any other person or entity claiming by, through, under, or on behalf of the Injured Party, for or on account of any Asbestos Personal Injury Claim, except as expressly provided herein, whether the same is now known or unknown or may now be latent or may in the future appear to develop, including all spousal claims for the Injured Party's claims. If the Claimant is an Official Representative, the Claimant represents and warrants that the Claimant has all requisite legal authority to act for, bind and accept payment on behalf of the Injured Party and all legal or personal representatives and heirs of the Injured Party on account of any Asbestos Personal Injury Claim against the Trust and hereby agrees to indemnify and hold harmless, to the extent of payment hereunder, excluding attorney's fees and costs, the Releasees from any loss, cost, damage or expense arising out of or in connection with the rightful claim of any other Entity to payments with respect to the Injured Party's Asbestos Personal Injury Claim against the Trust.

5. This Release and Indemnity Agreement is not intended to bar any cause of action, right, lien or claim that the Claimant may have against any alleged tortfeasor, or any other person or entity, not included in the definition of Releasees. The Claimant hereby expressly reserves all his or her rights against such persons or entities. This Release and Indemnity Agreement is not intended to release or discharge any Asbestos Personal Injury Claim or potential Asbestos Personal Injury Claim that the Injured Party's heirs (if any), spouse (if any), the Official Representative (if any) or the Official Representative's heirs (if any) (other than the Injured Party) may have as a result of their own exposure to asbestos or asbestos-containing products.

6. The Claimant represents and warrants that all valid liens or subrogation and reimbursement claims relating to benefits paid to or on account of the Injured Party in connection with, or relating to, the Asbestos Personal Injury Claim have been resolved or will be resolved from the net proceeds of the settlement payment to the Claimant under this Release and Indemnity Agreement or otherwise. It is further agreed and understood that no Releasee shall have any liability to the Claimant or any other person or entity in connection with such liens or subrogation and reimbursement claims and that the Claimant will indemnify and hold the Releasees harmless from any and all such alleged liability as provided in the following sentence. The Claimant will indemnify and hold the Releasees harmless, to the extent of the amount of payment hereunder, excluding attorney's fees and costs, from any and all liability arising from subrogation, indemnity, or contribution claims related to

* The "Official Representative" is the/a person who under applicable state law or legal documentation has the authority to represent the Injured Party, the Injured Party's estate, or the Injured Party's heirs.

the Asbestos Personal Injury Claim released herein including those arising from any compensation or medical payments due, or claimed to be due, under any applicable law, regulation, or contract related to the Asbestos Personal Injury Claim released herein.

7. It is further agreed and understood that if the Claimant has filed a civil action against the Trust, the Claimant shall dismiss such civil action and obtain the entry of an Order of Dismissal with Prejudice with respect to any Asbestos Personal Injury Claim released herein no later than 30 days after the date hereof.

8. The Claimant understands that the Asbestos Personal Injury Claim released herein is being resolved by the Trust, and a liquidated value ($_____) has been established for such Claim. The Claimant acknowledges that, pursuant to the TDP, the Trust will only be able to pay the Claimant a percentage (the "Payment Percentage") of the liquidated value of such Claim. The Payment Percentage applicable to the Claim will be determined in the manner set forth in the TDP. The Claimant further acknowledges that the Payment Percentage is based on estimates that change over time, and that other claimants may have in the past received, or may in the future receive, a smaller or larger percentage of the value of their claims than the Claimant. The Claimant further acknowledges that, other than as specifically set forth in the TDP, the fact that earlier or later claimants may have been paid or may in the future be paid a smaller or larger percentage of the value of their claims shall not entitle the Claimant to any additional compensation from the Trust.

9. In the event of a verdict against others, any judgment entered on the verdict that takes into account the status of the Trust as a joint tortfeasor legally responsible for the Injured Party's injuries shall be reduced by no more than the total and actual amount paid as consideration for this Release and Indemnity Agreement or such lesser amount as allowed by law.

10. The Claimant understands, represents, and warrants that this Release and Indemnity Agreement is a compromise of a disputed claim and not an admission of liability by, or on the part of, the Releasees. Neither this Release and Indemnity Agreement, the compromise and settlement evidenced hereby, nor any evidence relating thereto, will ever be admissible as evidence against the Trust in any suit, claim, or proceeding of any nature except to enforce this Release and Indemnity Agreement. However, this Release and Indemnity Agreement is and may be asserted by the Releasees as an absolute and final bar to any claim or proceeding now pending or hereafter brought by or on behalf of the Injured Party with respect to the Asbestos Personal Injury Claim released herein, except as expressly provided herein.

11. The Claimant (a) represents that no judgment debtor has satisfied in full or in part, the Trust's liability with respect to the Injured Party's Asbestos Personal Injury Claim as the result of a judgment entered in the tort system, and (b) upon information and belief, represents that the Claimant has not entered into a release (other than this Release and Indemnity Agreement) that discharges or releases the Trust's liability to the Claimant with respect to the Injured Party's Asbestos Personal Injury Claim.

12. The Claimant represents that he or she understands that this Release and Indemnity Agreement constitutes a final and complete release of the Releasees with respect to the Injured Party's Asbestos Personal Injury Claim, except as expressly provided herein. The Claimant has relied solely upon his or her own knowledge and information, and the advice of his or her attorneys (if any), as to the nature, extent and duration of the Injured Party's injuries, damages, and legal rights, as well as the alleged liability of the Trust and the legal consequences of this Release and Indemnity Agreement, and not on any statement or representation made by or on behalf of the Trust.

13. This Release and Indemnity Agreement contains the entire agreement between the parties and supersedes all prior or contemporaneous, oral or written agreements or understandings relating to the subject matter hereof between or among any of the parties hereto, including, without limitation, any prior agreements or understandings with respect to the liquidation of the Claim.

14. This Release and Indemnity Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law thereof and shall be binding on the Injured Party and his or her heirs, legal representatives, successors and assigns.

15. TO THE EXTENT APPLICABLE, THE CLAIMANT HEREBY WAIVES ALL RIGHTS UNDER SECTION 1542 OF THE CALIFORNIA CIVIL CODE, AND ANY SIMILAR LAWS OF ANY OTHER STATE. CALIFORNIA CIVIL CODE SECTION 1542 STATES:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

THE CLAIMANT UNDERSTANDS AND ACKNOWLEDGES THAT BECAUSE OF THE CLAIMANT'S WAIVER OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, EVEN IF THE INJURED PARTY SHOULD EVENTUALLY SUFFER ADDITIONAL DAMAGES, THE INJURED PARTY WILL NOT BE ABLE TO MAKE ANY CLAIM AGAINST THE RELEASEES FOR THOSE DAMAGES, EXCEPT AS EXPRESSLY PROVIDED HEREIN. THE CLAIMANT ACKNOWLEDGES THAT HE OR SHE INTENDS THESE CONSEQUENCES.

16. If the Claimant's counsel directed the [CLAIMS PROCESSING FACILITY] ("___") to transmit to the Trust any information from ___ for purposes of settling the Claim, the Claimant acknowledges that the Claimant consented to the disclosure, transfer and/or exchange of information related to the Claim (including medical information) between the Trust and ___ in connection with ___'s processing of the Claim.

17. The Claimant authorizes payment pursuant to Paragraph 8 to the Claimant or the Claimant's counsel, as trustee for the Claimant.

18. The Claimant acknowledges that the Trust's obligation to pay the Claimant is not triggered until the Trust receives the executed Release and Indemnity Agreement from Claimant.

CERTIFICATION

I state that I have carefully read the foregoing Release and Indemnity Agreement and know the contents thereof, and I sign the same as my own free act. I additionally certify, under penalty of perjury, that the information that has been provided to support the Claim is true according to my knowledge, information, and belief, and further that I have the authority as the Claimant to sign this Release and Indemnity Agreement.

I further represent and certify to the Trust that, in respect of the Claim, the Claimant has paid or will provide for the payment and/or resolution of any obligations owing or potentially owing under 42 U.S.C. § 1395y(b), or any related rules, regulations, or guidance, in connection with, or relating to, the Claim.

I am: _____ the Injured Party
_____ the Official Representative of the Injured Party, the Injured Party's Estate, or the Injured Party's Heirs

EXECUTED this ___ day of _____, 20___

_____
Signature of the Claimant

Name of the Claimant: _____ SSN: _____

Name of the Injured Party if different from the Claimant: _____ SSN: _____

SWORN to and subscribed before me this ___ day of _____, 20___

_____
Notary Public
My Commission Expires: _____

-OR-

Signatures of two persons unrelated to the Claimant by blood or marriage who witnessed the signing of this Release and Indemnity Agreement

_____ _____
Witness Signature Witness Signature

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APPENDIX I: AUTHORIZATION FOR ASBESTOS TRUST TO OBTAIN TRUST RECORDS

AUTHORIZATION FOR RELEASE OF RECORDS OF OTHER ASBESTOS TRUSTS AND CLAIM RESOLUTION FACILITIES

TO WHOM IT MAY CONCERN:

The Claimant named below hereby authorizes each asbestos trust and claim resolution facility listed in the attachment hereto to provide directly to the Sepco Asbestos Personal Injury Trust (the "Asbestos Trust"), or any of its representatives, all submissions made by Claimant and (if different from the Claimant) the party whose injury forms the basis of the claim (the "Injured Party"), including claim forms, any attachments to claim forms, and any amended or supplemental claim forms. Claimant expressly acknowledges that the other asbestos trust or claim resolution facility may provide such documents directly to the Asbestos Trust and need not obtain any further authorization from the Claimant or his/her representatives.

A copy of this Authorization shall be as valid as the original. This Authorization contains no expiration date and may be exercised by the Asbestos Trust at any time. If Claimant's representative has signed this Authorization, a notarized power of attorney is attached.

Name of Claimant: _____
Social Security No.: _____
Date of Birth: _____

Name of Injured Party (if different from Claimant): _____
Social Security No.: _____
Date of Birth: _____

Name of representative for Claimant or Injured Party: _____

Signing party: _____

Signature: _____

Date: _____

Notarized:

Attachment: List of Asbestos Trusts and Claim Resolution Facilities

List of Other Asbestos Trusts and Claim Resolution Facilities

A&I Corp. Asbestos Bodily Injury Trust	Forty-Eight Insulations Qualified Settlement Trust	Raytech Corp. Asbestos Personal Injury Settlement Trust
A-Best Asbestos Settlement Trust	Fuller-Austin Asbestos Settlement Trust	Rock Wool Mfg Company Asbestos Trust
AC&S Asbestos Settlement Trust	G-I Asbestos Settlement Trust	Rutland Fire Clay Company Asbestos Trust
Amatex Asbestos Disease Trust Fund	H.K. Porter Asbestos Trust	Shook & Fletcher Asbestos Settlement Trust
APG Asbestos Trust	Hercules Chemical Company, Inc. Asbestos Trust	Skinner Engine Co. Asbestos Trust
API, Inc. Asbestos Settlement Trust	J.T. Thorpe Settlement Trust	Stone and Webster Asbestos Trust
Armstrong World Industries Asbestos Personal Injury Settlement Trust	JT Thorpe Company Successor Trust	Swan Asbestos and Silica Settlement Trust
ARTRA 524(g) Asbestos Trust	Kaiser Asbestos Personal Injury Trust	T H Agriculture & Nutrition, LLC Industries Asbestos Personal Injury Trust
ASARCO LLC Asbestos Personal Injury Settlement Trust	Keene Creditors Trust	Thorpe Insulation Company Asbestos Personal Injury Settlement Trust
Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust	Lummus 524(g) Asbestos PI Trust	United States Gypsum Asbestos Personal Injury Settlement Trust
Bartells Asbestos Settlement Trust	Lykes Tort Claims Trust	United States Lines, Inc. and United States Lines (S.A.) Inc. Reorganization Trust
Brauer 524(g) Asbestos Trust	M.H. Detrick Company Asbestos Trust	United States Mineral Products Company Asbestos Personal Injury Settlement Trust
Burns and Roe Asbestos Personal Injury Settlement	Manville Personal Injury	UNR Asbestos-Disease

Trust	Settlement Trust	Claims Trust
C.E. Thurston & Sons Asbestos Trust	Muralo Trust	Utex Industries, Inc. Successor Trust
Celotex Asbestos Settlement Trust	NGC Bodily Injury Trust	Wallace & Gale Company Asbestos Settlement Trust
Combustion Engineering 524(g) Asbestos PI Trust	Owens Corning Fibreboard Asbestos Personal Injury Trust (OC Sub-Fund)	Western MacArthur-Western Asbestos Trust
Congoleum Plan Trust	Owens Corning Fibreboard Asbestos Personal Injury Trust (FB Sub-Fund)	W.R. Grace Trust
DII Industries, LLC Asbestos PI Trust	PLI Disbursement Trust	Pittsburgh Corning Trust
Eagle-Picher Industries Personal Injury Settlement Trust	Plibrico Asbestos Trust	Bondex Trust
Federal Mogul U.S. Asbestos Personal Injury Trust	Porter Hayden Bodily Injury Trust	Flintkote Company and Flintkote Mines Limited Asbestos Personal Injury Trust
MLC Asbestos Personal Injury Trust	Metex Asbestos Trust	Leslie Controls, Inc. Asbestos Personal Injury Trust
Plant Insulation Company Asbestos Settlement Trust	Quigley Co. Inc. Asbestos Personal Injury Trust	Yarway Asbestos Personal Injury Trust
GST Settlement Facility	Geo. V. Hamilton, Inc. Asbestos Trust	

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EXHIBIT B

Asbestos Trust Distribution Procedures

(Attached)

GEO. V. HAMILTON, INC. ASBESTOS TRUST DISTRIBUTION PROCEDURES

GEO. V. HAMILTON, INC. ASBESTOS TRUST DISTRIBUTION PROCEDURES

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GEO. V. HAMILTON, INC. ASBESTOS TRUST DISTRIBUTION PROCEDURES

The Geo. V. Hamilton, Inc. Asbestos Trust Distribution Procedures (the "**TDP**") contained herein provide for resolving all Asbestos Claims as defined in the Plan of Reorganization of Geo. V. Hamilton, Inc. under Chapter 11 of the Bankruptcy Code, dated as of January 5, 2018 (as it may be amended or modified, the "**Plan**"),[1] as provided in and required by the Plan and the Geo. V. Hamilton, Inc. Asbestos Trust Agreement (the "**Trust Agreement**"). The Plan and Trust Agreement establish the Geo. V. Hamilton Asbestos Trust (the "**Asbestos Trust**"). The Trustee of the Asbestos Trust (the "**Trustee**") shall implement and administer this TDP in accordance with the Trust Agreement.

SECTION 1.

INTRODUCTION

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

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

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1 Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan and the Trust Agreement.

SECTION 2.

OVERVIEW

2.1 Asbestos Trust Goals. The goal of the Asbestos Trust is to treat all claimants equitably. This TDP furthers that goal by setting forth procedures for processing and paying the Debtor's several share of the unpaid portion of the liquidated value of Asbestos Claims generally on an impartial, first-in-first-out ("**FIFO**") basis, with the intention of paying all claimants over time as equivalent a share as possible of the value of their claims based on historical values for substantially similar claims in the tort system.[2] To this end, the TDP establishes a schedule of five asbestos-related diseases ("**Disease Levels**") which have presumptive medical and exposure requirements ("**Medical/Exposure Criteria**") and specific liquidated values ("**Scheduled Values**"). The Disease Levels, Medical/Exposure Criteria, and Scheduled Values, which are set forth in Section 5.3(a)(3) below, have all been selected and derived with the intention of achieving a fair allocation of the Asbestos Trust funds as among claimants suffering from these different disease processes in light of the best available information considering the settlement history of the Debtor and the rights claimants would have in the tort system absent the bankruptcy. A claimant may not assert more than one Asbestos Claim hereunder.

2.2 Claims Liquidation Procedures. Asbestos Claims shall be processed based on their place in the FIFO Processing Queue to be established pursuant to Section 5.1(a)(1) below. The Asbestos Trust shall take all reasonable steps to resolve Asbestos Claims as efficiently and expeditiously as possible at each stage of claims processing and arbitration, which steps may

---

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

include, in the Asbestos Trust's sole discretion, 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 evaluated pursuant to the valuation factors set forth herein. The Asbestos Trust shall also make every effort to resolve each year at least that number of Asbestos Claims required to exhaust the Maximum Annual Payment as that term is defined below.

The Asbestos Trust shall liquidate all Asbestos Claims under the Expedited Review Process described in Section 5.3(a) below.

Based upon the Debtor's claims settlement history in light of applicable tort law, and current projections of present and future unliquidated claims, the Scheduled Values for all Disease Levels have been established as set forth in Section 5.3(a)(3).

All unresolved disputes over a claimant's medical condition or exposure history shall be subject to binding or non-binding arbitration as set forth in Section 5.8 below, at the election of the claimant, under the ADR Procedures that are to be established by the Asbestos Trust. Asbestos Claims that are the subject of a dispute with the Asbestos Trust that cannot be resolved by non-binding arbitration may enter the tort system as provided in Sections 5.9 and 7.6 below. However, if and when a claimant obtains a judgment in the tort system, the judgment shall be payable (subject to the Payment Percentage and Maximum Annual Payment provisions) as provided in Section 7.7 below.

2.3 Establishment and Application of the Payment Percentage. The Payment Percentage for Asbestos Claims shall be established by the Trustee with the consent of the Trust Advisory Committee ("**TAC**") and the Future Claimants' Representative ("**FCR**"). After the liquidated value of an Asbestos Claim as defined in Section 5.3(a)(3) below is determined pursuant

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

The Payment Percentage may be adjusted upwards or downwards from time to time by the Asbestos Trust with the consent of the TAC and the FCR to reflect then-current estimates of the Asbestos Trust's assets and its liabilities, as well as then-estimated value of then-pending and future claims. If the Payment Percentage is increased over time, claimants whose claims were liquidated and paid in prior periods under the TDP shall receive additional payments only as provided in Section 4.3 below. Because there is uncertainty in the prediction of both the number and severity of future Asbestos Claims, and the amount of the Asbestos Trust's assets, no guarantee can be made of any Payment Percentage of an Asbestos Claim's liquidated value.

2.4 Asbestos Trust's Determination of the Maximum Annual Payment. After calculating the Payment Percentage, the Asbestos Trust shall model the cash flow, principal and income year-by-year to be paid over its entire life to ensure that all present and future holders of Asbestos Claims are compensated at the Payment Percentage. In each year, based upon the model of cash flow, the Asbestos Trust shall be empowered to pay out the portion of its funds payable for that year according to the model (the "**Maximum Annual Payment**"). The Asbestos Trust's distributions to all claimants for that year shall not exceed the Maximum Annual Payment. The Payment Percentage and the Maximum Annual Payment figures are based on projections over the lifetime of the Asbestos Trust. If such long-term projections are revised, the Payment Percentage

may be adjusted accordingly, which would result in a new model of the Asbestos Trust's anticipated cash flow and a new calculation of the Maximum Annual Payment figures.

However, year-to-year variations in the Asbestos Trust's flow of claims or the value of its assets, including earnings thereon, will not mean necessarily that the long-term projections are inaccurate; they may simply reflect normal variations, both up and down, from the smooth curve created by the Asbestos Trust's long-term projections. If, in a given year, however, asset values, including earnings thereon, are below projections, the Asbestos Trust may need to distribute less in that year than would otherwise be permitted based on the original Maximum Annual Payment derived from long-term projections. Accordingly, the original Maximum Annual Payment for a given year may be temporarily decreased if the present value of the assets of the Asbestos Trust as measured on a specified date during the year is less than the present value of the assets of the Asbestos Trust projected for that date by the cash flow model described in the foregoing paragraph. The Asbestos Trust shall make such a comparison whenever the Trustee becomes aware of any information that suggests that such a comparison should be made. If the Asbestos Trust determines that as of the date in question, the present value of the Asbestos Trust's assets is less than the projected present value of its assets for such date, then it will remodel the cash flow year-by-year to be paid over the life of the Asbestos Trust based upon the reduced value of the total assets as so calculated and identify the reduced portion of its funds to be paid for that year, which will become the Temporary Maximum Annual Payment (additional reductions in the Maximum Annual Payment can occur during the course of that year based upon subsequent calculations). If in any year the Maximum Annual Payment was temporarily reduced as a result of an earlier calculation and, based upon a later calculation, the difference between the projected present value of the Asbestos Trust's assets and the actual present value of its assets has decreased, the Temporary

Maximum Annual Payment shall be increased to reflect the decrease in the differential. In no event, however, shall the Temporary Maximum Annual Payment exceed the original Maximum Annual Payment. As a further safeguard, the Asbestos Trust's distribution to all claimants for the first nine months of a year shall not exceed 85% of the Maximum Annual Payment determined for that year. If on December 31 of a given year, the original Maximum Annual Payment for such year is not in effect, the original Maximum Annual Payment for the following year shall be reduced proportionately.

2.5 Indirect Asbestos Claims. As set forth in Section 5.5 below, any Indirect Asbestos Claim (an "**Indirect Asbestos Claim**") shall be subject to the same categorization, evaluation, and payment provisions of this TDP as all other Asbestos Claims.

SECTION 3.

TDP ADMINISTRATION

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

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

SECTION 4.

PAYMENT PERCENTAGE; PERIODIC ESTIMATES

4.1 Uncertainty of Debtor's Personal Injury Asbestos Liabilities. As discussed above, there is inherent uncertainty regarding the Debtor's total asbestos-related tort liabilities, as well as the total value of the assets available to the Asbestos Trust to pay Asbestos Claims. Consequently, there is inherent uncertainty regarding the amounts that holders of Asbestos Claims shall receive. To seek to ensure substantially equivalent treatment of all present and future Asbestos Claims, the Trustee must determine from time to time the percentage of full liquidated value that holders of present and future Asbestos Claims shall be likely to receive, *i.e.*, the "**Payment Percentage**" described in Section 2.3 above and Section 4.2 below.

4.2 Computation of Payment Percentage. As provided in Section 2.3 above, the Payment Percentage shall be established by the Trustee with the consent of the TAC and the FCR, and shall apply to all Trust Claims.

The Payment Percentage shall be subject to change pursuant to the terms of this TDP and the Trust Agreement if the Trustee with the consent of the TAC and FCR determines that an adjustment is required. No less frequently than once every three (3) years, commencing with the first day of January occurring after the Effective Date, the Trustee shall reconsider the then-

applicable Payment Percentage to assure that it is based on accurate, current information and may, after such reconsideration, change the Payment Percentage if necessary with the consent of the TAC and the FCR. The Trustee shall also reconsider the then-applicable Payment Percentage at shorter intervals if he or she deems such reconsideration to be appropriate or if requested to do so by the TAC or the FCR. In any event, no less frequently than once every three (3) years, commencing on the date four (4) years and six (6) months after the date that the Asbestos Trust first makes available the proof of claim forms and other claims materials required to file a claim with the Asbestos Trust (the six-month anniversary of the date the Asbestos Trust first makes available the proof of claim form and other claims materials required to file a claim being referred to herein as the "**Initial Claims Filing Date**"), the Trustee shall compare the liability forecast on which the then applicable Payment Percentage is based with the actual claims filing and payment experience of the Asbestos Trust to date. If the results of the comparison call into question the ability of the Asbestos Trust to continue to rely upon the current liability forecast, the Trustee shall undertake a reconsideration of the Payment Percentage.

The Trustee must base his or her determination of the Payment Percentage on current estimates of the number, types, and values of present and future Asbestos Claims, the value of the assets then available to the Asbestos 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 value to all holders of Asbestos Claims. When making these determinations, the Trustee shall exercise common sense and flexibly evaluate all relevant factors.

4.3 Applicability of the Payment Percentage. Except as otherwise provided (a) in Section 5.1(b) below for Asbestos Claims involving deceased or incompetent claimants for which

approval of the Asbestos Trust's offer by a court or through a probate process is required and (b) in the paragraph below with respect to Released Claims, no holder of any other Asbestos Claim shall receive a payment that exceeds the liquidated value of the claim times the Payment Percentage in effect at the time of payment; provided, however, that if there is a reduction in the Payment Percentage, the Trustee, in his or her sole discretion, may cause the Asbestos Trust to pay an Asbestos Claim based on the Payment Percentage that was in effect prior to the reduction if such Asbestos Claim was filed and actionable with the Asbestos Trust ninety (90) days or more prior to the date the Trustee proposed the new Payment Percentage in writing to the TAC and the FCR (the "**Proposal Date**") and the processing of such claim was unreasonably delayed due to circumstances beyond the control of the claimant or the claimant's counsel, but only if such claim had no deficiencies for the ninety (90) days prior to the Proposal Date.

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

Notwithstanding anything contained herein, if the proposed Payment Percentage is lower than the current Payment Percentage, a claimant whose Asbestos Claim was liquidated prior to the

Proposal Date and who either (a) transmitted[3] an executed release to the Asbestos Trust prior to the Proposal Date or (b) with respect to those claimants who had received releases fewer than thirty (30) days prior to the Proposal Date, transmitted an executed release to the Asbestos Trust within thirty (30) days of the claimant's receipt of the release (the claims described in (a) and (b) are collectively referred to herein as the "**Released Claims**") shall be paid based on the current Payment Percentage (the "**Released Claims Payment Percentage**"). For purposes hereof, (a) a claimant represented by counsel shall be deemed to have received a release on the date that the claimant's counsel receives the release, (b) if the Asbestos Trust transmits a release electronically, the release shall be deemed to have been received on the date the Asbestos Trust transmits the offer notification, and (c) if the Asbestos Trust places the release in the U.S. mail, postage prepaid, the release shall be deemed to have been received three (3) business days after such mailing date. A delay in the payment of the Released Claims for any reason, including delays resulting from limitations on payment amounts in a given year pursuant to Section 2.4 hereof, shall not affect the rights of the holders of the Released Claims to be paid based on the Released Claims Payment Percentage.

At least thirty (30) days prior to proposing in writing to the TAC and the FCR a change in the Payment Percentage, the Trustee shall issue a written notice to claimants or claimants' counsel indicating that the Trustee is reconsidering such Payment Percentage. During the period of time when the Trustee is contemplating a change in the Payment Percentage, the Asbestos Trust shall continue processing claims and making offers in a manner consistent with its normal course of business.

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[3] For purposes of this sentence, "transmitted" is defined as the date/time postmarked if submitted by mail or the date/time uploaded if submitted electronically.

If the Trustee, with the consent of the TAC and the FCR, makes a determination to increase the Payment Percentage, the Trustee shall make supplemental payments to all claimants who previously liquidated their claims against the Asbestos Trust and received payments based on a lower Payment Percentage. The amount of any such supplemental payment shall be the liquidated value of the claim in question times the newly adjusted Payment Percentage, less all amounts previously paid to the claimant with respect to the claim (excluding the portion of such previously paid amounts that was attributable to any sequencing adjustment paid pursuant to Section 7.5 below).

The Trustee'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, 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. However, the Trustee's obligation shall resume and the Trustee shall pay any such aggregate supplemental payments due the claimant at such time that the total exceeds $100.

SECTION 5.

RESOLUTION OF ASBESTOS CLAIMS.

5.1 Ordering, Processing and Payment of Claims.

5.1(a) Ordering of Claims.

5.1(a)(1) Establishment of the FIFO Processing Queue. The Asbestos Trust shall order claims that are sufficiently complete to be reviewed for processing purposes on a FIFO basis except as otherwise provided herein (the "**FIFO Processing Queue**"). The claimant's position in the FIFO Processing Queue shall be determined by the date the claim is filed with the Asbestos Trust. If any claims are filed on the same date, the claimant's position in

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

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

If an Asbestos Claim meets any of the tolling provisions described in the preceding sentence and the claim was not barred by the applicable federal or state statute of limitation at the time of the tolling event, it shall be treated as timely filed if it is actually filed with the Asbestos Trust within three (3) years after the Initial Claims Filing Date, or within three (3) years after the date of the diagnosis of the disease for which the claim is filed, whichever occurs later. In addition, any Asbestos Claims that were first diagnosed after the Petition Date, irrespective of the application of any relevant federal or state statute of limitation or repose, may be filed with the Asbestos Trust within three (3) years after the date of diagnosis or within three (3) years after the

Initial Claims Filing Date, whichever occurs later. However, the processing of any Asbestos Claim by the Asbestos Trust may be deferred at the election of the claimant pursuant to Section 6.3 below.

5.1(b) Payment of Claims. Asbestos Claims that have been liquidated by the Expedited Review Process as provided in Section 5.3(a) below, by arbitration as provided in Section 5.8 below, or by litigation in the tort system provided in Section 5.9 below, shall be paid in FIFO order based on the date their liquidation became final (the "**FIFO Payment Queue**"), all such payments being subject to the applicable Payment Percentage, the Maximum Annual Payment, and the sequencing adjustment provided for in Section 7.5 below, except as otherwise provided herein. Pre-Petition Liquidated Claims, as defined in Section 5.2 below, shall be subject to the Maximum Annual Payment and Payment Percentage limitations.

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 Asbestos Trust on the claim shall remain open so long as proceedings before that court or in that probate process remain pending, provided that the Asbestos Trust has been furnished with evidence that the settlement offer has been submitted to such court or in the probate process for approval. If the offer is ultimately approved by the court or through the probate process and accepted by the claimant's representative, the Asbestos Trust shall pay the claim in the amount so offered, multiplied by the Payment Percentage in effect at the time the offer was first made.

If any claims are liquidated on the same date, the claimant's position in the FIFO Payment Queue shall be determined by the date of the diagnosis of the claimant's asbestos-related disease for which the claim was filed. If any claims are liquidated on the same date and the respective holders' asbestos-related diseases were diagnosed on the same date, the position of those claims

in the FIFO Payment Queue shall be determined by the Asbestos Trust based on the dates of the claimants' birth, with older claimants given priority over younger claimants.

5.2 Resolution of Pre-Petition Liquidated Claims.

5.2(a) Processing and Payment. As soon as practicable after the Effective Date, the Asbestos Trust shall pay, upon submission by the claimant of the appropriate documentation, all Asbestos 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 tort system obtained prior to the Petition Date, or (iii) 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 Asbestos Trust, the holder of a Pre-Petition Liquidated Claim must submit all documentation necessary to demonstrate to the Asbestos Trust that the claim was liquidated in the manner described in the preceding sentence, which documentation shall include (A) a copy of the settlement agreement (if applicable), a court-authenticated copy of the jury verdict (if applicable), a non-final judgment (if applicable) or a final judgment (if applicable) and (B) the name, social security number, and date of birth of the claimant, and the name and address of the claimant's lawyer; provided, however, that if a Pre-Petition Liquidated Claim is listed on the schedule of such claims that the Debtor provides to the Asbestos Trust and the claimant confirms the information provided by the Debtor, the claimant shall not be required to provide any additional documentation.

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 that amount in accordance with the

terms of the agreement, if any, or under applicable state law for settlements or judgments as of the Petition Date; however, the liquidated value of a Pre-Petition Liquidated Claim shall not include any punitive or exemplary damages. In addition, the amounts payable with respect to such claims shall be subject to the Maximum Annual Payment and Payment Percentage provisions. In the absence of a Final Order of the Bankruptcy Court determining whether a settlement agreement is binding and judicially enforceable, a dispute between the claimant and the Asbestos Trust over this issue shall be resolved pursuant to the same procedures in this TDP that are provided for resolving the validity and/or liquidated value of an Asbestos Claim (*i.e.*, arbitration and litigation in the tort system as set forth in Sections 5.8 and 5.9 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 Asbestos Trust based on the date the Asbestos Trust received all required documentation for the particular claim. If any Pre-Petition Liquidated Claims were filed on the same date, the claimant's position in the FIFO queue for such claims shall be determined by the dates of the claimants' birth, with older claimants given priority over younger claimants.

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

5.3 Resolution of Unliquidated Asbestos Claims. As soon as possible after the establishment of the Asbestos Trust, the Trustee, with the consent of the TAC and the FCR, shall adopt procedures for reviewing and liquidating all unliquidated Asbestos Claims, which shall

include deadlines for processing such claims. Such procedures shall also require that claimants seeking resolution of unliquidated Asbestos Claims must first file a proof of claim form, together with the required supporting documentation, in accordance with the provisions of Sections 6.1 and 6.2 below. It is anticipated that the Asbestos Trust shall provide an initial response to the claimant within three (3) months of receiving the proof of claim form.

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

Upon filing of a valid proof of claim form with the required supporting documentation, the claimant shall be placed in the FIFO Processing Queue in accordance with the ordering criteria described in Section 5.1(a)(1) above.

5.3(a) Expedited Review Process.

5.3(a)(1) In General. The Asbestos Trust's Expedited Review Process is designed primarily to provide an expeditious, efficient and inexpensive method for liquidating all Asbestos Claims eligible for payment under this TDP. Expedited Review is also intended to provide qualifying claimants a fixed and certain claims payment.

Thus, claims that undergo Expedited Review and meet the presumptive Medical/ Exposure Criteria for the relevant Disease Level shall be paid the Scheduled Value for such Disease Level set forth in Section 5.3(a)(3) below. All claims liquidated by Expedited Review shall be subject to the applicable Payment Percentage and Maximum Annual Payment limitations set forth above.

Subject to the provisions of Section 5.7, the claimant's eligibility to receive the Scheduled Value for his or her Asbestos Claim pursuant to the Expedited Review Process shall be determined solely by reference to the Medical/Exposure Criteria set forth below.

5.3(a)(2) Claims Processing Under Expedited Review. All claimants seeking liquidation of their claims pursuant to Expedited Review shall file the Asbestos Trust's proof of claim form. As a proof of claim form is reached in the FIFO Processing Queue, the Asbestos Trust shall determine whether the claim described therein meets the Medical/Exposure Criteria for one of the Disease Levels, and shall advise the claimant of its determination. If a Disease Level is determined, the Asbestos 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 Asbestos 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 Asbestos Trust shall disburse payment subject to the limitations of the Maximum Annual Payment.

5.3(a)(3) Disease Levels, Scheduled Values and Medical/Exposure Criteria. The five Disease Levels covered by this TDP, together with the Medical/Exposure Criteria and the Scheduled Values for each are set forth below. These Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all Asbestos Claims filed with the Asbestos Trust (except Pre-Petition Liquidated Claims) on or before the Initial Claims Filing Date provided in Section 4.2. Thereafter, for purposes of administering the Expedited Review Process and with the consent of the TAC and the FCR, the Trustee may add to, change, or eliminate Disease Levels, Scheduled Values, or Medical/Exposure Criteria; develop subcategories of Disease Levels, Scheduled Values or Medical/Exposure Criteria; or determine that a novel or exceptional asbestos

personal injury claim is compensable even though it does not meet the Medical/Exposure Criteria for any of the then-current Disease Levels.

Disease Level	**Scheduled Value**	**Medical/Exposure Criteria**
Mesothelioma (Level V)	$120,000	(1) Diagnosis[4] of mesothelioma, and (2) Debtor Exposure as defined in Section 5.6(b)(3).
Lung Cancer 1 (Level IV)	$25,000	(1) Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease,[5] (2) six months Debtor Exposure, (3) Significant Occupational Exposure[6] to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.
Lung Cancer 2 (Level III)	$10,000	(1) Diagnosis of a primary lung cancer, (2) six months Debtor Exposure, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing

4 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 5.6 below.

5 Evidence of "Bilateral Asbestos-Related Nonmalignant Disease," for purposes of meeting the criteria for establishing Disease Levels II and IV, means either (i) a chest X-ray read by a qualified B reader of 1/0 or higher on the ILO scale or (ii)(x) a chest X-ray read by a qualified B reader or other Qualified Physician, (y) a CT scan read by a Qualified Physician, or (z) pathology, in each case showing either bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification. Evidence submitted to demonstrate (i) or (ii) above must be in the form of a written report stating the results (*e.g.,* an ILO report, a written radiology report or a pathology report). Solely for asbestos claims filed against the Debtor or another defendant in the tort system prior to the Petition Date, if an ILO reading is not available, either (i) a chest X-ray or a CT scan read by a Qualified Physician, or (ii) pathology, in each case showing bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification consistent with or compatible with a diagnosis of asbestos-related disease, shall be evidence of a Bilateral Asbestos-Related Nonmalignant Disease for purposes of meeting the presumptive medical requirements of Disease Levels II and IV. Pathological proof of asbestosis may be based on the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, "Asbestos-associated Diseases," Vol. 106, No. 11, App. 3 (October 8, 1982). For all purposes of this TDP, a "Qualified Physician" is a physician who is board-certified in one or more relevant specialized fields of medicine such as pulmonology, radiology, internal medicine or occupational medicine; provided, however, subject to the provisions of Section 5.6, that the requirement for board certification in this provision shall not apply to otherwise qualified physicians whose X-ray and/or CT scan readings are submitted for deceased holders of Asbestos Claims. In addition, for all purposes of this TDP, if the diagnostic images being interpreted in such regard are digital images, then a written report by a Qualified Physician confirming that the images reviewed are with reasonable medical certainty equivalent to those that would qualify for the required ILO grade shall be acceptable as well.

6 The term "Significant Occupational Exposure" is defined in Section 5.6(b)(2) below.

Disease Level	Scheduled Value	Medical/Exposure Criteria
		asbestos exposure as a contributing factor in causing the lung cancer in question.
Other Cancer (Level II)	$3,000	(1) Diagnosis of a primary colo-rectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, (2) six months Debtor Exposure, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.
Severe Asbestosis (Level I)	$15,000	(1) Diagnosis of asbestosis with ILO of 2/1 or greater, or asbestosis determined by pathological evidence of asbestosis, plus (a) TLC less than 65%, or (b) FVC less than 65% and FEV1/FVC ratio greater than 65%,[7] (2) six months Debtor Exposure, (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.

5.4 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 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 Asbestos Trust. In addition, the claimant with secondary exposure must establish that he or she is suffering from one of the five 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, asbestos-containing products, or conduct for which the Asbestos Trust has legal responsibility, and that such secondary

[7] This must be the actual measured value as opposed to the percentage of predicted.

exposure was a cause of the claimed disease. All other liquidation and payment rights and limitations under this TDP shall be applicable to such claims.

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

To establish a presumptively valid Indirect Asbestos 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 Asbestos Trust) or a Final Order (as defined in the Plan) provided that such claim is valid under the applicable state law. In any case where the Indirect Claimant has satisfied the claim of a Direct

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

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

Any dispute between the Asbestos Trust and an Indirect Claimant over whether the Indirect Claimant has a right to reimbursement for any amount paid to a Direct Claimant shall be subject to the ADR Procedures provided in Section 5.8 below. If such dispute is not resolved by said ADR Procedures, the Indirect Claimant may litigate the dispute in the tort system pursuant to Sections 5.9 and 7.6 below.

The Trustee may develop and approve a separate proof of claim form for Indirect Asbestos Claims. Indirect Asbestos Claims that have not been disallowed, discharged, or otherwise resolved

by prior order of the Bankruptcy Court shall be processed in accordance with procedures to be developed and implemented by the Trustee consistent with the provisions of this Section 5.5, which procedures (a) shall determine the validity, acceptability and enforceability of such claims; and (b) shall otherwise provide the same liquidation and payment procedures and rights to the holders of such claims as the Asbestos Trust would have afforded the holders of the underlying valid Asbestos Claims.

5.6 Evidentiary Requirements.

5.6(a) Medical Evidence.

5.6(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.

5.6(a)(1)(A) Disease Level I. All diagnoses of Severe Asbestosis (Disease Level I) shall be based, in the case of a claimant who was living at the time the claim was filed, upon a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease. All living claimants must also provide (i) an ILO reading of 2/1 or greater or pathological evidence of asbestosis and (ii) pulmonary function testing.[8]

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8 "Pulmonary function testing" or "PFT" shall mean testing that is in material compliance with the quality criteria established by the American Thoracic Society ("ATS") and is performed on equipment which is in material compliance with ATS standards for technical quality and calibration. PFT performed in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations ("**JCAHO**"), or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician shall be presumed to comply with ATS standards, and the claimant may submit a summary report of the testing. If the PFT was not performed in a JCAHO-accredited hospital, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician, the claimant must submit the full report of the testing (as opposed to a summary report); provided, however, that if the PFT was conducted prior to the Effective Date of the Plan and the full PFT report is not available, the claimant must

In the case of a claimant who was deceased at the time the claim was filed, all diagnoses of Severe Asbestosis (Disease Level I) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis; or (ii) pathological evidence of Severe Asbestosis; or (iii) either an ILO reading of 2/1 or greater or pathological evidence of asbestosis; and (iv) pulmonary function testing.

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

5.6(a)(2) Credibility of Medical Evidence. Before making any payment to a claimant, the Asbestos Trust must have reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical standards. The Asbestos Trust may require the submission of X-rays, CT scans, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examination or reviews of other medical evidence, and may require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods and procedures to assure that such evidence is reliable. Medical evidence (i) that is of a kind shown to have been received in evidence by a state or federal judge at trial, (ii) that is consistent with evidence submitted to the Debtor to settle for payment similar disease cases prior to the Debtor's bankruptcy, or (iii) that is

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submit a declaration signed by a Qualified Physician or other qualified party, in the form provided by the Asbestos Trust, certifying that the PFT was conducted in material compliance with ATS standards.

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 Asbestos Trust may seek to rebut the presumption. In addition, claimants who otherwise meet the requirements of this TDP for payment of an Asbestos Claim shall be paid irrespective of the results in any litigation at any time between the claimant and any other defendant in the tort system. However, any relevant evidence submitted in a proceeding in the tort system, other than any findings of fact, a verdict, or a judgment, involving another defendant may be introduced by either the claimant or the Asbestos Trust in any Arbitration proceeding conducted pursuant to 5.8.

5.6(a)(3) Reliance by Asbestos Trust on Finding of another Asbestos Trust. The Trustee may review the governing documents of another asbestos trust or claims facility and, with the consent of the TAC and the FCR, determine to accept the disease level classifications as found by such other asbestos trust or claims facility in lieu of the medical evidence claimants are required to submit under this TDP.

5.6(a)(4) Exemption from Filing Medical Evidence. The Trustee, with the consent of the TAC and the FCR, may exempt claimants from the obligation to submit medical evidence or certain types of medical evidence.

5.6(b) Exposure Evidence.

5.6(b)(1) In General. As set forth above in Section 5.3(a)(3), to qualify for any Disease Level, the claimant must demonstrate a minimum exposure to asbestos, asbestos-containing products, or conduct for which the Asbestos Trust has legal responsibility. Claims based on conspiracy theories that involve no exposure to asbestos, asbestos-containing products, or conduct for which the Asbestos Trust has legal responsibility are not compensable

under this TDP. To meet the presumptive exposure requirements of Expedited Review set forth in Section 5.3(a)(3) above, the claimant must show (i) for all Disease Levels, Debtor Exposure as defined in Section 5.6(b)(3) below; and (ii) for Severe Asbestosis (Disease Level I), Other Cancer (Disease Level II), or Lung Cancer 1 or 2 (Disease Levels III and IV), the claimant must show six (6) months Debtor Exposure plus Significant Occupational Exposure to asbestos.

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

5.6(b)(3) Debtor Exposure. The claimant must demonstrate (i) meaningful and credible exposure to asbestos, asbestos-containing products, or conduct for which the Asbestos Trust has legal responsibility ("**Debtor Exposure**"). 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 Asbestos Trust finds such evidence reasonably reliable), by invoices, employment, construction or similar records, or by other credible evidence. The specific exposure information required by the Asbestos Trust to process a claim shall be set

forth on the proof of claim form to be used by the Asbestos Trust. The Asbestos Trust can also require submission of other or additional evidence of exposure when it deems such to be necessary.

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

5.6(b)(3)(A) Accepted Jobsites. The jobsites for which there is consensus as to the likelihood of exposure to asbestos attributable to the Debtor are identified in the list of Accepted Job Sites attached as Exhibit 1 to this TDP ("**Accepted Jobsites**"). The Asbestos Trust may add jobsites to the Accepted Jobsites. The Asbestos Trust may also remove sites from the Accepted Jobsites if it discovers that those sites should not have been included.

5.6(b)(3)(B) Presumptive Industries and Occupations. The Debtor historically sold, distributed, and installed asbestos-containing insulation products. Because of the nature of the Debtor's business, the Asbestos Trust shall consider that there is a limited universe of industries and occupations in which claimants are likely to have been either directly or indirectly exposed to asbestos, asbestos-containing products, or conduct for which the Asbestos Trust has legal responsibility. Those industries and occupations are identified in the list of Presumptive Industries and Occupations attached as Exhibit 2 to this TDP ("**Presumptive Industries and Occupations**"). The Asbestos Trust may add industries and occupations to the

Presumptive Industries and Occupations. The Asbestos Trust may also remove industries and occupations from the Presumptive Industries and Occupations if it discovers that those industries and occupations should not have been included.

5.6(b)(3)(C) Reliance by the Asbestos Trust on Finding by another Asbestos Trust. The Trustee may, with the consent of the TAC and the FCR, determine that if either the Owens Corning/Fibreboard Asbestos Personal Injury Trust or the Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust has determined that a person experienced asbestos exposure at an Accepted Jobsite, the Asbestos Trust may accept such finding in lieu of requiring the subject claimant to submit evidence of such exposure for review by the Asbestos Trust. In such case, the Asbestos Trust would also accept (i) such other asbestos trust's determination as to the duration of exposure at the Accepted Jobsite and (ii) the finding of such other asbestos trust with respect to whether the person experienced Significant Occupational Exposure.

5.6(b)(3)(D) Other Exposures. A claimant who claims Debtor Exposure at a site that is not on the Asbestos Trust's list of Accepted Jobsites or who indicates employment in an industry or occupation that is not specified on the Asbestos Trust's list of Presumptive Industries and Occupations must provide additional exposure evidence.

5.7 Claims Audit Program. The Asbestos Trust, with the consent of the TAC and the FCR, may develop methods for auditing the reliability of medical evidence, including additional reading of X-rays, CT scans and verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including exposure to asbestos-containing products for which the Asbestos Trust has legal responsibility. In the event that the Asbestos Trust reasonably determines that any individual or entity has engaged in a pattern or practice of providing unreliable

medical evidence to the Asbestos Trust, it may decline to accept additional evidence from such provider in the future.

Further, in the event that an audit reveals that fraudulent information has been provided to the Asbestos Trust, the Asbestos Trust may penalize any claimant or claimant's attorney by rejecting the Asbestos 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 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.

5.8 Arbitration.

5.8(a) Establishment of ADR Procedures. The Asbestos Trust, with the consent of the TAC and the FCR, shall institute binding and non-binding arbitration procedures in accordance with Alternative Dispute Resolution ("**ADR**") Procedures to be established by the Trustee, with the consent of the TAC and the FCR, for resolving disputes concerning whether a pre-petition settlement agreement with the Debtor is binding and judicially enforceable in the absence of a Final Order of the Bankruptcy Court determining the issue, whether the Asbestos Trust's outright rejection or denial of a claim was proper, or whether the claimant's medical condition or exposure history meets the requirements of this TDP for purposes of categorizing a claim involving Disease Levels I-V. Binding and non-binding arbitration shall also be available for resolving disputes over the Debtor's share of the unpaid portion of a Pre-Petition Liquidated Claim described in Section 5.2 above and disputes over the validity of an Indirect Trust Claim.

In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in Section 5.6 above. With respect to all claims eligible for arbitration, the claimant, but not the Asbestos Trust, may elect either non-binding or binding arbitration. The ADR Procedures may be modified by the Asbestos Trust with the consent of the TAC and the FCR.

5.8(b) Limitations on and Payment of Arbitration Awards. The arbitrator shall not return an award in excess of the Scheduled Value for any claim. A claimant who submits to arbitration and who accepts the arbitral award shall receive payments in the same manner as one who accepts the Asbestos Trust's original valuation of the claim.

5.8(c) Arbitration Fees. Each claimant must submit a fee of $500 when initiating binding or non-binding arbitration. The fee shall be refunded in full to claimants who prevail in arbitration.

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

SECTION 6.

CLAIMS MATERIALS

6.1 Claims Materials. The Asbestos Trust shall prepare suitable and efficient claims materials ("**Claims Materials**") for all Asbestos Claims, and shall provide such Claims Materials upon a written request for such materials to the Asbestos Trust. The proof of claim form to be submitted to the Asbestos Trust shall require the claimant to assert the highest Disease Level for

which the claim qualifies at the time of filing. The proof of claim form shall also include a certification by the claimant or his or her attorney sufficient to meet the requirements of Rule 11(b) of the Federal Rules of Civil Procedure. In developing its claim filing procedures, the Asbestos Trust shall make every effort to provide claimants with the opportunity to utilize currently available technology at their discretion, including filing claims and supporting documentation over the Internet. The proof of claim form to be used by the Asbestos Trust shall be developed by the Asbestos Trust and submitted to the TAC and the FCR for approval; it may be changed by the Asbestos Trust with the consent of the TAC and the FCR.

6.2 Content of Claims Materials. The Claims Materials shall include a copy of this TDP, such instructions as the Trustee shall approve, and a detailed proof of claim form. This TDP has been prepared with the goal of simplifying the filing of claims, reducing paperwork by claimants, and reducing the cost of reviewing claims in an effort to maximize distribution to claimants. Accordingly, instead of collecting some or all of the claims information from a claimant or the claimant's attorney, the Asbestos Trust may, with the consent of the claimant or the claimant's attorney, obtain such information from electronic databases maintained by any other asbestos claims resolution organization. If requested by the claimant, the Asbestos Trust shall accept information provided electronically. The claimant may, but shall not be required to, provide the Asbestos 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 Claim at any time upon written notice to the Asbestos Trust and file another claim subsequently without affecting the status of the claim for statute of limitations purposes, but any such claim filed after withdrawal shall be given a place in the FIFO Processing Queue based on the date of such

subsequent filing. A claimant can also request that the processing of his or her Asbestos Claim by the Asbestos Trust be deferred for a period not to exceed two (2) years without affecting the status of the claim for statute of limitations purposes, in which case the claimant shall also retain his or her original place in the FIFO Processing Queue. During the period of such deferral, a sequencing adjustment on such claimant's Asbestos Claim as provided in Section 7.5 hereunder shall not accrue and payment thereof shall be deemed waived by the claimant. Except for Asbestos Claims held by representatives of deceased or incompetent claimants for which court or probate approval of the Asbestos Trust's offer is required, or an Asbestos Claim for which deferral status has been granted, a claim shall be deemed to have been withdrawn if the claimant neither accepts, rejects, nor initiates arbitration within one (1) year of the Asbestos Trust's written offer of payment or rejection of the claim. Upon written request and good cause, the Asbestos Trust may extend the withdrawal or deferral period for an additional six (6) months.

6.4 Filing Requirements and Fees. Each claimant must submit a filing fee of $30 to have an Asbestos Claim processed by the Asbestos Trust. The fee shall be refunded in full to claimants who receive and accept payment of a settlement offer from the Asbestos Trust.

6.5 Confidentiality of Claimants' Submissions. All submissions to the Asbestos Trust by a holder of an Asbestos 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 Asbestos Trust, and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including but not limited to those directly applicable to settlement discussions. The Asbestos Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only, with the permission of the holder, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) of the Bankruptcy

Code or other applicable law, to such other persons as authorized by the holder, or in response to a valid subpoena of such materials issued by the Bankruptcy Court, a Delaware State Court, or the United States District Court for the District of Delaware. Furthermore, the Asbestos Trust shall provide counsel for the holder a copy of any such subpoena immediately upon being served. The Asbestos Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privileges before the Bankruptcy Court, a Delaware State Court, or the United States District Court for the District of Delaware and before those courts having appellate jurisdiction related thereto. Notwithstanding anything in the foregoing to the contrary, with the consent of the TAC and the FCR, the Asbestos Trust may, in specific limited circumstances, disclose information, documents or other materials reasonably necessary in the Asbestos Trust's judgment to preserve, litigate, resolve, or settle coverage, or to comply with an applicable obligation under an insurance policy or settlement agreement within the Asbestos Insurance Assets; provided, however, that the Asbestos Trust shall take any and all steps reasonably feasible in its judgment to preserve the further confidentiality of such information, documents and materials, and prior to the disclosure of such information, documents or materials to a third party, the Asbestos Trust shall receive from such third party a written agreement of confidentiality that (a) ensures that the information, documents and materials provided by the Asbestos Trust shall be used solely by the receiving party for the purpose stated in the agreement and (b) prohibits any other use or further dissemination of the information, documents and materials by the third party except as set forth in the written agreement of confidentiality. Nothing in this TDP, the Plan or the Trust Agreement expands, limits or impairs the obligation under applicable law of a claimant to respond fully to lawful discovery in any underlying civil action

regarding his or her submission of factual information to the Asbestos Trust for the purpose of obtaining compensation for asbestos-related injuries from the Asbestos Trust.

SECTION 7.

GENERAL GUIDELINES FOR LIQUIDATING AND PAYING CLAIMS

7.1 Showing Required. To establish a valid Asbestos Claim, a claimant must meet the requirements set forth in this TDP.

7.2 Costs Considered. Notwithstanding any provisions of this TDP to the contrary, the Trustee shall always give appropriate consideration to the cost of investigating and uncovering invalid Asbestos Claims so that the payment of valid Asbestos Claims is not further impaired by such processes with respect to issues related to the validity of the medical evidence supporting an Asbestos Claim. The Trustee shall also have the latitude to make judgments regarding the amount of transaction costs to be expended by the Asbestos Trust so that valid Asbestos Claims are not unduly further impaired by the costs of additional investigation. Nothing herein shall prevent the Trustee, in appropriate circumstances, from contesting the validity of any claim against the Asbestos Trust whatever the costs, or declining to accept medical evidence from sources that the Trustee have determined to be unreliable pursuant to the Claims Audit Program described in Section 5.7 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 and the Maximum Annual Payment requirements set forth above, the Trustee shall proceed as quickly as possible to liquidate valid Asbestos 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 Asbestos Trust's income over time remains uncertain, and decisions about payments must be based on estimates that cannot be done precisely, they may have to be revised in light of experiences over time, and there can be no guarantee of any specific level of payment to claimants. However, the Trustee shall use his or her best efforts to treat similar claims in substantially the same manner, consistent with his or her duties as Trustee, the purposes of the Asbestos Trust, and the practical limitations imposed by the inability to predict the future with precision.

In the event that the Asbestos Trust faces temporary periods of limited liquidity, the Trustee may, with the consent of the TAC and the FCR, (a) suspend the normal order of payment, (b) temporarily limit or suspend payments altogether, and/or (c) commence making payments on an installment basis.

7.4 Punitive Damages. In determining the value of any liquidated or unliquidated Asbestos Claim, punitive or exemplary damages, *i.e.*, damages other than compensatory damages, shall not be considered or paid, notwithstanding their availability in the tort system. Similarly, no punitive or exemplary damages shall be payable with respect to any claim litigated against the Asbestos Trust in the tort system pursuant to Sections 5.9 above and 7.6 below.

7.5 Sequencing Adjustment.

7.5(a) In General. Subject to the limitations set forth below, a sequencing adjustment shall be paid on all Asbestos Claims with respect to which the claimant has had to wait a year or more for payment, provided, however, that no claimant shall receive a sequencing adjustment for a period in excess of seven (7) years, or for a period when the claim was deferred

or withdrawn at the claimant's request. The sequencing adjustment factor shall be the one-year U.S. Treasury bill interest rate in effect on January 1 of the year in which the accrual of the sequencing adjustment commences. The rate of the sequencing adjustment shall be adjusted each January 1 to correspond to the one-year Treasury bill interest rate then in effect. The applicable sequencing adjustment shall be calculated based only on the value of the claim specified in Section 7.5(b) or (c) below, subject to the Payment Percentage; any accrued but unpaid sequencing adjustment shall not be included in such calculation.

7.5(b) Unliquidated Asbestos Claims. A sequencing adjustment shall be payable on the Scheduled Value of any unliquidated Asbestos Claim, whether the claim is liquidated under Expedited Review or by arbitration. No sequencing adjustment shall be paid on any claim liquidated in the tort system pursuant to Section 5.9 above and Section 7.6 below. Sequencing adjustments on all such unliquidated claims shall be measured from the date of payment back to the earliest of the date that is one year after the date on which (a) the claim was filed against the Debtor prior to the Petition Date; (b) the claim was filed against another defendant in the tort system on or after the Petition Date but before the Effective Date; (c) the claim was filed with the Bankruptcy Court during the pendency of the Chapter 11 proceeding; or (d) the claim was filed with the Asbestos Trust after the Effective Date.

7.5(c) Liquidated Pre-Petition Claims. A sequencing adjustment shall also be payable on the liquidated value of all Pre-Petition Liquidated Claims described in Section 5.2(a) above. In the case of Pre-Petition Liquidated Claims liquidated by verdict or judgment, the sequencing adjustment shall be measured from the date of payment back to the date that is one (1) year after the date that the verdict or judgment was entered; provided, however, that in no event shall the sequencing adjustment be measured from a date prior to the Petition Date if the liquidated

value of the Pre-Petition Liquidated Claim includes pre-petition interest. In the case of Pre-Petition Liquidated Claims liquidated by a binding, judicially enforceable settlement, the sequencing adjustment shall be measured from the date of payment back to the date that is one (1) year after the Petition Date.

7.6 Suits in the Tort System. If the holder of a disputed claim disagrees with the Asbestos Trust's determination regarding the Disease Level of the claim or the claimant's exposure history, and if the holder has first submitted the claim to non-binding arbitration as provided in Section 5.8 above, the holder may file a lawsuit against the Asbestos Trust in the Claimant's Jurisdiction as defined in Section 8.3 below. 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 Asbestos Trust, all defenses which could have been asserted by the Debtor) shall be available to both sides at trial; however, the Asbestos Trust may waive any defense and/or concede any issue of fact or law. If the claimant was alive at the time the initial pre-petition complaint was filed or on the date the proof of claim form was filed with the Asbestos Trust, the case shall be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim.

7.7 Payment of Judgments for Money Damages. If and when a claimant obtains a judgment in the tort system, the claim shall be placed in the FIFO Payment Queue based on the date on which the judgment became final. Thereafter, the claimant shall receive from the Asbestos Trust an initial payment (subject to the applicable Payment Percentage and the Maximum Annual Payment provision set forth above) of an amount equal to the greater of (i) the Asbestos Trust's last offer to the claimant or (ii) the award that the claimant declined in non-binding arbitration;

provided, however, that in no event shall such payment amount exceed the amount of the judgment obtained in the tort system. The claimant shall receive the balance of the judgment, if any, in five (5) equal installments in years six (6) through ten (10) following the year of the initial payment (also subject to the applicable Payment Percentage and Maximum Annual Payment provisions above in effect on the date of the payment of the subject installment).

The total amounts paid with respect to such claims shall not exceed the relevant Scheduled Values for such Disease Levels as set forth in Section 5.3(a)(3) above. Under no circumstances shall (a) a sequencing adjustment be paid pursuant to Section 7.5 or (b) interest be paid under any statute on any judgments obtained in the tort system.

7.8 Releases. As a condition to making a payment to a claimant, the Asbestos Trust shall obtain from such claimant a Release in the form attached hereto as Exhibit 3. The Trustee may modify the provisions of the Release so long as he or she obtains the consent of the TAC, the FCR, and the Reorganized Debtor. If allowed by state law, the endorsing of a check or draft for payment by or on behalf of a claimant may, in the discretion of the Asbestos Trust, constitute such a release.

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

SECTION 8.

MISCELLANEOUS

8.1 Amendments. Except as otherwise provided herein, the Trustee 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 he or she first obtains the consent of the TAC and the FCR 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 TAC or the FCR from proposing to the Trustee, in writing, amendments to this TDP. Any amendment proposed by the TAC or the FCR 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 the Debtor's obligations to any insurance company providing insurance coverage to the Debtor in respect of claims for personal injury based on exposure to an asbestos-containing product or to conduct for which the Debtor has legal responsibility, the Asbestos Trust with the consent of the TAC and the FCR may amend this TDP and/or the Trust Agreement to make the provisions of either or both documents consistent with the duties and obligations of the Debtor to said insurance company.

8.3 Governing Law. Except for purposes of determining the liquidated value of any Asbestos Claim, administration of this TDP shall be governed by, and construed in accordance with, the laws of the State of Delaware. The law governing the liquidation of Asbestos Claims in

the case of arbitration or litigation in the tort system shall be the law of the Claimant's Jurisdiction as described below.

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

Exhibit 1

Accepted Jobsites

[TO COME]

The jobsites for which there is consensus as to the likelihood of exposure to asbestos attributable to the Debtor are identified in the list that will be included as Exhibit 1 ("**Accepted Jobsites**") to the TDP.

The Accepted Jobsites will include 1) sites identified in the Debtor's records,[9] and 2) sites in western Pennsylvania, eastern Ohio, and West Virginia from the approved site lists of the Owens Corning / Fibreboard Asbestos Personal Injury Trust and the Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust as of the Effective Date. The Asbestos Trust may add sites to the Accepted Jobsites. The Asbestos Trust may also remove sites from the Accepted Jobsites if it discovers that those sites should not have been included.

[9] The Debtor's records are the "Asbestos Records" as defined in the Asbestos Records Cooperation Agreement attached as Exhibit D to the Plan.

Exhibit 2

Presumptive Industries and Occupations

[TO COME]

There is a limited universe of industries and occupations in which claimants are likely to have been either directly or indirectly exposed to asbestos, asbestos-containing products, or conduct for which the Asbestos Trust has legal responsibility. Those industries and occupations are identified in the list that will be included as Exhibit 2 ("**Presumptive Industries and Occupations**") to the TDP.

The Presumptive Industries and Occupations will include those that appear on the "Significant Occupational Exposure Rating" list maintained by the Owens Corning / Fibreboard Asbestos Personal Injury Trust as of the Effective Date.[10] The Asbestos Trust may add industries and occupations to the Presumptive Industries and Occupations. The Asbestos Trust may also remove industries and occupations from the Presumptive Industries and Occupations if it discovers that those industries and occupations should not have been included.

[10] This list is also identified as the "list of Presumptive SOE Occupations Ratings" on the OCFB Asbestos Personal Injury Trust Proof Of Claim Form and the "SOE Occupations Rating list" in the "Instructions for Filing a Claim" available on the that trust's website.

Exhibit 3

Geo. V. Hamilton, Inc. Asbestos Trust Release and Indemnity Agreement

[TO COME]

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

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

SECTION I

Introduction

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

[1] Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan.

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

SECTION II

Overview

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

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

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

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

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

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

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

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

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

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

[4] For purposes of this TDP, "liquidated" means approved and valued by the Trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION III

TDP Administration

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

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

SECTION IV

Payment Percentage; Periodic Estimates

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

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

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

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

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

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

The uncertainty surrounding the amount of the Trust's future assets is due in significant part to the fact that the estimates of those assets do not take into account the possibility that the Trust may receive substantial additional funds from successful recoveries of insurance proceeds that have been assigned to the Trust with respect to which the coverage is presently in dispute or the solvency of the carrier is in doubt. If the Trust successfully resolves an insurance coverage dispute or otherwise receives a substantial recovery of insurance proceeds, the Trust shall use those proceeds first to maintain the Payment Percentage then in effect. There is also uncertainty surrounding the totality of the Trust Claims to be paid over time as well as the extent to which changes in existing foreign, federal, and/or state law could affect the Trust's liabilities under this TDP. If the value of the Trust's future assets increases significantly and/or if the value or

volume of Trust Claims actually filed with the Trust is significantly lower than originally estimated, the Trust shall use those proceeds and/or claims savings, as the case may be, first to maintain the Payment Percentage then in effect.

If the Trustees, with the consent of the TAC and the Future Claimants' Representative, make a determination to increase the Payment Percentage due to a material change in the estimates of the Trust's future assets and/or liabilities, the Trustees shall also make supplemental payments to all claimants who previously liquidated their claims against the Trust and received payments based on a lower Payment Percentage. The amount of any such supplemental payment shall be the liquidated value of the claim in question times the newly adjusted Payment Percentage, less all amounts previously paid to the claimant with respect to the claim (excluding the portion of such previously paid amounts that was attributable to any sequencing adjustment paid pursuant to Section 7.5 below).

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

4.3 Applicability of the Payment Percentage. Except as otherwise provided (a) in Section 5.1(c) below for Trust Claims involving deceased or incompetent claimants for which approval of the Trust's offer by a court or through a probate process is required, (b) in the paragraph below with respect to Released Claims, and (c) in Section 4.2 above with respect to supplemental payments, no holder of any Trust Claim shall receive a payment that exceeds the

liquidated value of the claim times the Payment Percentage in effect at the time of payment; provided, however, that if there is a reduction in the Payment Percentage, the Trustees, in their sole discretion, may cause the Trust to pay a Trust Claim based on the Payment Percentage that was in effect prior to the reduction if such Trust Claim was filed and actionable with the Trust ninety (90) days or more prior to the date the Trustees proposed the new Payment Percentage in writing to the TAC and the Future Claimants' Representative (the "Proposal Date") and the processing of such claim was unreasonably delayed due to circumstances beyond the control of the claimant or the claimant's counsel, but only if such claim had no deficiencies for the ninety (90) days prior to the Proposal Date.

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

Notwithstanding anything contained herein, if the proposed Payment Percentage is lower than the current Payment Percentage, a claimant who received a release from the Trust prior to the Proposal Date and who either (a) transmitted[5] an executed release to the Trust prior to the Proposal Date or (b) with respect to those claimants who had received releases fewer than thirty (30) days prior to the Proposal Date, transmitted an executed release to the Trust within thirty

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

(30) days of the claimant's receipt of the release (the claims described in (a) and (b) are collectively referred to herein as the "Released Claims") shall be paid based on the current Payment Percentage (the "Released Claims Payment Percentage"). For purposes hereof, (a) a claimant represented by counsel shall be deemed to have received a release on the date that the claimant's counsel receives the release, (b) if the Trust transmits a release electronically, the release shall be deemed to have been received on the date the Trust transmits the offer notification, and (c) if the Trust places the release in the U.S. mail, postage prepaid, the release shall be deemed to have been received three (3) business days after such mailing date. A delay in the payment of the Released Claims for any reason, including delays resulting from limitations on payment amounts in a given year pursuant to Sections 2.4 and 2.5 hereof, shall not affect the rights of the holders of the Released Claims to be paid based on the Released Claims Payment Percentage.

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

SECTION V

Resolution of Trust Claims

5.1 Ordering, Processing and Payment of Claims.

5.1(a) Ordering of Claims.

5.l(a)(1) Establishment of the FIFO Processing Queue. The Trust will order Trust Claims that are sufficiently complete to be reviewed for processing purposes on a FIFO basis except as otherwise provided herein (the "FIFO Processing Queue"). For all claims filed on or before the date six (6) months after the date that the Trust first makes available the

proof of claim forms and other claims materials required to file a Trust claim (such six-month anniversary being referred to herein as the "Initial Claims Filing Date"), a claimant's position in the FIFO Processing Queue shall be determined as of the earliest of (i) the date prior to the Petition Date (if any) that the specific claim was either filed against Flintkote in the tort system or was actually submitted to Flintkote pursuant to an administrative settlement agreement; (ii) the date before the Petition Date that an asbestos claim was filed against another defendant in the tort system if at the time the claim was subject to a tolling agreement with Flintkote; (iii) the date after the Petition Date (if any) but before the date that the Trust first makes available the claims materials required to file a Trust Claim that the asbestos claim was filed against another defendant in the tort system; (iv) the date after the Petition Date (if any) but before the Effective Date that the claimant filed a proof of claim against Flintkote in Flintkote's Chapter 11 proceeding; (v) the date the claimant submitted a ballot in Flintkote's Chapter 11 proceeding for purposes of voting on the Plan pursuant to the voting procedures approved by the Bankruptcy Court; or (vi) the date after the Effective Date, but on or before the Initial Claims Filing Date, that the claim was filed with the Trust.

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

5.l(a)(2) Effect of Statutes of Limitations and Repose. All unliquidated Trust Claims must meet either, (i) for claims first filed in the tort system against Flintkote prior to the Petition Date, the applicable federal, state, or foreign statutes of limitations and repose that were in effect at the time of the filing of the claim in the tort system, or (ii) for claims that were not filed against Flintkote in the tort system prior to the Petition Date, the applicable federal, state, or foreign statute of limitations that was in effect at the time of the filing with the Trust.

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

If a Trust Claim meets any of the tolling provisions described in the preceding sentence and the claim was not barred by the applicable federal, state or foreign statute of limitations at the time of the tolling event, it will be treated as timely filed if it is actually filed with the Trust within three (3) years after the Initial Claims Filing Date. In addition, any claims that were first diagnosed after the Petition Date, irrespective of the application of any relevant federal, state, or foreign statute of limitations or repose, must be filed with the Trust within three (3) years after the date of diagnosis or within three (3) years after the Initial Claims Filing Date, whichever occurs later, unless the applicable statute of limitations of the Claimant's Jurisdiction, as defined in Section 5.3(b)(2) below, is longer than three (3) years, in which case the claim must be filed within the time period prescribed by the statute of limitations of the Claimant's Jurisdiction in

effect at the time of the filing with the Trust. However, the processing of any Trust Claim by the Trust may be deferred at the election of the claimant pursuant to Section 6.3 below.

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

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

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

been submitted to such court or in the probate process for approval. If the offer is ultimately approved by the court or through the probate process and accepted by the claimant's representative, the Trust shall pay the claim in the amount so offered, multiplied by the Payment Percentage in effect at the time the offer was first made, subject to the redetermination provisions set forth in Section 4.3 above. For purposes of placement in the FIFO Payment Queue, the date of final liquidation shall be the date the Trust receives evidence of said approval and acceptance.

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

5.2 Resolution of Pre-Petition Liquidated Trust Claims.

5.2(a) Processing and Payment. As soon as practicable after the Effective Date, the Trust shall pay, upon submission by the claimant of all appropriate documentation required by the Trust, all Trust Claims that were liquidated (i) by a binding settlement agreement for the particular claim entered into prior to the Petition Date that is judicially enforceable by the claimant, (ii) after the Petition Date according to the terms of a binding settlement agreement entered into prior to the Petition Date (a "Pre-Petition Agreement"), (iii) by a jury verdict or non-final judgment in the tort system obtained prior to the Petition Date, or (iv) by a judgment that became final and non-appealable prior to the Petition Date (collectively "Pre-Petition Liquidated Trust Claims"). In order to receive payment from the Trust, the holder of a Pre-Petition Liquidated Trust Claim must submit all documentation necessary to demonstrate to the Trust that

the claim was liquidated in the manner described in (i), (ii), (iii), or (iv), which documentation shall include (A) a copy of the executed, binding settlement agreement, if applicable, (B) a court authenticated copy of the jury verdict (if applicable), non-final judgment (if applicable), or final judgment (if applicable), and (C) the name, Social Security number, and date of birth of the claimant and the name and address of the claimant's lawyer; provided, however, that such documentation shall not be required with respect to any Pre- Petition Liquidated Trust Claim that Flintkote has identified to the Trust as a Pre-Petition Liquidated Trust Claim as to which all conditions to payment under the applicable agreement, jury verdict, or judgment have been satisfied. Flintkote shall deliver to the Trust a list of the Pre-Petition Liquidated Trust Claims that Flintkote has approved for payment (the "Approved Pre- Petition Liquidated Trust Claims"), which claims shall be entitled to rely upon the exception set forth in the preceding sentence.

The liquidated value of a Pre-Petition Liquidated Trust Claim shall be Flintkote's share of the unpaid portion of the amount agreed to in the binding settlement agreement or Pre-Petition Agreement, the unpaid portion of the amount awarded by the jury verdict or non-final judgment, or the unpaid portion of the amount of the final judgment, as the case may be, plus interest, if any, that has accrued on that amount in accordance with the terms of the binding settlement agreement or Pre-Petition Agreement, if any, or under applicable state law for settlements or judgments as of the Petition Date; however, except as otherwise provided in Section 7.4 below, the liquidated value of a Pre-Petition Liquidated Trust Claim shall not include any punitive or exemplary damages. In addition, the amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Claims Payment Ratio and the Maximum Available Payment limitations, but shall be subject to the Maximum Annual Payment and Payment Percentage provisions. In the absence of a Final Order of the Bankruptcy Court

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

The Trust shall pay the Approved Pre-Petition Liquidated Trust Claims as expeditiously as possible. The other Pre-Petition Liquidated Trust Claims shall be processed and paid in accordance with their order in a separate FIFO queue to be established by the Trust based on the date the Trust received all required documentation for the particular claim; however, the amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Claims Payment Ratio or the Maximum Available Payment, but shall be subject to the Maximum Annual Payment and Payment Percentage provisions set forth above. If any Pre-Petition Liquidated Trust Claims are filed with the Trust on the same date, the claimant's position in the FIFO queue for such claims shall be determined by the date on which the claim was liquidated. If any Pre-Petition Liquidated Trust Claims are both filed with the Trust and liquidated on the same dates, those claimants' positions in the FIFO queue shall be determined by the dates of the claimants' birth, with older claimants given priority over younger claimants.

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

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

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

When the claim reaches the top of the FIFO Processing Queue, the Trust shall process and liquidate the claim based upon the medical/exposure evidence submitted by the claimant, and under the process elected by the claimant. If the claimant fails to elect either the Individual Review Process or the Expedited Review Process, then the Trust shall process and liquidate the claim under the Expedited Review Process, although the claimant shall retain the right to request Individual Review as described in Section 5.3(b) below.

5.3(a) Expedited Review Process.

5.3(a)(1) In General. The Trust's Expedited Review Process is designed primarily to provide an expeditious, efficient and inexpensive method for liquidating all

Trust Claims (except those involving Disease Level V (Lung Cancer 2), Secondary Exposure Claims for Disease Levels I-VI, and all Foreign Claims (as defined below), which must be liquidated pursuant to the Trust's Individual Review process) where the claim can easily be verified by the Trust as meeting the presumptive Medical/Exposure Criteria for the relevant Disease Level. Expedited Review thus provides claimants with a substantially less burdensome process for pursuing Trust Claims than does the Individual Review Process described in Section 5.3(b) below. Expedited Review is also intended to provide qualifying claimants a fixed and certain claims value.

Thus, claims that undergo Expedited Review and meet the presumptive Medical/Exposure Criteria for the relevant Disease Level shall be liquidated at the Scheduled Value for such Disease Level set forth in Section 5.3(a)(3) below. However, all claims liquidated by Expedited Review shall be subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment, and the Claims Payment Ratio. Claimants holding claims that (i) cannot be liquidated by Expedited Review because they do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level or (ii) have otherwise failed to qualify for payment through the Expedited Review Process may elect the Trust's Individual Review Process set forth in Section 5.3(b) below.

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

5.3(a)(2) Claims Processing under Expedited Review. All claimants seeking liquidation of their Trust Claims pursuant to Expedited Review shall file the

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

5.3(a)(3) Disease Levels, Scheduled Values and Medical/Exposure Criteria. The seven Disease Levels covered by this TDP, together with the Medical/Exposure Criteria and Scheduled Values for each, are set forth below. These Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all Asbestos Trust Voting Claims (other than Pre- Petition Liquidated Trust Claims) filed with the Trust on or before the Initial Claims Filing Date provided in Section 5.1 above for which the claimant elects the Expedited Review Process. Thereafter, for purposes of administering the Expedited Review Process and with the consent of the TAC and the Future Claimants' Representative, the Trustees may add to, change or eliminate Disease Levels, Scheduled Values, or Medical/Exposure Criteria; develop subcategories of Disease Levels, Scheduled Values or Medical/Exposure Criteria; or determine that a novel or exceptional asbestos personal injury claim is compensable even though it does not meet the Medical/Exposure Criteria for any of the then current Disease Levels.

Disease Level	Scheduled Value	Medical/Exposure Criteria

Mesothelioma (Level VII)	$184,000	(1) Diagnosis[6] of mesothelioma; and (2) evidence of Flintkote Exposure (as defined in Section 5.7(b)(3) below).
Lung Cancer 1 (Level VI)	$20,000	(1) Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease,[7] (2) six months Flintkote Exposure prior to December 31, 1982, (3) Significant Occupational Exposure,[8] and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.
Lung Cancer 2 (Level V)	None	(1) Diagnosis of a primary lung cancer; (2) Flintkote Exposure prior to December 31, 1982, and (3) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question. Lung Cancer 2 (Level V) claims are claims that do not meet the more stringent medical and/or exposure requirements of Lung Cancer (Level VI)

[6] 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.

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

[8] "Significant Occupational Exposure" is defined in Section 5.7(b)(2) below.

		claims. All claims in this Disease Level will be individually evaluated. The estimated likely Average Value of the individual evaluation awards for this category is $4,000, with such awards capped at $10,000, unless the claim qualifies for Extraordinary Claim treatment discussed in Section 5.4(a) below). Level V claims that show no evidence of either an underlying Bilateral Asbestos-Related Non-malignant Disease or Significant Occupational Exposure may be individually evaluated, although it is not expected that such claims will be treated as having any significant value, especially if the claimant is also a Smoker.[9] In any event, no presumption of validity will be available for any claims in this category.
Other Cancer (Level IV)	$4,500	(1) Diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, (2) six months Flintkote Exposure prior to December 31, 1982, (3) Significant Occupational Exposure, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.
Severe Asbestosis (Level III)	$15,000	(1) Diagnosis of asbestosis with ILO[10] of 2/1 or greater, or asbestosis determined by pathological evidence of asbestos,

[9] There is no distinction between Non-Smokers and Smokers for either Lung Cancer 1 (Level VI) or Lung Cancer 2 (Level V), although a claimant who meets the more stringent requirements of Lung Cancer 1 (Level VI) (evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease plus Significant Occupational Exposure), and who is also a Non-Smoker, may wish to have his or her claim individually evaluated by the Trust. In such a case, absent circumstances that would otherwise reduce the value of the claim, it is anticipated that the liquidated value of the claim might well exceed the $20,000 Scheduled Value for Lung Cancer 1 (Level VI) shown above. "Non-Smoker" means a claimant who either (a) never smoked or (b) has not smoked during any portion of the twelve (12) years immediately prior to the diagnosis of the lung cancer.

[10] If the diagnostic images being interpreted in such regard are digital images, then a written report by a Qualified Physician confirming that the images reviewed are with reasonable certainty equivalent to those that would qualify for the required ILO grade shall be acceptable as well.

		plus (a) TLC less than 65%, or (b) FVC less than 65% and FEV1/FVC ratio greater than 65%, (2) six months Flintkote Exposure prior to December 31, 1982, (3) Significant Occupational Exposure, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Asbestosis/ Pleural Disease (Level II)	$1,400	(1) Diagnosis of Bilateral Asbestos-Related Nonmalignant Disease, plus TLC less than 80%, or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%, (2) six months Flintkote Exposure prior to December 31, 1982, (3) Significant Occupational Exposure, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Asbestosis/ Pleural Disease (Level I)	$650	(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease, (2) six months Flintkote Exposure prior to December 31, 1982, and (3) five years cumulative occupational exposure to asbestos.

5.3(b) Individual Review Process.

5.3(b)(1) In General. Subject to the provisions set forth below, a Flintkote claimant may elect to have his or her Trust Claim reviewed under the Individual Review Process for purposes of determining whether the claim would be cognizable and valid in the applicable tort system even though it does not meet the presumptive Medical/Exposure Criteria for any of the Disease Levels set forth in Section 5.3(a)(3) above. In addition or alternatively, a Flintkote claimant holding a Trust Claim involving Disease Levels III, IV, VI, or VII may elect to have a claim undergo the Individual Review Process for purposes of

determining whether the liquidated value of the claim exceeds the Scheduled Value for the relevant Disease Level also set forth in Section 5.3(a) above. However, except for claimants who allege Disease Level V, Secondary Exposure Claims for Disease Levels I-VI, and all claimants with Foreign Claims (as defined below), until such time as the Trust has made an offer on a claim pursuant to Individual Review, the claimant may change his or her Individual Review election and have the claim liquidated pursuant to the Trust's Expedited Review Process. In the event of such a change in the processing election, the claimant shall nevertheless retain his or her place in the FIFO Processing Queue.

The liquidated value of all Foreign Claims payable under this TDP shall be established under the Trust's Individual Review Process only. Trust Claims of individuals exposed in Canada who were residents in Canada when such claims were filed shall not be considered Foreign Claims hereunder and shall be eligible for liquidation under the Expedited Review Process. Accordingly, a "Foreign Claim" is a Trust Claim with respect to which the claimant's exposure to an asbestos-containing product for which Flintkote has legal responsibility occurred outside of the United States and its Territories and Possessions, and outside of the Provinces and Territories of Canada.

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

valuation factors set forth in Section 5.3(b)(2) below, and any matrices or methodologies developed pursuant to the provisions of this Section 5.3(b)(1).

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

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

5.3(b)(1)(A) Review of Medical/Exposure Criteria. The Trust's Individual Review Process provides a claimant with an opportunity for individual consideration and evaluation of a Trust Claim that fails to meet the presumptive Medical/Exposure Criteria for

Disease Levels I–IV, and VI or VII. In such a case, the Trust shall either deny the claim, or, if the Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the applicable tort system, the Trust can offer the claimant a liquidated value amount up to the Scheduled Value for that Disease Level, unless the claim qualifies as an Extraordinary Claim as defined in Section 5.4(a) below, in which case its liquidated value cannot exceed the extraordinary maximum value for such a claim.

5.3(b)(l)(B) Review of Liquidated Value. Claimants holding claims involving Disease Levels III–VII shall also be eligible to seek Individual Review of the liquidated value of their claims, as well as of their medical/exposure evidence. The Individual Review Process is intended to result in payments equal to the full liquidated value for each claim multiplied by the applicable Payment Percentage; however, the liquidated value of any Trust Claim that undergoes Individual Review may be determined to be less than the Scheduled Value the claimant would have received under Expedited Review. Moreover, the liquidated value for a claim involving Disease Levels III–VII shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(b)(3) below, unless the claim meets the requirements of an Extraordinary Claim described in Section 5.4(a) below, in which case its liquidated value cannot exceed the extraordinary maximum value set forth in that provision for such claims. Because the detailed examination and valuation process pursuant to Individual Review requires substantial time and effort, claimants electing to undergo the Individual Review Process may be paid the liquidated value of their Trust Claims later than would have been the case had the claimant elected the Expedited Review Process. Subject to the provisions of Section 5.8, the Trust shall devote reasonable resources to the review of all claims to ensure that there is a reasonable balance maintained in reviewing all classes of claims.

5.3(b)(2) Valuation Factors to Be Considered in Individual Review. The Trust will liquidate the value of each Trust Claim that undergoes Individual Review based on the historic liquidated values of other similarly situated claims in the applicable tort system for the same Disease Level. The Trust will thus take into consideration all of the factors that affect the severity of damages and values within the applicable tort system including, but not limited to credible evidence of (i) the degree to which the characteristics of a claim differ from the presumptive Medical/Exposure Criteria for the Disease Level in question; (ii) factors such as the claimant's age, disability, employment status, disruption of household, family or recreational activities, dependencies, special damages, and pain and suffering; (iii) whether the claimant's damages were (or were not) caused by asbestos exposure, including exposure to an asbestos-containing product for which Flintkote has legal responsibility prior to December 31, 1982 (for example, alternative causes, and the strength of documentation of injuries); (iv) the industry of exposure; (v) settlement and verdict histories in the Claimant's Jurisdiction for similarly situated claims; and (vi) settlement and verdict histories for the claimant's law firm for similarly situated claims. Where the claimant's law firm submits clear and convincing evidence to the Trust, and the Trustees determine, in their sole discretion, that the claimant's law firm, prior to the Petition Date, played a substantial role in the prosecution, trial and resolution of asbestos personal injury claims against Flintkote in the Claimant's Jurisdiction, such as actively participating in court appearances, discovery and trial of the subject cases (evidence will be required of all three phases: prosecution, trial and resolution for each law firm involved; necessary evidence will include evidence of active participation in the cases; and the mere referral of a case, without further involvement will not be viewed as having played a substantial role in the prosecution and resolution of a case), irrespective of whether a second law firm also was involved, the Trust shall

include such cases in the settlement and verdict histories for the claimant's law firm in the Claimant's Jurisdiction. If this occurs, the claimant's law firm shall certify, as required by the Trust, that it has provided all settlement and verdict history information for asbestos cases against Flintkote in which claimant's law firm, prior to the Petition Date, played a substantial role in the prosecution, trial and resolution of asbestos personal injury claims against Flintkote in the Claimant's Jurisdiction, as described above.

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

With respect to the "Claimant's Jurisdiction" in the event a personal representative or authorized agent makes a claim under the TDP for wrongful death with respect to which the governing law of the Claimant's Jurisdiction could only be the Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for "exemplary" or "punitive" damages, the Claimant's Jurisdiction for such claim shall be the Commonwealth of Pennsylvania, and such claimant's damages shall be determined pursuant to the statutory and common laws of the Commonwealth of Pennsylvania without regard to its choice of law principles. The choice of law provision in Section 7.4 below applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant's Jurisdiction pursuant to this Section 5.3(b)(2) is determined to be the

Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for "exemplary" or "punitive" damages, shall only govern the rights between the Trust and the claimant, and, to the extent the Trust seeks recovery from any entity that provided insurance coverage to Flintkote, the otherwise applicable state law shall govern.

5.3(b)(3) Scheduled, Average, and Maximum Values. The Scheduled, Average, and Maximum Values for domestic claims involving the Disease Levels compensable under this TDP are the following:

Scheduled Disease	Scheduled Value	Average Value	Maximum Value
Mesothelioma (Level VII)	$184,000	$210,000	$450,000
Lung Cancer 1 (Level VI)	$20,000	$25,000	$40,000
Lung Cancer 2 (Level V)	None	$6,000	$10,000
Other Cancer (Level IV)	$4,500	$6,000	$10,000
Severe Asbestosis (Level III)	$15,000	$20,000	$35,000
Asbestosis/Pleural Disease (Level II)	$1,400	$1,400	$1,400
Asbestosis/Pleural Disease (Level I)	$650	$650	$650

These Scheduled, Average, and Maximum Values shall apply to all domestic Asbestos Trust Voting Claims other than Pre-Petition Liquidated Trust Claims filed with the Trust on or before the Initial Claims Filing Date as provided in Section 5.1 above. Thereafter, the Trustees, with the consent of the TAC and the Future Claimants' Representative, pursuant to Sections 6.7(b) and 7.7(b) of the Trust Agreement, may change these valuation amounts for good cause and consistent with other restrictions on the amendment power.

5.4 Categorizing Claims as Extraordinary and/or Exigent Hardship.

5.4(a) Extraordinary Claims. "Extraordinary Claim" means a Trust Claim that otherwise satisfies the Medical Criteria for Disease Levels III–VII, and that is held by a claimant whose exposure to asbestos (i) occurred predominately as the result of working in a manufacturing facility of Flintkote during a period in which Flintkote was manufacturing asbestos-containing products at that facility, or (ii) was at least 75% the result of exposure to an asbestos-containing product for which Flintkote has legal responsibility, and in either case there is little likelihood of a substantial recovery elsewhere. All such Extraordinary Claims shall be presented for Individual Review and, if valid, shall be entitled to an award of up to an extraordinary maximum value of five (5) times the Scheduled Value for claims qualifying for Disease Levels III, IV, VI, and VII, and five (5) times the Average Value for claims in Disease Level V, multiplied by the applicable Payment Percentage. The Trustees may ask that a holder of an Extraordinary Claim provide the Trust with evidence of all recoveries from other asbestos trusts and all asbestos-related recoveries from other defendants. If a claimant submits such evidence, the Trust shall preserve the confidentiality of the submission as provided in Section 6.5 below.

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

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

5.5 Secondary Exposure Claims. Except with respect to Disease Level VII claims, if a claimant alleges an asbestos-related disease resulting solely from exposure to an occupationally exposed person, such as a family member, the claimant must seek Individual Review of his or her claim pursuant to Section 5.3(b) above. In such a case, the claimant must establish that the occupationally exposed person would have met the exposure requirements under this TDP for the claimant's Disease Level that would have been applicable the occupationally exposed person filed a direct claim against the Trust. In addition, the claimant with secondary exposure must establish that he or she is suffering from one of the seven Disease Levels described in Section 5.3(a)(3) above or an asbestos-related disease otherwise compensable under the TDP, that his or her own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person was exposed to

asbestos products produced by Flintkote, and that such secondary exposure was a cause of the claimed disease. All other liquidation and payment rights and limitations under this TDP shall be applicable to such claims.

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

To establish a presumptively valid Indirect Trust Claim, the Indirect Claimant's aggregate liability for the Direct Claimant's claim must also have been fixed, liquidated, and paid fully by the Indirect Claimant by settlement (with an appropriate full release in favor of the Trust) or a Final Order (as defined in the Plan) provided that such claim is valid under the

applicable state, federal, or foreign law. In any case where the Indirect Claimant has satisfied the claim of a Direct Claimant against the Trust under applicable law by way of a settlement, the Indirect Claimant shall obtain for the benefit of the Trust a release in form and substance satisfactory to the Trustees.

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

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

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

5.7 Evidentiary Requirements.

5.7(a) Medical Evidence.

5.7(a)(1) In General. All diagnoses of a Disease Level shall be accompanied by either (i) a statement by the physician providing the diagnosis that at least ten (10) years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis, or (ii) a history of the claimant's exposure sufficient to establish a 10-year latency period. A finding by a physician after the Effective Date that a claimant's disease is "consistent with" or "compatible with" asbestosis will not alone be treated by the Trust as a diagnosis.[11] For all Trust Claims, including Foreign Claims, all evidence submitted to the Trust must be in English.

[11] All diagnoses of Asbestosis/Pleural Disease (Disease Levels I and II) not based on pathology shall be presumed to be based on findings of bilateral asbestosis or pleural disease, and all diagnoses of Mesothelioma (Disease Level VII) shall be presumed to be based on findings that the disease involves a malignancy. However, the Trust may refute such presumptions.

5.7(a)(1)(A) Disease Levels I–III. Except for asbestos claims filed against Flintkote or another defendant in the tort system prior to the Petition Date, all diagnoses of a nonmalignant asbestos-related disease (Disease Levels I–III) shall be based in the case of a claimant who was living at the time the claim was filed, upon a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease. All living claimants must provide (i) for Disease Levels I and II, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in footnote 7 above), (ii) for Disease Level III, an ILO reading of 2/1 or greater or pathological evidence of asbestosis, and (iii) for Disease Levels II and III, pulmonary function testing.[12]

In the case of a claimant who was deceased at the time the claim was filed, all diagnoses of a nonmalignant asbestos-related disease (Disease Levels I–III) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease, or (ii) pathological evidence of the nonmalignant asbestos-related disease, or (iii) in the case of Disease Levels I and II, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in footnote 7 above), and for Disease Level III, either an ILO reading of 2/1 or greater or pathological evidence of asbestosis; or (iv) for either Disease Level II or III, pulmonary function testing.

[12] "Pulmonary function testing" or "PFT" shall mean testing that is in material compliance with the quality criteria established by the American Thoracic Society ("ATS") and is performed on equipment which is in material compliance with ATS standards for technical quality and calibration. PFT performed in a hospital accredited by the JCAHO, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician shall be presumed to comply with ATS standards, and the claimant may submit a summary report of the testing. If the PFT was not performed in a JCAHO accredited hospital, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician, the claimant must submit the full report of the testing (as opposed to a summary report); provided, however, that if the PFT was conducted prior to the Effective Date of the Plan and the full PFT report is not available, the claimant must submit a declaration signed by a Qualified Physician or other party who is qualified to make a certification regarding a PFT in the form provided by the Trust, certifying that the PFT was conducted in material compliance with ATS standards.

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

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

5.7(a)(2) Credibility of Medical Evidence. Before making any payment to a claimant, the Trust must have reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical standards. The Trust may require the submission of X-rays, CT scans, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examinations or reviews of other medical evidence, and may require that medical evidence submitted comply with

recognized medical standards regarding equipment, testing methods, and procedures to assure that such evidence is reliable. Medical evidence that is (i) of a kind shown to have been received in evidence by a state or federal, or foreign judge at trial, (ii) consistent with evidence submitted to Flintkote to settle for payment of similar disease cases prior to Flintkote's bankruptcy, or (iii) a diagnosis by a physician shown to have previously qualified as a medical expert with respect to the asbestos-related disease in question before a state or federal judge, is presumptively reliable, although the Trust may seek to rebut the presumption. Notwithstanding the foregoing or any other provision of these TDP, any medical evidence submitted by a physician or entity that the Trust has determined, after consulting with the TAC and the FCR, to be unreliable shall not be acceptable as medical evidence in support of any Trust Claim.

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

5.7(b) Exposure Evidence.

5.7(b)(1) In General. As set forth in Section 5.3(a)(3) above, to qualify for any Disease Level, the claimant must demonstrate a minimum exposure to an asbestos-containing product manufactured or distributed by Flintkote. Claims based on conspiracy theories that involve no exposure to an asbestos-containing product produced by Flintkote are not compensable under this TDP. To meet the presumptive exposure requirements of Expedited

Review set forth in Section 5.3(a)(3) above, the claimant must show (i) for all Disease Levels, Flintkote Exposure as defined in Section 5.7(b)(3) below prior to December 31, 1982; (ii) for Asbestos/Pleural Disease Level I, six (6) months Flintkote Exposure prior to December 31, 1982, plus five (5) years cumulative occupational asbestos exposure; and (iii) for Asbestosis/Pleural Disease (Disease Level II), Severe Asbestosis (Disease Level III), Other Cancer (Disease Level IV) or Lung Cancer 1 (Disease Level VI), six (6) months Flintkote Exposure prior to December 31, 1982, plus Significant Occupational Exposure as defined in Section 5.7(b)(2) below. If the claimant cannot meet the relevant presumptive exposure requirements for a Disease Level eligible for Expedited Review, the claimant may seek Individual Review pursuant to Section 5.3(b) above of his or her claim based on exposure to an asbestos-containing product for which Flintkote has legal responsibility.

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

5.7(b)(3) Flintkote Exposure. "Flintkote Exposure" means meaningful and credible exposure, which occurred prior to December 31, 1982, to asbestos or asbestos-containing products supplied, specified, manufactured, installed, maintained, or

repaired by Flintkote and/or any entity, including a Flintkote contracting unit, for which Flintkote has legal responsibility. Meaningful and credible exposure evidence may be established by an affidavit or sworn statement of the claimant, by an affidavit or sworn statement of a co-worker, or by an affidavit or sworn statement of a family member in the case of a deceased claimant (providing the Trust finds such evidence reasonably reliable), by invoices, employment, construction or similar records, interrogatory answers, sworn work histories, and depositions, or by other credible evidence. The specific exposure information required by the Trust to process a claim under either Expedited or Individual Review shall be set forth on the proof of claim form to be used by the Trust. The Trust can also require submission of other or additional evidence of exposure when it deems such to be necessary.

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

5.8 Claims Audit Program. The Trust with the consent of the TAC and the Future Claimants' Representative may develop methods for auditing the reliability of medical evidence, including additional reading of X-rays, CT scans and verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including exposure to asbestos-containing products manufactured or distributed by Flintkote prior to December 31, 1982. In the

event that the Trust reasonably determines that any individual or entity has engaged in a pattern or practice of providing unreliable medical or exposure evidence to the Trust, it may decline to accept additional evidence from such provider in the future.

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

5.9 Second Disease (Malignancy) Claims. Notwithstanding the provisions of Section 2.1 above that a claimant may not assert more than one Trust Claim hereunder with respect to a specific injured party, the holder of a Trust Claim involving a nonmalignant asbestos-related disease (Disease Levels I–III) may file a new Trust Claim against the Trust for a malignant disease (Disease Levels IV–VII) that is subsequently diagnosed. Any additional payments to which such claimant may be entitled with respect to such malignant asbestos-related disease shall not be reduced by the amount paid for the nonmalignant asbestos-related disease, provided that the malignant disease had not been diagnosed at the time the claimant was paid with respect to his or her original claim involving the nonmalignant disease. The provisions hereof shall also apply with respect to claimants who were paid by Flintkote for nonmalignant asbestos-related diseases prior to the formation of the Trust.

5.10 Arbitration.

5.10(a) Establishment of ADR Procedures. The Trust, with the consent of the TAC and the Future Claimants' Representative, shall institute binding and non-binding arbitration procedures in accordance with the ADR Procedures to be established by the Trustees, with the consent of the TAC and the FCR, for resolving disputes concerning whether a Pre-Petition settlement agreement with Flintkote is binding and judicially enforceable in the absence of a Final Order of the Bankruptcy Court determining the issue, whether the Trust's outright rejection or denial of a claim was proper, or whether the claimant's medical condition or exposure history meets the requirements of this TDP for purposes of categorizing a claim involving Disease Levels I–IV, VI, and VII. Binding and non- binding arbitration shall also be available for resolving disputes over the liquidated value of a claim involving Disease Levels III–VII as well as disputes over Flintkote's share of the unpaid portion of a Pre-Petition Liquidated Trust Claim described in Section 5.2 above and disputes over the validity of an Indirect Trust Claim.

In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in Section 5.7 above. In the case of an arbitration involving the liquidated value of a claim involving Disease Levels III–VII, the arbitrator shall consider the same valuation factors that are set forth in Section 5.3(b)(2) above. In order to facilitate the Individual Review Process with respect to such claims, the Trust may from time to time develop valuation methodologies and/or matrices taking account of the valuation factors that are set forth in Section 5.3(b)(2) above that enable the Trust to efficiently make initial liquidated value offers on these claims in the Individual Review setting. With respect to all claims except Foreign Claims, these valuation methodologies and/or matrices are often referred

to as the Individual Review model. Except as provided below for arbitrations involving Foreign Claims, the Trust shall neither offer into evidence or describe any such methodologies and/or matrices, or assert that any information generated by the methodologies and/or matrices has any evidentiary relevance or should be used by the arbitrator in determining the presumed correct liquidated value in the arbitration. The underlying data that was used to create the methodologies and/or matrices may be relevant and may be made available to the arbitrator but only if provided to the claimant or his or her counsel at least ten (10) days prior to the arbitration proceeding.

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

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

With respect to all claims eligible for arbitration, the claimant, but not the Trust, may elect either non-binding or binding arbitration. The ADR Procedures may be modified by the Trust with the consent of the TAC and the Future Claimants' Representative. Such amendments may include adoption of mediation procedures as well as establishment of an Extraordinary Claims Panel to review such claims pursuant to Section 5.4(a) above.

5.10(b) Claims Eligible for Arbitration. In order to be eligible for arbitration, the claimant must first complete the Individual Review Process set forth in Section 5.3(b) above with respect to the disputed issue, as well as the other preliminary steps to arbitration set forth in the ADR Procedures[13] with respect to the disputed issue. Individual Review will be treated as completed for these purposes when the claim has been individually reviewed by the Trust, the Trust has made an offer on the claim, the claimant has rejected the liquidated value resulting from the Individual Review, and the claimant has notified the Trust of the rejection in writing. Individual Review will also be treated as completed if the Trust has rejected the claim.

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

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

[13] To the extent there is any ambiguity or conflict between any provision of this TDP and the ADR Procedures, the provisions of this TDP shall control.

SECTION VI

Claims Materials

6.1 Claims Materials. The Trust shall prepare suitable and efficient claims materials ("Claims Materials") for all Trust Claims, and shall provide such Claims Materials upon a written request for such materials to the Trust. The proof of claim form to be submitted to the Trust shall require the claimant to (i) assert the highest Disease Level for which the claim qualifies at the time of filing and shall include a certification by the claimant or his or her attorney sufficient to meet the requirements of Rule 11(b) of the Federal Rules of Civil Procedure, and (ii) provide sufficient information for the Trust to determine whether the claim resulted from exposure for which the Flintkote Company, Flintkote Mines Limited, or both the Flintkote Company and Flintkote Mines Limited have legal responsibility. In developing its claim filing procedures, the Trust shall make every reasonable effort to provide claimants with the opportunity to utilize currently available technology at their discretion, including filing claims and supporting documentation over the internet and electronically by disk or CD-rom. The proof of claim form to be used by the Trust shall be developed by the Trust and submitted to the TAC and the Future Claimants' Representative for approval; it may be changed by the Trust with the consent of the TAC and the Future Claimants' Representative.

6.2 Content of Claims Materials. The Claims Materials shall include a copy of this TDP, such instructions as the Trustees shall approve, and a detailed proof of claim form. If feasible, the forms used by the Trust to obtain claims information shall be the same or substantially similar to those used by other asbestos claims resolution organizations. If requested by the claimant, the Trust shall accept information provided electronically. The claimant may, but will not be required to, provide the Trust with evidence of recovery from other asbestos defendants and claims resolution organizations, except that the Trust may require a claimant

holding a Foreign Claim to provide it with such evidence of recovery or other information that such claimant would be required to provide pursuant to the substantive law, rules of procedure, or practices in the tort system in the Claimant's Jurisdiction, including pre- and post-verdict rules, so as to enable the Trust to (1) determine whether the claim would be valid and cognizable in the tort system in the Claimant's Jurisdiction, (2) comply with the provisions of Section 5.3(b)(1) hereof, and (3) determine Flintkote's several share of liability for the claimant's unpaid damages.

6.3 Withdrawal or Deferral of Claims. A claimant can withdraw a Trust Claim at any time upon written notice to the Trust and file another such claim subsequently without affecting the status of the claim for statute of limitations or repose purposes, but any such claim filed after withdrawal shall be given a place in the FIFO Processing Queue based on the date of such subsequent filing. A claimant can also request that the processing of his or her Trust Claim by the Trust be deferred for a period not to exceed three (3) years without affecting the status of the claim for statute of limitations purposes, in which case the claimant shall also retain his or her original place in the FIFO Processing Queue. During the period of such deferral, a sequencing adjustment on such claimant's Trust Claim as provided in Section 7.5 below shall not accrue and payment thereof shall be deemed waived by the claimant. Except for Trust Claims held by representatives of deceased or incompetent claimants for which court or probate approval of the Trust's offer is required, or a Trust Claim for which deferral status has been granted, a claim will be deemed to have been withdrawn if the claimant neither accepts, rejects, nor initiates arbitration within six (6) months of the Trust's written offer of payment or rejection of the claim. Upon written request and good cause, the Trust may extend either the deferral or withdrawal period for an additional six (6) month period.

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

6.5 Confidentiality of Claimants' Submissions. All submissions to the Trust by a holder of a Trust Claim or a proof of claim form and materials related thereto shall be treated as made in the course of settlement discussions between the holder and the Trust and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including, but not limited to, those directly applicable to settlement discussions. The Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only, with the permission of the holder, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) and/or section 105 of the Bankruptcy Code or other applicable law, to such other persons as authorized by the holder, or in response to a valid subpoena of such materials issued by the Bankruptcy Court, a Delaware State Court, the United States District Court for the District of Delaware or any other court or body that may issue a valid subpoena on the Trust. Furthermore, the Trust shall provide counsel for the holder a copy of any such subpoena immediately upon being served. The Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privileges before the Bankruptcy Court, a Delaware State Court, the United States District Court for the District of Delaware or any other similar body that may issue a valid subpoena on the Trust and before those courts having appellate jurisdiction related thereto. Notwithstanding anything in the foregoing to the contrary, with the consent of the TAC and the

Future Claimants' Representative, the Trust may, in specific limited instances, disclose information, documents or other materials reasonably necessary in the Trust's judgment to preserve, litigate, resolve, or settle coverage, or to comply with an applicable obligation under an insurance policy or settlement agreement within the Asbestos Insurance Policies or the Asbestos Insurance Settlement Agreements; provided, however, that the Trust shall take any and all steps reasonably feasible in its judgment to preserve the further confidentiality of such information, documents, and materials, and prior to the disclosure of such information, documents or materials to a third party, the Trust shall receive from such third party a written agreement of confidentiality that (a) ensures that the information, documents, and materials provided by the Trust shall be used solely by the receiving party for the purpose stated in the agreement, and (b) prohibits any other use or further dissemination of the information, documents, and materials by the third party.

SECTION VII

General Guidelines for Liquidating and Paying Claims

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

Nothing in this TDP shall prohibit the Trust at any time from challenging the validity of a claim under the provisions of this TDP and/or whether a claim has been paid, satisfied, settled, released, waived, or otherwise discharged; provided, however, that as provided in Section 5.9,

the Trust shall not assert a prior release for a nonmalignant disease as a defense in the event a claimant later develops a malignant disease.

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

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

Because the Trust's income and liabilities over time remain uncertain, and decisions about payments must be based on estimates that cannot be done precisely, such decisions may

have to be revised in light of experiences over time, and there can be no guarantee of any specific level of payment to claimants. However, the Trustees shall use their best efforts to treat similar claims in substantially the same manner, consistent with their duties as Trustees, the purposes of the Trust, the established allocation of funds to claims in Categories A and B, and the practical limitations imposed by the inability to predict the future with precision.

In the event that the Trust faces temporary periods of limited liquidity, the Trustees may, with the consent of the TAC and the Future Claimants' Representative, (a) suspend the normal order of payment, (b) temporarily limit or suspend payments altogether, (c) offer a Reduced Payment Option as described in Section 2.5 above, and/or (d) commence making payments on an installment basis.

7.4 Punitive Damages. Except as provided below for claims asserted under the Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for "exemplary" or "punitive" damages, in determining the value of any liquidated or unliquidated Trust Claim, punitive or exemplary damages, i.e., damages other than compensatory damages, shall not be considered or allowed, notwithstanding their availability in the tort system. Similarly, no punitive or exemplary damages shall be payable with respect to any claim litigated against the Trust in the tort system pursuant to Sections 5.11 above and 7.6 below. The only damages that may be awarded pursuant to this TDP to claimants who are deceased and whose personal representatives pursue their claims only under the Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for "exemplary" or "punitive" damages, shall be compensatory damages determined pursuant to the statutory and common law of the Commonwealth of Pennsylvania, without regard to its choice of law principles. The choice of

law provision in this Section 7.4 applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant's Jurisdiction pursuant to Section 5.3(b)(2) is determined to be the Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for "exemplary" or "punitive" damages, shall only govern the rights between the Trust and the claimant including, but not limited to, suits in the tort system pursuant to Section 7.6 below, and to the extent the Trust seeks recovery from any entity that provided insurance to Flintkote, the otherwise applicable state law shall govern.

7.5 Sequencing Adjustment.

7.5(a) In General. Subject to the limitations set forth below, a sequencing adjustment shall be paid on all Trust Claims with respect to which the claimant has had to wait a year or more for payment, provided, however, that no claimant shall receive a sequencing adjustment for a period in excess of seven (7) years. The sequencing adjustment factor for each year shall be the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the first auction of 5-year Treasury Notes occurring in such year.

7.5(b) Unliquidated Trust Claims. A sequencing adjustment shall be payable on the Scheduled Value of any unliquidated Trust Claim that meets the requirements of Disease Levels I–IV, VI, and VII, whether the claim is liquidated under Expedited Review, Individual Review, or by arbitration. No sequencing adjustment shall be paid on any claim liquidated in the tort system pursuant to Sections 5.11 above and 7.6 below. The sequencing adjustment on an unliquidated Trust Claim that meets the requirements of Disease Level V shall be based on the Average Value of such a claim. Sequencing adjustments on all such unliquidated claims shall be

measured from the date of payment back to the earliest of the date that is one year after the date on which (a) the claim was filed against Flintkote prior to the Petition Date, (b) the claim was filed against another defendant in the tort system on or after the Petition Date, but before the Effective Date, or (c) the claim was filed with the Trust after the Effective Date.

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

7.6 Suits in the Tort System. If the holder of a disputed claim disagrees with the Trust's determination regarding the Disease Level of the claim, the claimant's exposure or medical history, the validity of the claim under the provisions of this TDP, or the liquidated value of the claim, and if the holder has first submitted the claim to non-binding arbitration as provided in Section 5.10 above, the holder may file a lawsuit in the Claimant's Jurisdiction as defined in Section 5.3(b)(2) above. Any such lawsuit must be filed by the claimant in his or her own right and name and not as a member or representative of a class, and no such lawsuit may be consolidated with any other lawsuit. All defenses (including, with respect to the Trust, all defenses which could have been asserted by Flintkote) shall be available to both sides at trial; however, the Trust may waive any defense and/or concede any issue of fact or law. If the claimant was alive at the time the initial pre-petition complaint was filed or on the date the proof

of claim form was filed with the Trust, the case will be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim.

7.7 Payment of Judgments for Money Damages. If and when a claimant obtains a judgment in the tort system, the claim shall be placed in the FIFO Payment Queue based on the date on which the judgment became final. Thereafter, the claimant shall receive from the Trust an initial payment (subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment, and the Claims Payment Ratio provisions set forth above) of an amount equal to 100% of the greater of (i) the Trust's last offer to the claimant or (ii) the award that the claimant declined in non-binding arbitration; provided, however, that in no event shall such payment amount exceed the amount of the judgment obtained in the tort system. The claimant shall receive the balance of the judgment, if any, in five (5) equal installments in years six (6) through ten (10) following the year of the initial payment (also subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment, and the Claims Payment Ratio provisions set forth above in effect on the date of the payment of the subject installment).

In the case of non-Extraordinary Claims involving Disease Levels III–VII, the total amounts paid with respect to such claims shall not exceed the Maximum Values for such Disease Levels set forth in Section 5.3(b)(3) above. In the case of Extraordinary Claims, the total amounts paid with respect to such claims shall not exceed the extraordinary maximum value for such claims set forth in Section 5.4(a) above. In the case of claims involving Disease Levels I and II, the total amounts paid with respect to such claims shall not exceed the Scheduled Value of such claims. Under no circumstances shall either a sequencing adjustment be paid pursuant to

Section 7.5 above or interest be paid under any statute on any judgments obtained in the tort system pursuant to Sections 5.11 and 7.6 above.

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

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

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

SECTION VIII

Miscellaneous

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

to conform this TDP to advances in scientific or medical knowledge or other changes in circumstances), provided they first obtain the consent of the TAC and the Future Claimants' Representative pursuant to the Consent Process set forth in Sections 6.7(b) and 7.7(b) of the Trust Agreement, except that the right to amend the Claims Payment Ratio is governed by the restrictions in Section 2.5 above, and the right to adjust the Payment Percentage is governed by Section 4.2 above. Nothing herein is intended to preclude the TAC or the Future Claimants' Representative from proposing to the Trustees, in writing, amendments to this TDP. Any amendment proposed by the TAC or the Future Claimants' Representative shall remain subject to Section 8.3 of the Trust Agreement.

8.2 Severability. Should any provision contained in this TDP be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this TDP. Should any provision contained in this TDP be determined to be inconsistent with or contrary to Flintkote obligations to any insurance company providing insurance coverage to Flintkote in respect of claims for personal injury based on exposure to asbestos-containing products manufactured or produced by Flintkote, the Trust with the consent of the TAC and the Future Claimants' Representative, may amend this TDP and/or the Trust Agreement to make the provisions of either or both documents consistent with the duties and obligations of Flintkote to said insurance company.

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

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YARWAY ASBESTOS PERSONAL INJURY TRUST DISTRIBUTION PROCEDURES

YARWAY ASBESTOS PERSONAL INJURY TRUST DISTRIBUTION PROCEDURES

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YARWAY ASBESTOS PERSONAL INJURY TRUST DISTRIBUTION PROCEDURES

The Yarway Asbestos Personal Injury Trust Distribution Procedures (the "**TDP**") contained herein provide for resolving all "**Asbestos Personal Injury Claims**" as defined in the Plan of Reorganization for Yarway Corporation under Chapter 11 of the Bankruptcy Code Proposed by Yarway Corporation and Tyco International plc, dated as of April 8, 2015 (as it may be amended, modified or supplemented, the "**Plan**"),[1] as provided in and required by the Plan and the Yarway Asbestos Personal Injury Trust Agreement (the "**Trust Agreement**"). The Plan and Trust Agreement establish the Yarway Asbestos Personal Injury Trust (the "**Asbestos PI Trust**"). The Trustee of the Asbestos PI Trust (the "**Trustee**") shall implement and administer this TDP in accordance with the Trust Agreement.

SECTION I

Introduction

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

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

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[1] Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan.

SECTION II

Overview

2.1 Asbestos PI Trust Goal. The goal of the Asbestos PI Trust is to treat all claimants similarly and equitably 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 several share of Yarway Corporation ("**Yarway**" or the "**Debtor**") with respect to the unpaid portion of the liquidated value of Asbestos Personal Injury Claims generally on an impartial, first-in-first-out ("**FIFO**") basis, with the intention of paying all claimants over time as equivalent a share as possible of the value of their claims based on historical values for substantially similar claims in the tort system.[2] To this end, the TDP establishes a schedule of seven asbestos-related diseases ("**Disease Levels**"), six of which have presumptive medical and exposure requirements ("**Medical/Exposure Criteria**") and specific liquidated values ("**Scheduled Values**"), and five of which have 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 Asbestos PI Trust funds as among claimants suffering from different disease processes in light of the best available information, considering the settlement history of the Debtor and the rights claimants would have in the tort system absent the bankruptcy. A claimant may not assert more than one Asbestos Personal Injury Claim hereunder, subject to the provisions set forth in Section 5.9 below.

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[2] As used in this TDP, the phrase "in the tort system" shall not include claims asserted against a trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) of the Bankruptcy Code or any other applicable law.

2.2 Asbestos Personal Injury Claims Liquidation Procedures. Asbestos Personal Injury Claims shall be processed based on their place in the FIFO Processing Queue to be established pursuant to Section 5.1(a) below. The Asbestos PI Trust shall take all reasonable steps to resolve Asbestos Personal Injury Claims as efficiently and expeditiously as possible at each stage of claims processing and arbitration, which steps may include, in the Asbestos PI Trust's sole discretion, 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. The Asbestos PI Trust shall also make every reasonable effort to resolve each year at least that number of Asbestos Personal Injury Claims required to exhaust the Maximum Annual Payment and the Maximum Available Payment, as those terms are defined below.

The Asbestos PI Trust shall, except as otherwise provided below, liquidate all Asbestos Personal Injury Claims (except Foreign Claims as defined in Section 5.3(b)(1) below, and secondary exposure claims as described in Section 5.5 below) that meet the presumptive Medical/Exposure Criteria of Disease Levels I–IV, VI and VII under the Expedited Review Process described in Section 5.3(a) below. Claims that do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level may undergo the Asbestos PI Trust's Individual Review Process described in Section 5.3(b) below. In such a case, notwithstanding that the claim does not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level, the Asbestos PI Trust can offer the claimant an amount up to the Scheduled Value for that Disease Level if the Asbestos PI Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the tort system.

Asbestos Personal Injury Claims involving Disease Levels III–IV, VI and VII tend to raise more complex valuation issues than the Asbestos Personal Injury Claims in Disease Levels I and II. Accordingly, in lieu of liquidating such claimant's claim under the Expedited Review Process, claimants holding claims involving these Disease Levels may alternatively seek to establish a liquidated value for the claim that is greater than its Scheduled Value by electing the Asbestos PI Trust's Individual Review Process. However, the liquidated value of a Disease Level III, IV, VI or VII 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 extraordinary value specified in that provision for such claims. Level V (Lung Cancer 2) claims, Foreign Claims, as defined in Section 5.3(b)(1) below, and all secondary exposure claims, as described in Section 5.5 below, may be liquidated[3] only pursuant to the Asbestos PI Trust's Individual Review Process.

Based upon the Debtor's claims settlement history in light of applicable tort law, and current projections of present and future unliquidated claims, the Scheduled Values and Maximum Values set forth in Section 5.3(b)(3) have been established for each of the five (5) Disease Levels that are eligible for Individual Review of their liquidated values.

The Trustee shall use reasonable best efforts to ensure that the Asbestos PI Trust processes claims such that over time the combination of domestic settlements at the Scheduled Values and those resulting from the Individual Review Process for the five more serious Disease

[3] For purposes of this TDP, "liquidated" means approved and valued by the Asbestos PI Trust.

Levels approximates the Average Values set forth in Section 5.3(b)(3) below for each such Disease Level.

All unresolved disputes over a claimant's medical condition, exposure history and/or the validity or liquidated value of the claim shall be subject to binding or non-binding arbitration as set forth in Section 5.10 below, at the election of the claimant, under ADR Procedures established by the Asbestos PI Trust. Asbestos Personal Injury Claims that are the subject of a dispute with the Asbestos PI Trust that cannot be resolved by non-binding arbitration may enter the tort system as provided in Sections 5.11 and 7.5 below. However, if a claimant obtains a judgment in the tort system, such judgment shall be payable (subject to the Payment Percentage, Maximum Annual Payment, Maximum Available Payment and Claims Payment Ratio provisions set forth below) as provided in Section 7.6 below.

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

A Payment Percentage (the **"Initial Payment Percentage"**) shall be set pursuant to Section 4.2 below promptly after the Asbestos PI Trust is established by the Trustee with the consent of the Trust Advisory Committee (the **"TAC"**) and the Future Claimants' Representative (the **"FCR"**) (who are described in Section 3.1 below). The Initial Payment Percentage shall be calculated on the assumption that the Average Values set forth in Section 5.3(b)(3) below shall

be achieved with respect to existing present claims and projected future claims involving Disease Levels III–VII.

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

2.4 Asbestos PI Trust's Determination of the Maximum Annual Payment and Maximum Available Payment. After calculating the Payment Percentage, the Asbestos PI Trust shall model the cash flow, principal and income year-by-year to be paid over its entire life to ensure that all present and future holders of Asbestos Personal Injury Claims are compensated at the Payment Percentage. In each year, based upon the model of cash flow, the Asbestos PI Trust shall be empowered to pay out the portion of its funds payable for that year according to the model (the "**Maximum Annual Payment**"). The Asbestos PI Trust's aggregate distributions to all claimants for that year shall not exceed the Maximum Annual Payment. The Payment Percentage and the Maximum Annual Payment figures are based on projections over the lifetime of the Asbestos PI Trust. As noted in Section 2.3 above, if such long-term projections are

revised, the Payment Percentage may be adjusted accordingly, which would result in a new model of the Asbestos PI Trust's anticipated cash flow and a new calculation of the Maximum Annual Payment.

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

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

In distributing the Maximum Annual Payment, the Asbestos PI Trust shall first allocate the amount in question to (a) outstanding Pre-Petition Liquidated Claims, (b) any Asbestos Personal Injury Claims (i) based on a diagnosis dated prior to the Effective Date and (ii) subsequently filed with the Asbestos PI Trust within one (1) year following the date the Asbestos PI Trust first accepts for processing the proof of claim forms and other materials required to file a claim with the Asbestos PI Trust[4], which are liquidated by the Asbestos PI Trust ("**Existing Claims**"), and (c) Exigent Hardship Claims (as defined in Section 5.4(b) below). Should the Maximum Annual Payment be insufficient to pay all such claims in full, they shall be paid in proportion to the aggregate value of each group of claims and the available funds allocated to each group of claims shall be paid to the maximum extent to claimants in the particular group based on their place in their respective FIFO Payment Queue. Claims in any group for which there are insufficient funds shall be carried over to the next year, and placed at the head of their

[4] Exceptions to the satisfaction of this one-year filing requirement may be made where a claimant can show an inability to file within the one-year period caused by extraneous factors beyond the claimant's control.

FIFO Payment Queue. If there is a decrease in the Payment Percentage prior to the payment of such claims, any such claims shall nevertheless be entitled to be paid at the Payment Percentage that they would have been entitled to receive but for the application of the Maximum Annual Payment. 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 Personal Injury Claims, subject to the Claims Payment Ratio set forth in Section 2.5 below; provided, however, that if the Maximum Annual Payment is reduced during a year pursuant to the provisions above, the Maximum Available Payment shall be adjusted accordingly. Claims in the groups described in (a), (b), and (c) above shall not be subject to the Claims Payment Ratio.

2.5 Claims Payment Ratio. Based upon the Debtor's domestic claims settlement history and analysis of present and future claims, a Claims Payment Ratio has been determined which, as of the Effective Date, has been set at 90% for Category A claims, which consist of Asbestos Personal Injury Claims involving severe asbestosis and malignancies (Disease Levels III–VII) and at 10% for Category B claims, which are Asbestos Personal Injury Claims involving non-malignant Asbestosis or Pleural Disease (Disease Levels I and II).

In each year, after the determination of the Maximum Available Payment described in Section 2.4 above, 90% of that amount shall be available to pay Category A claims and 10% shall be available to pay Category B claims that have been liquidated since April 22, 2013 (the "**Petition Date**"), except for claims which, pursuant to Section 2.4 above, are not subject to the Claims Payment Ratio; provided, however, that if the Maximum Annual Payment is reduced during the year pursuant to the provisions of Section 2.4 above, the amounts available to pay Category A and Category B claims shall be recalculated based on the adjusted Maximum Available Payment. In the event there are insufficient funds in any year to pay the liquidated

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

Notwithstanding any other provision herein, if, at the end of any calendar year following the third anniversary of the date the Asbestos PI Trust began accepting claims, there are excess funds available in either Category A or Category B and insufficient funds in the other Category to pay such Category's claims, then the Trustee may transfer up to a specified amount of excess funds (the "Permitted Transfer Amount" as defined below) to the Category with the shortfall; provided, however that the Trustee shall never transfer more than the amount of the receiving Category's shortfall. The "**Permitted Transfer Amount**" shall be determined as follows: (a) the Trustee shall first determine the cumulative amount allocated to the Category with excess funds based on the Claims Payment Ratio since the date the Asbestos PI Trust last calculated its Payment Percentage; (b) the Trustee shall then determine the cumulative amount that the

Asbestos PI Trust estimated would be paid to the Category with excess funds since the date the Asbestos PI Trust last calculated its Payment Percentage; (c) the Trustee shall then subtract the amount determined in (b) from the amount determined in (a), and the difference between the two shall be referred to as the "**Permitted Transfer Amount**." The Trustee shall provide the TAC and the FCR with the Permitted Transfer Amount calculation thirty (30) days prior to making a transfer. If, at the end of any calendar year following the third anniversary of the date the Asbestos PI Trust began accepting claims, there are excess funds in either or both Categories because there is an insufficient amount of liquidated claims to exhaust the respective Maximum Available Payment amount for that Category, or, in a year where there was a transfer from one Category to the other, if the amount transferred was less than the amount of excess funds, then the excess funds for the Category or Categories with excess funds shall be rolled over and remain dedicated to the respective Category to which they were originally allocated.

During the first nine months of a given year, the Asbestos PI Trust's payments to claimants in a Category shall not exceed the amount of any excess funds that were rolled over for such Category from the prior year plus 85% of the amount that would otherwise be available for payment to claimants in such Category.

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

No amendment to the Claims Payment Ratio may be made without the consent of the TAC members and the consent of the FCR. The consent process set forth in Sections 5.7(b) and 6.6(b) of the Trust Agreement shall apply in the event of any amendments to the Claims Payment Ratio. The Trustee, with the consent of the TAC and the FCR, may offer the option of a reduced Payment Percentage to holders of claims in either Category A or Category B in return for prompter payment (the "**Reduced Payment Option**").

2.6 Indirect Asbestos Personal Injury Claims. As set forth in Section 5.6 below, any Indirect Asbestos Personal Injury Claim (an "**Indirect Asbestos Personal Injury Claim**") shall be subject to the same categorization, evaluation, and payment provisions of this TDP as all other Asbestos Personal Injury Claims.

SECTION III

TDP Administration

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

3.2 Consent and Consultation Procedures. In those circumstances in which consultation or consent is required, the Trustee shall provide written notice to the TAC and the FCR of the specific amendment or other action that is proposed. The Trustee shall not implement such amendment or 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 Debtor's Personal Injury Asbestos Liabilities. As discussed above, there is inherent uncertainty regarding Debtor's total asbestos-related liabilities, as well as the total value of the assets available to the Asbestos PI Trust to pay Asbestos Personal Injury Claims. Consequently, there is inherent uncertainty regarding the amounts that holders of Asbestos Personal Injury Claims shall receive. To seek to ensure substantially equivalent treatment of all present and future Asbestos Personal Injury Claims, the Trustee must determine from time to time the percentage of full liquidated value that holders of present and future Asbestos Personal Injury Claims are likely to receive, *i.e.*, the "**Payment Percentage**" described in Section 2.3 above and Section 4.2 below.

4.2 Computation of Payment Percentage. As provided in Section 2.3 above, the Initial Payment Percentage shall be set by the Trustee with the consent of the TAC and the FCR promptly after the Asbestos PI Trust is established.

The Payment Percentage shall be subject to change pursuant to the terms of this TDP and the Trust Agreement if the Trustee, with the consent of the TAC and FCR, determines that an adjustment is required. No less frequently than once every three (3) years, commencing with the

date that is three (3) years after the Effective Date, the Trustee shall reconsider the then applicable Payment Percentage to assure that it is based on accurate, current information and may, after such reconsideration, change the Payment Percentage if necessary with the consent of the TAC and the FCR. The Trustee shall also reconsider the then-applicable Payment Percentage at shorter intervals if he or she deems such reconsideration to be appropriate or if requested to do so by the TAC or the FCR. In any event, no less frequently than once every twelve (12) months, commencing on the Initial Claims Filing Date, the Trustee shall compare the liability forecast on which the then-applicable Payment Percentage is based with the actual claims filing and payment experience of the Asbestos PI Trust to date. If the results of the comparison call into question the ability of the Asbestos PI Trust to continue to rely upon the current liability forecast, the Trustee shall reconsider the Payment Percentage.

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

4.3 Applicability of the Payment Percentage. Except as otherwise provided (a) in Section 5.1(c) below for Asbestos Personal Injury Claims involving deceased or incompetent claimants for which approval of the Asbestos PI Trust's offer by a court or through a probate process is required and (b) in the paragraph below with respect to Released Claims, no holder of any Asbestos Personal Injury Claim shall receive a payment that exceeds the liquidated value of the claim times the Payment Percentage in effect at the time of payment; provided, however, that if there is a reduction in the Payment Percentage, the Trustee, in his or her sole discretion, may cause the Asbestos PI Trust to pay an Asbestos Personal Injury Claim based on the Payment Percentage that was in effect prior to the reduction if such Asbestos Personal Injury Claim was filed and actionable with the Asbestos PI Trust ninety (90) days or more prior to the date the Trustee proposed the new Payment Percentage in writing to the TAC and the FCR (the "**Proposal Date**") and the processing of such claim was unreasonably delayed due to circumstances beyond the control of the claimant or the claimant's counsel, but only if such claim had no deficiencies for the ninety (90) days prior to the Proposal Date.

If a redetermination of the Payment Percentage has been proposed in writing by the Trustee to the TAC and the FCR 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 is the lower amount but is 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 is the higher amount and is subsequently adopted, the claimant shall thereafter receive the difference between the lower current amount and the higher adopted amount.

Notwithstanding anything contained herein, if the proposed Payment Percentage is lower than the current Payment Percentage, a claimant whose Asbestos Personal Injury Claim was liquidated prior to the Proposal Date and who either (a) transmitted[5] an executed release to the Asbestos PI Trust prior to the Proposal Date or (b) with respect to those claimants who had received releases fewer than thirty (30) days prior to the Proposal Date, transmitted an executed release to the Asbestos PI Trust within thirty (30) days of the claimant's receipt of the release (the claims described in (a) and (b) are collectively referred to herein as the "**Released Claims**") shall be paid based on the current Payment Percentage (the "**Released Claims Payment Percentage**"). For purposes hereof, (a) a claimant represented by counsel shall be deemed to have received a release on the date that the claimant's counsel receives the release, (b) if the Asbestos PI Trust transmits a release electronically, the release shall be deemed to have been received on the date the Asbestos PI Trust transmits the offer notification, and (c) if the Asbestos PI Trust places the release in the U.S. mail, postage prepaid, the release shall be deemed to have been received three (3) business days after such mailing date. A delay in the payment of the Released Claims for any reason, including delays resulting from limitations on payment amounts in a given year pursuant to Sections 2.4 and 2.5 hereof, shall not affect the rights of the holders of the Released Claims to be paid based on the Released Claims Payment Percentage.

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

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

There is uncertainty surrounding the value of the Asbestos PI Trust's assets in the future. There is also uncertainty surrounding the totality of the Asbestos Personal Injury Claims to be paid over time. If the value of the Asbestos PI Trust's future assets increases significantly and/or if the value or volume of Asbestos Personal Injury Claims actually filed with the Asbestos PI Trust is significantly lower than originally estimated, the Asbestos PI Trust shall use those proceeds and/or claims savings, as the case may be, first to maintain the Payment Percentage then in effect.

If the Trustee, with the consent of the TAC and the FCR, makes a determination to increase the Payment Percentage due to a material change in the estimates of the Asbestos PI Trust's future assets and/or liabilities, the Trustee shall also make supplemental payments to all claimants who previously liquidated their claims against the Asbestos PI Trust and received payments based on a lower Payment Percentage. The amount of any such supplemental payment shall be the liquidated value of the claim in question times the newly adjusted Payment Percentage, less all amounts previously paid to the claimant with respect to the claim.

The Asbestos PI 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 Asbestos PI Trust's obligation shall resume, and the Asbestos PI Trust shall pay any such aggregate supplemental payments due the claimant at such time that the total exceeds $100.00.

SECTION V

Resolution of Asbestos Personal Injury Claims.

5.1 Ordering, Processing and Payment of Asbestos Personal Injury Claims.

5.1(a) Ordering of Asbestos Personal Injury Claims.

5.1(a)(1) Establishment of the FIFO Processing Queue. The Asbestos PI Trust shall order claims that are sufficiently complete to be reviewed for processing purposes on a FIFO basis except as otherwise provided herein (the "**FIFO Processing Queue**"). For all claims filed on or before the date six (6) months after the date that the Asbestos PI Trust first makes available the proof of claim forms and other claims materials required to file a claim with the Asbestos PI Trust (such six-month anniversary being referred to herein as the "**Initial Claims Filing Date**"), a claimant's position in the FIFO Processing Queue shall be determined as of the earliest of (i) the date prior to the Petition Date that the claim was either filed against the Debtor in the tort system or was actually submitted to the Debtor pursuant to an administrative settlement agreement; (ii) the date before the Petition Date that the claim was filed against another defendant in the tort system if at the time the claim was subject to a tolling agreement with the Debtor; (iii) the date after the Petition Date but before the date that the Asbestos PI Trust first makes available the proof of claim forms and other claims materials required to file a claim with the Asbestos PI Trust that the claim was filed against another defendant in the tort system; (iv) the date after the Petition Date but before the Effective Date that a proof of claim was filed by the claimant against the Debtor in the Chapter 11 proceeding; or (v) the date a ballot was submitted on behalf of the claimant for purposes of voting to accept or reject the Plan pursuant to the voting procedures approved by the Bankruptcy Court.

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

5.1(a)(2) Effect of Statutes of Limitation and Repose. All unliquidated Asbestos Personal Injury Claims must meet either (i) for claims first filed in the tort system against the Debtor prior to the Petition Date, the applicable federal, state or foreign statutes of limitation and repose that were in effect at the time of the filing of the claim in the tort system, or (ii) for claims not filed against the Debtor in the tort system prior to the Petition Date, the applicable federal, state or foreign statutes of limitation and repose that were in effect at the time of the filing with the Asbestos PI Trust. However, the running of the relevant statute of limitation and repose shall be tolled as of the earliest of (X) the actual filing of the claim against the Debtor prior to the Petition Date, whether in the tort system or by submission of the claim to the Debtor pursuant to an administrative settlement agreement; (Y) the tolling of the claim against the Debtor prior to the Petition Date by an agreement or otherwise, provided such tolling is still in effect on the Petition Date; or (Z) the Petition Date. If an Asbestos Personal Injury Claim meets any of the tolling provisions described in the preceding sentence and was not barred by the applicable federal, state or foreign statute of limitation and repose at the time of the tolling event, it shall be treated as timely filed if it is actually filed with the Asbestos PI Trust within three (3)

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

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

5.1(c) Payment of Asbestos Personal Injury Claims. Asbestos Personal Injury Claims that have been liquidated by the Expedited Review Process as provided in Section 5.3(a) below, by the Individual Review Process as provided in Section 5.3(b) below, by arbitration as provided in Section 5.10 below or by litigation in the tort system as provided in Section 5.11 below, shall be paid in FIFO order based on the date their liquidation became final (the "**FIFO Payment Queue**"); all such payments are subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment and the Claims Payment Ratio. Pre-Petition Liquidated Claims, as defined in Section 5.2 below, Existing Claims and Exigent Hardship Claims, as defined in Section 5.4(b) below, shall be subject to the Maximum Annual Payment and Payment Percentage limitations, but not to the Maximum Available Payment and Claims Payment Ratio provisions set forth above.

Where the claimant is deceased or incompetent, and the settlement and payment of his or her claim must be approved by a court of competent jurisdiction or through a probate process

prior to acceptance of the claim by the claimant's representative, an offer made by the Asbestos PI Trust on the claim shall remain open so long as proceedings before that court or in that probate process remain pending, provided that the Asbestos PI Trust has been furnished with evidence that the settlement offer has been submitted to such court or is in the probate process for approval. If the offer is ultimately approved by the court or through the probate process and accepted by the claimant's representative, the Asbestos PI Trust shall pay the claim in the amount so offered, multiplied by the Payment Percentage in effect at the time the offer was first made.

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

5.2 Resolution of Pre-Petition Liquidated Claims.

5.2(a) Processing and Payment. As soon as practicable after the Effective Date, the Asbestos PI Trust shall pay, upon submission by the claimant of the appropriate documentation, all Asbestos Personal 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) after the Petition Date according to the terms of a binding settlement agreement entered into prior to the Petition Date (a "**Pre-Petition Agreement**"), (iii) a jury verdict or non-final judgment in the tort system obtained prior to the Petition Date or (iv) 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 Asbestos PI Trust, the holder of a Pre-Petition Liquidated Claim must submit all documentation necessary to demonstrate to the Asbestos PI Trust that the claim was liquidated in the manner described above, which documentation shall include (A) a court authenticated copy of the jury verdict (if applicable), a non-final judgment (if applicable) or a final judgment (if applicable) and (B) the name, social security number and date of birth of the claimant and the name and address of the claimant's lawyer; provided, however, that such documentation shall not be required with respect to any Pre-Petition Liquidated Claim that Debtor has identified to the Asbestos PI Trust as a Pre-Petition Liquidated Claim as to which all conditions to payment under the applicable agreement, jury verdict or judgment have been satisfied. Debtor shall deliver to the Asbestos PI Trust a list of the Pre-Petition Liquidated Claims that Debtor has approved for payment, which claims shall be entitled to rely upon the exception set forth in the preceding sentence.

The liquidated value of a Pre-Petition Liquidated Claim shall be the unpaid portion of the amount agreed to in the binding settlement agreement or Pre-Petition Agreement, the unpaid

portion of the amount awarded by the jury verdict or non-final judgment or the unpaid portion of the amount of the final judgment, as the case may be, plus interest, if any, that has accrued on that amount in accordance with the terms of the agreement, if any, or under applicable state law for settlements or judgments, as of the Petition Date; however, except as otherwise provided in Section 7.4 below, the liquidated value of a Pre-Petition Liquidated Claim shall not include any punitive or exemplary damages. In addition, the amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Claims Payment Ratio and the Maximum Available Payment limitations, but shall be subject to the Maximum Annual Payment and Payment Percentage provisions. In the absence of a Final Order of the Bankruptcy Court determining whether a settlement agreement is binding and judicially enforceable, a dispute between the claimant and the Asbestos PI Trust over this issue shall be resolved pursuant to the same procedures in this TDP that are provided for resolving the validity and/or liquidated value of an Asbestos Personal Injury Claim (*i.e.*, arbitration and litigation in the tort system 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 Asbestos PI Trust based on the date the Asbestos PI Trust received all required documentation for the particular claim. 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 position of the claimants in the FIFO queue shall be determined by the dates of the claimants' birth, with older claimants given priority over younger claimants.

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

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

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

Upon filing of a valid proof of claim form with the required supporting documentation, the claim shall be placed in the FIFO Processing Queue in accordance with the ordering criteria

described in Section 5.1(a) above. When the claim reaches the top of the FIFO Processing Queue, the Asbestos PI Trust shall process and liquidate the claim based upon the medical/exposure evidence submitted by the claimant and under the process elected by the claimant. If the claimant fails to elect either the Individual Review Process or the Expedited Review Process, then the Asbestos PI Trust shall process and liquidate the claim under the Expedited Review Process, although the claimant shall retain the right to request Individual Review as described in Section 5.3(b) below.

5.3(a) Expedited Review Process.

5.3(a)(1) In General. The Asbestos PI Trust's Expedited Review Process is designed primarily to provide an expeditious, efficient, consistent and inexpensive method for liquidating all valid Asbestos Personal Injury Claims (except those involving Lung Cancer 2 – Disease Level V, all secondary exposure claims (as described in Section 5.5 below) and Foreign Claims, which shall only be liquidated pursuant to the Asbestos PI Trust's Individual Review Process), where the claim can easily be verified by the Asbestos PI Trust as meeting the presumptive Medical/Exposure Criteria for the relevant Disease Level. Expedited Review thus provides claimants with a substantially less burdensome process for pursuing Asbestos Personal 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 claims value.

Claims that undergo Expedited Review and meet the presumptive Medical/Exposure Criteria for the relevant Disease Level shall be liquidated at the Scheduled Value for such Disease Level set forth in Section 5.3(a)(3) below. However, all claims liquidated by Expedited Review shall be subject to the applicable Payment Percentage, the Maximum Annual Payment,

the Maximum Available Payment and the Claims Payment Ratio limitations set forth above; provided, however, that Existing Claims and Exigent Hardship Claims shall not be subject to the Maximum Available Payment and Claims Payment Ratio. Claimants holding claims that cannot be liquidated by Expedited Review because they do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level may elect the Asbestos PI Trust's Individual Review Process set forth in Section 5.3(b) below.

Subject to the provisions of Section 5.8 below, the claimant's eligibility to have his or her Asbestos Personal Injury Claim liquidated at the Scheduled Value pursuant to the Expedited Review Process shall be determined solely by reference to the Medical/Exposure Criteria set forth below for each of the Disease Levels eligible for Expedited Review.

5.3(a)(2) Claims Processing Under Expedited Review. All claimants seeking liquidation of their claims pursuant to Expedited Review shall file the Asbestos PI Trust's proof of claim form. As a proof of claim form is reached in the FIFO Processing Queue, the Asbestos PI Trust shall determine whether the claim described therein meets the Medical/Exposure Criteria for one of the six Disease Levels eligible for Expedited Review, and shall advise the claimant of its determination. If a Disease Level is determined, the Asbestos PI Trust shall tender to the claimant an offer of payment of the Scheduled Value for the relevant Disease Level multiplied by the applicable Payment Percentage, together with (x) a form of release approved by the Asbestos PI Trust and (y) the Asbestos Personal Injury Claimant Release attached hereto as Exhibit A. If the claimant accepts the Asbestos PI Trust's offer of payment and returns the two (2) releases properly executed, the claim shall be placed in the FIFO Payment Queue, following which the Asbestos PI Trust shall disburse payment subject to the

limitations of the Maximum Annual Payment, the Maximum Available Payment and the Claims Payment Ratio, if any.

5.3(a)(3) Disease Levels, Scheduled Values and Medical/Exposure Criteria. The seven Disease Levels covered by this TDP, together with the Medical/Exposure Criteria for each and the Scheduled Values for the six Disease Levels eligible for Expedited Review, are set forth below. These Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all Trust Voting Claims[6] filed with the Asbestos PI Trust (except Pre-Petition Liquidated Claims) on or before the Initial Claims Filing Date provided in Section 5.1 above for which the claimant elects the Expedited Review Process. Thereafter, for purposes of administering the Expedited Review Process, the Trustee may, with the consent of the TAC and the FCR, add to, change, or eliminate Disease Levels, Scheduled Values, or Medical/Exposure Criteria; develop subcategories of Disease Levels, Scheduled Values or Medical/Exposure Criteria; or determine that a novel or exceptional Asbestos Personal Injury Claim is compensable even though it does not meet the Medical/Exposure Criteria for any of the then current Disease Levels.

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[6] The term "**Trust Voting Claims**" includes (i) Pre-Petition Liquidated Claims as defined in Section 5.2(a) below; (ii) claims filed against the Debtor in the tort system or actually submitted to the Debtor pursuant to an administrative settlement agreement prior to the Petition Date; and (iii) all asbestos claims filed against another defendant in the tort system prior to December 22, 2014, the date the Plan was filed with the Bankruptcy Court; provided, however, that (1) the holder of a claim described in subsection (i), (ii) or (iii) above, or his or her authorized agent, actually voted to accept or reject the Plan pursuant to the voting procedures established by the Bankruptcy Court (unless such holder certifies to the satisfaction of the Trustee that he or she was prevented from voting in this proceeding as a result of circumstances resulting in a state of emergency affecting, as the case may be, the holder's residence, the holder's principal place of business or legal representative's place of business at which the holder or his or her legal representative receives notice and/or maintains material records relating to his or her Trust Voting Claim); and provided further that (2) the claim was subsequently filed with the Asbestos PI Trust pursuant to Section 6.1 below by the Initial Claims Filing Date defined in Section 5.1(a) below.

Disease Level	**Scheduled Value**	**Medical/Exposure Criteria**
Mesothelioma (Level VII)	$55,000	(1) Diagnosis[7] of mesothelioma, and (2) Yarway Exposure as defined in Section 5.7(b)(3) below.
Lung Cancer 1 (Level VI)	$17,500	(1) Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease[8], (2) six months Yarway Exposure prior to December 31, 1982, (3) Significant Occupational Exposure[9] to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

[7] 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.

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

[9] The term "Significant Occupational Exposure" is defined in Section 5.7(b)(2) below.

Disease Level	**Scheduled Value**	**Medical/Exposure Criteria**
Lung Cancer 2 (Level V)	None	(1) Diagnosis of a primary lung cancer; (2) Yarway Exposure prior to December 31, 1982, and (3) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question. Lung Cancer 2 (Level V) claims are claims that do not meet the more stringent medical and/or exposure requirements of Lung Cancer 1 (Level VI) claims. All claims in this Disease Level shall be individually evaluated. The estimated likely average of the individual evaluation awards for this category is $5,000, with such awards capped at $15,000 unless the claim qualifies for Extraordinary Claim treatment. Level V claims that show no evidence of either an underlying Bilateral Asbestos-Related Nonmalignant Disease or Significant Occupational Exposure may be individually evaluated, although it is not expected that such claims shall be treated as having any significant value, especially if the claimant is also a Smoker.[10] In any event, no presumption of validity shall be available for any claims in this category.
Other Cancer (Level IV)	$5,000	(1) Diagnosis of a primary colo-rectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, (2) six months Yarway Exposure prior to December 31,

[10] There is no distinction between Non-Smokers and Smokers for either Lung Cancer 1 (Level VI) or Lung Cancer 2 (Level V), although a claimant who meets the more stringent requirements of Lung Cancer 1 (Level VI) (evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease plus Significant Occupational Exposure), and who is also a Non-Smoker, may wish to have his or her claim individually evaluated by the Asbestos PI Trust. In such a case, absent circumstances that would otherwise reduce the value of the claim, it is anticipated that the liquidated value of the claim might well exceed the $17,500 Scheduled Value for Lung Cancer 1 (Level VI) shown above. "**Non-Smoker**" means a claimant who either (a) never smoked or (b) has not smoked during any portion of the twelve (12) years immediately prior to the diagnosis of the lung cancer. A "**Smoker**" is a claimant who does not qualify as a Non-Smoker.

Disease Level	Scheduled Value	Medical/Exposure Criteria
		1982, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.
Severe Asbestosis (Level III)	$10,000	(1) Diagnosis of asbestosis with ILO[11] of 2/1 or greater, or asbestosis determined by pathological evidence of asbestos, plus (a) TLC less than 65%, or (b) FVC less than 65% and FEV1/FVC ratio greater than 65%, (2) six months Yarway Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Asbestosis/Pleural Disease (Level II)	$2,000	(1) Diagnosis of Bilateral Asbestos-Related Nonmalignant Disease, plus (a) TLC less than 80%, or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%, and (2) six months Yarway Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Asbestosis/Pleural Disease (Level I)	$500	(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease, (2) six months Yarway Exposure prior to December 31, 1982, and (3) five years cumulative occupational exposure to asbestos.

[11] If the diagnostic images being interpreted in such regard are digital images, then a written report by a Qualified Physician confirming that the images reviewed are with reasonable certainty equivalent to those that would qualify for the required ILO grade shall be acceptable as well.

5.3(b) Individual Review Process.

5.3(b)(1) In General. Subject to the provisions set forth below, a claimant may elect to have his or her Asbestos Personal Injury Claim reviewed for purposes of determining whether the claim would be cognizable and valid in the tort system even though it does not meet the presumptive Medical/Exposure Criteria for any of the Disease Levels set forth in Section 5.3(a)(3) above.[12] In addition or alternatively, a claimant may elect to have a claim undergo the Individual Review Process for purposes of determining whether the liquidated value of a claim involving Disease Levels III, IV, VI, or VII exceeds the Scheduled Value for the relevant Disease Level also set forth in said provision. However, until such time as the Asbestos PI Trust has made an offer on such claim pursuant to Individual Review, the claimant may change his or her Individual Review election and have the claim liquidated pursuant to the Asbestos PI Trust's Expedited Review Process (except those claims involving Lung Cancer 2 – Disease Level V, secondary exposure claims (as described in Section 5.5 below) and Foreign Claims, which shall only be liquidated pursuant to the Asbestos PI Trust's Individual Review Process). In the event of such a change in the processing election, the claimant shall nevertheless retain his or her place in the FIFO Processing Queue.

The liquidated value of all Foreign Claims payable under this TDP shall be established only under the Asbestos PI Trust's Individual Review Process. Asbestos Personal Injury Claims of individuals exposed in Canada who were resident in Canada when such claims were filed ("**Canadian Claims**") shall not be considered Foreign Claims hereunder and shall be eligible for

[12] Under this provision, an Asbestos Personal Injury Claim that does not include evidence of exposure prior to December 31, 1982, as set forth in the Significant Occupational Exposure or Yarway Exposure provisions below, may still undergo the Individual Review Process for purposes of determining whether such claim would be cognizable and valid in the tort system.

liquidation under, at the claimant's election, either the Expedited Review Process or the Individual Review Process. Accordingly, a "**Foreign Claim**" is an Asbestos Personal Injury Claim with respect to which the claimant's exposure to an asbestos-containing product or conduct for which the Debtor has legal responsibility occurred outside of the United States and its Territories and Possessions, and outside of the Provinces and Territories of Canada.[13]

In reviewing Foreign Claims, the Asbestos PI Trust shall take into account all relevant procedural and substantive legal rules to which the claims would be subject in the Claimant's Jurisdiction as defined in Section 5.3(b)(2) below. The Asbestos PI Trust shall determine the liquidated value of Foreign Claims based on historical settlements and verdicts in the Claimant's Jurisdiction as well as the other valuation factors set forth in Section 5.3(b)(2) below.

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

At such time as the Asbestos PI Trust has sufficient historical settlement, verdict and other valuation data for claims from a particular foreign jurisdiction, the Trustee, with the

[13] Notwithstanding any other provision of the TDP, all issues related to Foreign Claims shall be agreed to by the Trustee, the TAC and the FCR.

consent of the TAC and the FCR, may also establish a separate valuation matrix for any such Foreign Claims based on that data.

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

5.3(b)(1)(B) Review of Liquidated Value. Claimants holding claims in Disease Levels III–VII shall also be eligible to seek Individual Review of the liquidated value of their claims, as well as of their medical/exposure evidence. The Individual Review Process is intended to result in payments equal to the full liquidated value for each claim multiplied by the Payment Percentage; however, the liquidated value of any Asbestos Personal 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 a claim involving Disease Levels III–VII shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(b)(3) below, unless the claim meets the requirements of an Extraordinary Claim described in Section 5.4(a) below, in which case its liquidated value cannot exceed the maximum extraordinary value set forth in that provision for such claims. Because the detailed examination and valuation process pursuant to Individual Review may require additional time and effort, claimants electing to undergo the Individual

Review Process may be paid the liquidated value of their Asbestos Personal Injury Claims later than would have been the case had the claimant elected the Expedited Review Process. Subject to the provisions of Section 5.8 below, the Asbestos PI Trust shall devote reasonable resources to the review of all claims to ensure that there is a reasonable balance maintained in reviewing all classes of claims.

5.3(b)(2) Valuation Factors to Be Considered in Individual Review. The Asbestos PI Trust shall liquidate the value of each Asbestos Personal Injury Claim that undergoes Individual Review based on the historic liquidated values of other similarly situated claims in the tort system for the same Disease Level. The Asbestos PI Trust shall thus take into consideration all of the factors that affect the severity of damages and values within the tort system including, but not limited to, credible evidence of (i) the degree to which the characteristics of a claim differ from the presumptive Medical/Exposure Criteria for the Disease Level in question; (ii) factors such as the claimant's age, disability, employment status, disruption of household, family or recreational activities, dependents, special damages, and pain and suffering; (iii) whether the claimant's damages were caused by asbestos exposure, including exposure to the Yarway Product Lines, as defined in Section 5.7(b)(3) hereof, prior to December 31, 1982 (for example, alternative causes, and the strength of documentation of injuries); (iv) the industry of exposure; (v) settlement and verdict histories and other law firms' experience in the Claimant's Jurisdiction for similarly situated claims; and (vi) settlement and verdict histories for the claimant's law firm for similarly situated claims. Where the claimant's law firm submits clear and convincing evidence to the Asbestos PI Trust, and the Trustee determines, in his or her sole discretion, that the claimant's law firm, prior to the Petition Date, played a substantial role in the prosecution, trial and resolution of asbestos personal injury claims against the Debtor in

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

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

With respect to the "Claimant's Jurisdiction" in the event a personal representative or authorized agent makes a claim under this TDP for wrongful death with respect to which the governing law of the Claimant's Jurisdiction could only be the Alabama Wrongful Death Statute, the Claimant's Jurisdiction for such claim shall be the Commonwealth of Pennsylvania, and such

claimant's damages shall be determined pursuant to the statutory and common laws of the Commonwealth of Pennsylvania without regard to its choice of law principles. The choice of law provision in Section 7.4 below applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant's Jurisdiction pursuant to Section 5.3(b)(2) is determined to be the Alabama Wrongful Death Statute, shall only govern the rights between the Asbestos PI Trust and the claimant, and, to the extent the Asbestos PI Trust seeks recovery from any entity that provided insurance coverage to the Debtor, the Alabama Wrongful Death Statute shall govern.

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

Scheduled Disease	Scheduled Value	Average Value	Maximum Value
Mesothelioma (Level VII)	$55,000	$80,000	$150,000
Lung Cancer 1 (Level VI)	$17,500	$20,000	$40,000
Lung Cancer 2 (Level V)	None	$5,000	$15,000
Other Cancer (Level IV)	$5,000	$6,000	$15,000
Severe Asbestosis (Level III)	$10,000	$12,000	$20,000
Asbestosis/Pleural Disease (Level II)	$2,000	None	None
Asbestosis/Pleural Disease (Level I)	$500	None	None

These Scheduled Values, Average Values and Maximum Values shall apply to all Trust Voting Claims other than Pre-Petition Liquidated Claims filed with the Asbestos PI Trust on or before the Initial Claims Filing Date as provided in Section 5.1 above. Thereafter, the Asbestos

PI Trust, with the consent of the TAC and the FCR 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 Asbestos Personal Injury Claims as Extraordinary and/or Exigent Hardship.

5.4(a) Extraordinary Claims. "**Extraordinary Claim**" means an Asbestos Personal Injury Claim that otherwise satisfies the Medical Criteria for Disease Levels I–VII, and that is held by a claimant whose exposure to asbestos (i) occurred predominantly as a result of working in a manufacturing facility of the Debtor or Gimpel Corporation, a Delaware corporation ("**Gimpel**") during a period in which the Debtor or Gimpel was manufacturing asbestos-containing products at that facility, or (ii) was at least 75% the result of Yarway Exposure (as defined in Section 5.7(b)(3) below), and in either case there is little likelihood of a substantial recovery elsewhere. All such Extraordinary Claims shall be presented for Individual Review and, if valid, shall be entitled to an award of up to a maximum extraordinary value of five (5) times the Scheduled Value set forth in Section 5.3(b)(3) above for claims qualifying for Disease Levels I–IV, VI and VII, and five (5) times the Average Value for claims in Disease Level V, in either case multiplied by the applicable Payment Percentage. The Trustee may ask that a holder of an Extraordinary Claim provide the Asbestos PI Trust with evidence of all recoveries from other asbestos trusts and all asbestos-related recoveries from other defendants. If a claimant submits such evidence, the Asbestos PI Trust shall preserve the confidentiality of the submission as provided in Section 6.5 below.

Any dispute as to Extraordinary Claim status shall be submitted to a special Extraordinary Claims panel established by the Asbestos PI Trust with the consent of the TAC

and the FCR (the "**Extraordinary Claims Panel**"). All decisions of the Extraordinary Claims Panel shall be final and not subject to any further administrative or judicial review. An Extraordinary Claim, following its liquidation, shall be placed in the FIFO Payment Queue ahead of all other Asbestos Personal Injury Claims, except Pre-Petition Liquidated Claims, Existing Claims and Exigent Hardship Claims, based on its date of liquidation and shall be paid subject to the Maximum Available Payment and Claims Payment Ratio described above.

5.4(b) Exigent Hardship Claims. At any time the Asbestos PI Trust may liquidate and pay Asbestos Personal 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 Asbestos Personal Injury Claims except Pre-Petition Liquidated Claims and Existing Claims, which claims, together with the Exigent Hardship Claims, shall be paid in accordance with the provisions of Section 2.4 hereof. An Asbestos Personal Injury Claim qualifies for payment as an Exigent Hardship Claim if the claim meets the Medical/Exposure Criteria for Severe Asbestosis (Disease Level III) or an asbestos-related malignancy (Disease Levels IV–VII), and the Asbestos PI Trust, in its sole discretion, determines that (i) the claimant needs financial assistance on an immediate basis based on the claimant's expenses and all sources of available income, and (ii) 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 for the claimant's Disease Level that would have been applicable had the occupationally exposed person filed a direct claim against the Asbestos PI Trust. In addition, the claimant with secondary exposure must establish that he or she is suffering from one of the seven Disease Levels described in Section 5.3(a)(3) above or an asbestos-related disease otherwise compensable under this TDP, that his or her own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person was exposed to asbestos or asbestos-containing products manufactured, produced or distributed by the Debtor or to conduct for which the Debtor has legal responsibility, and that such secondary exposure was a cause of the claimed disease. If the claimant establishes the elements called for in this Section 5.5, the Asbestos PI Trust shall offer the claimant the Scheduled Value for the applicable Disease Level unless the claimant is seeking review of the liquidated value of the claim pursuant to Section 5.3(b)(1) hereof. All other liquidation and payment rights and limitations under this TDP shall be applicable to such claims.

5.6 Indirect Asbestos Personal Injury Claims. An Indirect Asbestos Personal Injury Claim asserted against the Asbestos PI Trust shall be treated as presumptively valid and paid by the Asbestos PI Trust subject to the applicable Payment Percentage if (a) such claim satisfied the requirements of any bar date for such claim established by the Bankruptcy Court, if applicable, and is not otherwise disallowed by Section 502(e) of the Code or subordinated under Section 509(c) of the Code, (b) the holder of such claim (the "**Indirect Claimant**") establishes to the satisfaction of the Trustee that (i) the Indirect Claimant has paid in full the liability and obligation of the Asbestos PI Trust to the individual claimant to whom the Asbestos PI Trust would otherwise have had a liability or obligation under this TDP (the "**Direct Claimant**"),

(ii) the Direct Claimant and the Indirect Claimant have forever and fully released the Asbestos PI Trust and the "**Released Parties**" (as defined in the Asbestos Personal Injury Claimant Release attached hereto as Exhibit A) from all liability to the Direct Claimant, and (iii) the claim is not otherwise barred by a statute of limitation and repose or by other applicable law and (c) the Asbestos PI Trust has not yet paid the Direct Claimant. In no event shall any Indirect Claimant have any rights against the Asbestos PI Trust superior to the rights of the related Direct Claimant against the Asbestos PI Trust, including any rights with respect to the timing, amount or manner of payment. In addition, no Indirect Asbestos Personal Injury Claim may be liquidated and paid in an amount that exceeds what the Indirect Claimant has actually paid the related Direct Claimant.

To establish a presumptively valid Indirect Asbestos Personal 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 Asbestos PI Trust and the Released Parties) or a Final Order (as defined in the Plan) and such claim must be valid under the applicable state law. In any case where the Indirect Claimant has satisfied the claim of a Direct Claimant against the Asbestos PI Trust under applicable law by way of a settlement, the Indirect Claimant shall obtain for the benefit of the Asbestos PI Trust a release in form and substance satisfactory to the Trustee and the Released Parties.

If an Indirect Claimant cannot meet the presumptive requirements set forth above, including the requirement that the Indirect Claimant provide the Asbestos PI Trust with a full release of the Direct Claimant's claim, the Indirect Claimant may request that the Asbestos PI Trust review the Indirect Asbestos Personal Injury Claim individually to determine whether the

Indirect Claimant can establish under applicable state law that the Indirect Claimant has paid all or a portion of a liability or obligation that the Asbestos PI Trust had to the Direct Claimant. If the Indirect Claimant can show that it has paid all or a portion of such a liability or obligation and the Asbestos PI Trust has not already paid the Direct Claimant, the Asbestos PI Trust shall reimburse the Indirect Claimant the amount of the liability or obligation so paid, multiplied by the then applicable Payment Percentage. However, in no event shall such reimbursement to the Indirect Claimant be greater than the amount to which the Direct Claimant would have otherwise been entitled under this TDP. Further, the liquidated value of any Indirect Asbestos Personal Injury Claim paid by the Asbestos PI Trust to an Indirect Claimant shall be treated as an offset to or reduction of the full liquidated value of any Asbestos Personal Injury Claim that might be subsequently asserted by the Direct Claimant against the Asbestos PI Trust.

Any dispute between the Asbestos PI Trust and an Indirect Claimant over whether the Indirect Claimant has a right to reimbursement for any amount paid to a Direct Claimant shall be subject to the ADR Procedures provided in Section 5.10 below. If such dispute is not resolved by said ADR Procedures, the Indirect Claimant may litigate the dispute in the tort system pursuant to Sections 5.11 and 7.5 below.

The Trustee may develop and approve a separate proof of claim form for Indirect Asbestos Personal Injury Claims. Indirect Asbestos Personal Injury Claims that have not been disallowed, discharged, or otherwise resolved by prior order of the Bankruptcy Court shall be processed in accordance with procedures to be developed and implemented by the Trustee consistent with the provisions of this Section 5.6, which procedures shall (a) determine the validity, acceptability and enforceability of such claims; and (b) otherwise provide the same

liquidation and payment procedures and rights to the holders of such claims as the Asbestos PI Trust would have afforded the holders of the underlying valid Asbestos Personal Injury Claims.

5.7 Evidentiary Requirements.

5.7(a) Medical Evidence.

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

5.7(a)(1)(A) Disease Levels I–III. Except for asbestos claims filed against the Debtor or any other defendant in the tort system prior to the Petition Date, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I–III) shall be based, in the case of a claimant who was living at the time the claim was filed, upon a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease. All living claimants must also provide (i) for Disease Levels I–II, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 8 above); (ii) for Disease Level III, an ILO reading of 2/1 or greater or pathological evidence of asbestosis; and (iii) for Disease Levels II and III, pulmonary function testing.[14,15]

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[14] All diagnoses of Asbestos/Pleural Disease (Disease Levels I and II) not based on pathology shall be presumed to be based on findings of bilateral asbestosis or pleural disease, and all diagnoses of Mesothelioma (Disease Level VII) shall be presumed to be based on findings that the disease involves a malignancy. However, the Asbestos PI Trust may rebut such presumptions.

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–III) shall be based upon (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease; (ii) pathological evidence of the non-malignant asbestos-related disease; or (iii) in the case of Disease Levels I–II, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 8 above), and for Disease Level III, either an ILO reading of 2/1 or greater or pathological evidence of asbestosis; and (iv) for either Disease Level II or III, pulmonary function testing.

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

5.7(a)(1)(C) Exception to the Exception for Certain Pre-Petition Claims. If the holder of an Asbestos Personal Injury Claim that was filed against the

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

Debtor or any other defendant in the tort system prior to the Petition Date has available a report of a diagnosing physician engaged by the holder or his or her law firm who conducted a physical examination of the holder as described in Sections 5.7(a)(1)(A) above, or if the holder has filed such medical evidence and/or a diagnosis of the asbestos-related disease by a physician not engaged by the holder or his or her law firm who conducted a physical examination of the holder with another asbestos-related personal injury settlement trust that requires such evidence, without regard to whether the claimant or the law firm engaged the diagnosing physician, the holder shall provide such medical evidence and/or diagnosis to the Asbestos PI Trust notwithstanding the exception in Section 5.7(a)(1)(A) above.

5.7(a)(2) Credibility of Medical Evidence. Before making any payment to a claimant, the Asbestos PI Trust must have reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical standards. The Asbestos PI Trust may require the submission of X-rays, CT scans, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examinations or reviews of other medical evidence, and may require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods and procedures to assure that such evidence is reliable. Medical evidence (i) that is of a kind shown to have been received in evidence by a state or federal judge at trial, (ii) that is consistent with evidence submitted to the Debtor to settle for payment similar disease cases prior to the Petition Date, or (iii) that is a diagnosis by a physician shown to have previously qualified as a medical expert with respect to the asbestos-related disease in question before a state, federal or foreign judge, is presumptively reliable, although the Asbestos PI Trust may seek to rebut the presumption. Notwithstanding the foregoing or any other provision of these TDP, any medical evidence

submitted by a physician or entity that the Asbestos PI Trust has determined, after consulting with the TAC and the FCR, to be unreliable shall not be acceptable as medical evidence in support of any Asbestos Personal Injury Trust Claim. In addition, claimants who otherwise meet the requirements of this TDP for payment of an Asbestos Personal Injury Claim shall be paid irrespective of the results in any litigation at any time between the claimant and any other defendant in the tort system. However, any relevant evidence submitted in a proceeding in the tort system, other than any findings of fact, a verdict, or a judgment involving another defendant, may be introduced by either the claimant or the Asbestos PI Trust in any Individual Review proceeding conducted pursuant to Section 5.3(b) above or any Extraordinary Claim proceeding conducted pursuant to Section 5.4(a) above.

5.7(b) Exposure Evidence.

5.7(b)(1) In General. As set forth above in Section 5.3(a)(3), to qualify for any Disease Level, the claimant must demonstrate a minimum exposure to the Yarway Product Lines, as defined in Section 5.7(b)(3) hereof. Claims based on conspiracy theories that involve no such exposure to the Yarway Product Lines are not compensable under this TDP. To meet the presumptive exposure requirements of Expedited Review set forth in Section 5.3(a)(3) above, the claimant must show (i) for all Disease Levels, Yarway Exposure as defined in Section 5.7(b)(3) below prior to December 31, 1982; (ii) for Asbestos/Pleural Disease Level I, six (6) months Yarway Exposure prior to December 31, 1982, plus five (5) years cumulative occupational asbestos exposure; and (iii) for Asbestosis/Pleural Disease (Disease Level II), Severe Asbestosis (Disease Level III), Other Cancer (Disease Level IV) or Lung Cancer 1 (Disease Level VI), six (6) months Yarway Exposure prior to December 31, 1982, plus Significant Occupational Exposure to asbestos. If the claimant cannot meet the relevant

presumptive exposure requirements for a Disease Level eligible for Expedited Review, the claimant may seek Individual Review pursuant to Section 5.3(b) above of his or her claim based on exposure to the Yarway Product Lines.

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

5.7(b)(3) Yarway Exposure. The claimant must demonstrate meaningful and credible exposure, which occurred prior to December 31, 1982, to the Yarway Product Lines ("**Yarway Exposure**"). That meaningful and credible exposure evidence may be established by an affidavit or sworn statement of the claimant, a co-worker, or a family member in the case of a deceased claimant (providing the Asbestos PI Trust finds such evidence reasonably reliable), by invoices, employment, construction or similar records, or by other credible evidence. The specific exposure information required by the Asbestos PI Trust to process a claim under either Expedited or Individual Review shall be set forth on the proof of claim form to be used by the Asbestos PI Trust. The Asbestos PI Trust may also require submission of other or additional evidence of exposure when it deems such to be necessary.

"**Yarway Product Lines**" means asbestos-containing products, equipment, components, parts, improvements to real property, or materials engineered, designed, marketed, manufactured, constructed, sold, supplied, produced, installed, maintained, serviced, specified, selected, repaired, removed, replaced, released, distributed, or in any way used by Yarway (including, without limitation, Gimpel), including without limitation any of those products manufactured, sold or distributed by (a) Yarway Corporation (a Pennsylvania corporation), the statutory predecessor to Yarway, (b) Gimpel Corporation (f/k/a Triple G Acquisition Corporation), a Delaware corporation, which merged into Yarway in 2000 and/or (c) Gimpel Corporation (f/k/a Gimpel Machine Works, Inc.), a Pennsylvania corporation that sold all or substantially all of its assets to Gimpel. For the avoidance of doubt, "Yarway Product Lines" does not include products, equipment, components, parts, improvements to real property, or materials engineered, designed, manufactured, constructed or produced by Grinnell Corporation, Mueller Company, Anderson, Greenwood & Co., Kunkle Valve Company Inc., The Henry Pratt Company, or any other Non-Debtor Affiliate, or any Representative of any of the foregoing Entities.

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

5.8 Claims Audit Program. The Asbestos PI Trust, with the consent of the TAC and the FCR, 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 the Yarway Product Lines prior to December 31, 1982. In the event that the Asbestos PI Trust reasonably determines that any individual or entity has engaged in a pattern or practice of providing unreliable medical or exposure evidence to the Asbestos PI Trust, it may decline to accept additional evidence from such provider in the future.

Further, in the event that an audit reveals that fraudulent information has been provided to the Asbestos PI Trust, the Asbestos PI Trust may penalize any claimant or claimant's attorney by rejecting the Asbestos Personal 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 Personal 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. Notwithstanding the provisions of Section 2.1 above that a claimant may not assert more than one Asbestos Personal Injury Claim hereunder, the holder of an Asbestos Personal Injury Claim involving a non-malignant asbestos-related disease (Disease Levels I–III) may assert a new Asbestos Personal Injury Claim against the Asbestos PI Trust for a malignant disease (Disease Levels IV–VII) that is subsequently diagnosed. Any additional payments to which such claimant may be entitled with respect to such

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

5.10 Arbitration.

5.10(a) Establishment of ADR Procedures. The Trustee, with the consent of the TAC and the FCR, shall establish binding and non-binding arbitration procedures, as part of the Alternative Dispute Resolution ("**ADR**") Procedures to be established by the Trustee with the consent of the TAC and the FCR, for resolving disputes concerning whether a pre-petition settlement agreement with the Debtor is binding and judicially enforceable in the absence of a Final Order of the Bankruptcy Court determining the issue, whether the Asbestos PI Trust's rejection or denial of a claim was proper, or whether the claimant's medical condition or exposure history meets the requirements of this TDP for purposes of categorizing a claim involving Disease Levels I–VII. Binding and non-binding arbitration shall also be available for resolving disputes over the liquidated value of a claim, as well as disputes over the Debtor's share of the unpaid portion of a Pre-Petition Liquidated Claim described in Section 5.2 above and disputes over the validity of an Indirect Asbestos Personal Injury Claim.

In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in Section 5.7 above. In the case of an arbitration involving the liquidated value of a claim involving Disease Levels III–VII, the arbitrator shall consider the same valuation factors that are set forth in Section 5.3(b)(2) above. In order to facilitate the Individual Review Process with respect to such claims, the Asbestos PI Trust may develop a valuation model that enables the Asbestos PI Trust to efficiently make initial liquidated value offers on those claims in the Individual Review setting. In an arbitration involving any such claim, the Asbestos

PI Trust shall neither offer into evidence or describe any such model nor assert that any information generated by the model has any evidentiary relevance or should be used by the arbitrator in determining the presumed correct liquidated value in the arbitration. The underlying data that was used to create the model may be relevant and may be made available to the arbitrator but only if provided to the claimant or his or her counsel ten (10) days prior to the arbitration proceeding. With respect to all claims eligible for arbitration, the claimant, but not the Asbestos PI Trust, may elect either non-binding or binding arbitration. The ADR Procedures may be modified by the Asbestos PI Trust with the consent of the TAC and the FCR.

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

5.10(c) Limitations on and Payment of Arbitration Awards. In the case of a non-Extraordinary Claim involving Disease Level I or II, the arbitrator shall not return an award in excess of the Scheduled Value for such claim. In the case of a non-Extraordinary Claim involving Disease Levels III–VII, the arbitrator shall not return an award in excess of the Maximum Value for the appropriate Disease Level as set forth in Section 5.3(a)(3) above, and for an Extraordinary Claim involving any Disease Level, the arbitrator shall not return an award greater than the maximum extraordinary value for such a claim as set forth in Section 5.4(a) above. A claimant

who submits to arbitration and who accepts the arbitral award shall receive payments in the same manner as one who accepts the Asbestos PI Trust's original valuation of the claim.

5.11 Litigation. Claimants who elect non-binding arbitration and then reject their arbitral awards retain the right to institute a lawsuit in the tort system against the Asbestos PI Trust pursuant to Section 7.5 below. However, a claimant shall be eligible for payment of a judgment for monetary damages obtained in the tort system from the Asbestos PI Trust's available cash only as provided in Section 7.6 below.

SECTION VI

Claims Materials

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

6.2 Content of Claims Materials. The Claims Materials shall include a copy of this TDP, such instructions as the Trustee shall approve, and a detailed proof of claim form. If feasible, the forms used by the Asbestos PI Trust to obtain claims information shall be the same or substantially similar to those used by other asbestos claims resolution organizations. If requested by the claimant, the Asbestos PI Trust shall accept information provided electronically. The claimant may, but shall not be required to, provide the Asbestos PI Trust with evidence of recovery from other defendants and claims resolution organizations; provided, however, that if a claim is an Extraordinary Claim and the Trustee requests such information pursuant to the provisions of Section 5.4(a) above, the claimant shall be required to provide such evidence to the Asbestos PI Trust.

6.3 Withdrawal or Deferral of Claims. A claimant can withdraw an Asbestos Personal Injury Claim at any time upon written notice to the Asbestos PI Trust and file another claim subsequently without affecting the status of the claim for purposes of statutes of limitations or repose, 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 Personal Injury Claim by the Asbestos PI Trust be deferred for a period not to exceed three (3) years without affecting the status of the claim for statute of limitations purposes, in which case the claimant shall also retain his or her original place in the FIFO Processing Queue. Except for Asbestos Personal Injury Claims held by representatives of deceased or incompetent claimants for which court or probate approval of the Asbestos PI Trust's offer is required, or an Asbestos Personal Injury Claim for which deferral status has been granted, a claim shall be deemed to have been withdrawn if the claimant neither accepts, rejects, nor initiates arbitration within six (6) months of the Asbestos PI Trust's written offer of payment

or rejection of the claim. Upon written request and good cause, the Asbestos PI Trust may extend the withdrawal or deferral period for an additional six (6) months.

6.4 Filing Requirements and Fees. The Trustee shall have the discretion to determine, with the consent of the TAC and the FCR, whether a filing fee should be required for any Asbestos Personal Injury Claims.

6.5 Confidentiality of Claimants' Submissions. All submissions to the Asbestos PI Trust by a holder of an Asbestos Personal Injury Claim, including 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 Asbestos PI Trust, and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including but not limited to those directly applicable to settlement discussions. The Asbestos PI Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only (i) with the permission of the holder, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) of the Bankruptcy Code or other applicable law, (ii) to such other persons as authorized by the holder or (iii) in response to a valid subpoena of such materials issued by a Delaware State Court or the United States District Court for the District of Delaware. Furthermore, the Asbestos PI Trust shall provide counsel for the holder a copy of any such subpoena immediately after being served. The Asbestos PI Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privileges before a Delaware State Court or the United States District Court for the District of Delaware and before those courts having appellate jurisdiction related thereto**.** Notwithstanding anything in the foregoing to the contrary, with the consent of the TAC and the FCR, the Asbestos PI Trust may, in specific limited circumstances, disclose information, documents or other

materials reasonably necessary in the Asbestos PI Trust's judgment to preserve, litigate, resolve, or settle coverage, or to comply with an applicable obligation under an insurance policy or settlement agreement within the Asbestos Personal Injury Trust Assets; provided, however, that the Asbestos PI Trust shall take any and all steps reasonably feasible in its judgment to preserve the further confidentiality of such information, documents and materials, and prior to the disclosure of such information, documents or materials to a third party, the Asbestos PI Trust shall receive from such third party a written agreement of confidentiality that (a) ensures that the information, documents and materials provided by the Asbestos PI Trust shall be used solely by the receiving party for the purpose stated in the agreement and (b) prohibits any other use or further dissemination of the information, documents and materials by the third party except as set forth in the written agreement of confidentiality. Nothing in this TDP, the Plan or the Trust Agreement expands, limits or impairs the obligation under applicable law of a claimant to respond fully to lawful discovery in any underlying civil action regarding his or her submission of factual information to the Asbestos PI Trust for the purpose of obtaining compensation for asbestos-related injuries from the Asbestos PI Trust.

6.6 English Language. All claims, claim forms, submissions, and evidence submitted to the Asbestos PI Trust or in connection with any claim or its liquidation shall be in the English language.

SECTION VII

General Guidelines for Liquidating and Paying Claims

7.1 Showing Required. To establish a valid Asbestos Personal Injury Claim, a claimant must meet the requirements set forth in this TDP. The Asbestos PI Trust may require the submission of X-rays, CT scans, laboratory tests, medical examinations or reviews, other

medical evidence or any other evidence to support or verify the Asbestos Personal Injury 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 Trustee shall always give appropriate consideration to the cost of investigating and uncovering invalid Asbestos Personal Injury Claims so that the payment of valid Asbestos Personal Injury Claims is not further impaired by such processes with respect to issues related to the validity of the medical evidence supporting an Asbestos Personal Injury Claim. The Trustee shall also have the latitude to make judgments regarding the costs to be expended by the Asbestos PI Trust so that valid Asbestos Personal Injury Claims are not unduly further impaired by the costs of additional investigation. Nothing herein shall prevent the Trustee, in appropriate circumstances, from contesting the validity of any claim against the Asbestos PI Trust whatever the costs, or declining to accept medical evidence from sources that the Trustee has determined to be unreliable pursuant to any claims audit program implemented pursuant to Section 5.8 above, or otherwise.

7.3 Discretion to Vary the Order and Amounts of Payments in Event of Limited Liquidity. Consistent with the provisions hereof and subject to the FIFO Processing and Payment Queues, the Maximum Annual Payment, the Maximum Available Payment and the Claims Payment Ratio requirements set forth above, the Trustee shall proceed as quickly as possible to liquidate valid Asbestos Personal 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 Asbestos PI Trust's income and liabilities over time remain uncertain, and decisions about payments must be based on estimates that cannot be done precisely, such decisions may have to be revised in light of experiences over time, and there can be no guarantee of any specific level of payment to claimants. However, the Trustee shall use his or her best efforts to treat similar claims in substantially the same manner, consistent with his or her duties as Trustee, the purposes of the Asbestos PI Trust, the established allocation of funds to claims in Categories A and B and the practical limitations imposed by the inability to predict the future with precision.

In the event that the Asbestos PI Trust faces temporary periods of limited liquidity, the Trustee may, with the consent of the TAC and the FCR, (a) suspend the normal order of payment, (b) temporarily limit or suspend payments altogether, (c) offer a Reduced Payment Option as described in Section 2.5 above and/or (d) commence making payments on an installment basis.

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

Similarly, no punitive or exemplary damages shall be payable with respect to any claim litigated against the Asbestos PI Trust in the tort system pursuant to Sections 5.11 above and 7.5 below. The only damages that may be awarded pursuant to this TDP to Alabama Claimants who

are deceased and whose personal representatives pursue their claims only under the Alabama Wrongful Death Statute shall be compensatory damages determined pursuant to the statutory and common law of the Commonwealth of Pennsylvania, without regard to its choice of law principles. The choice of law provision in this Section 7.4 applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant's Jurisdiction pursuant to Section 5.3(b)(2) is determined to be the Alabama Wrongful Death Statute, shall only govern the rights between the Asbestos PI Trust and the claimant including, but not limited to, suits in the tort system pursuant to Section 7.5 below.

7.5 Suits in the Tort System. If the holder of a disputed claim disagrees with the Asbestos PI Trust's determination regarding the Disease Level of the claim, the claimant's exposure or medical history, the validity of the claim 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 against the Asbestos PI Trust 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 Asbestos PI Trust, all defenses which could have been asserted by the Debtor, except as otherwise provided in the Plan) shall be available to both sides at trial; however, the Asbestos PI Trust may waive any defense and/or concede any issue of fact or law. If the claimant was alive at the time the initial pre-petition complaint was filed or on the date the proof of claim form was filed with the Asbestos PI Trust, the case shall be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim.

7.6 Payment of Judgments for Money Damages. If and when a claimant obtains a judgment in the tort system, the claim shall be placed in the FIFO Payment Queue based on the date on which the judgment became final. Thereafter, the claimant shall receive from the Asbestos PI Trust an initial payment (subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment and the Claims Payment Ratio provisions set forth above) of an amount equal to the greater of (i) the Asbestos PI Trust's last offer to the claimant or (ii) the award that the claimant declined in non-binding arbitration; provided, however, that in no event shall such payment amount exceed the amount of the judgment obtained in the tort system. The claimant shall receive the balance of the judgment, if any, in five (5) equal installments in years six (6) through ten (10) following the year of the initial payment (also subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment and the Claims Payment Ratio provisions above in effect on the date of the payment of the subject installment).

In the case of a non-Extraordinary Claim involving Disease Level I or II, the total amount paid with respect to such claim shall not exceed the Scheduled Value for such Disease Level as set forth in Section 5.3(b)(3) above. In the case of a claim that does not attain classification under a Disease Level, the amount payable shall not exceed the Scheduled Value for the Disease Level most comparable to the disease proven. In the case of non-Extraordinary Claims involving Disease Levels III-VII, the total amounts paid with respect to such claims shall not exceed the Maximum Values for such Disease Levels set forth in Section 5.3(b)(3). In the case of Extraordinary Claims, the total amounts paid with respect to such claims shall not exceed the maximum extraordinary values for such claims set forth in Section 5.4(a) above. Under no

circumstances shall interest be paid under any statute on any judgments obtained in the tort system.

7.7 Releases. The Trustee shall, with the consent of the TAC and the FCR, determine the form and substance of the release to be provided to the Asbestos PI Trust. As a condition to receiving any payment from the Asbestos PI Trust, a Direct Claimant or, in the case of an Indirect Claim, an Indirect Claimant and the related Direct Claimant shall be required to execute such form of release and, in addition, the Asbestos Personal Injury Claimant Release attached hereto as Exhibit A. Notwithstanding anything to the contrary in this TDP, (i) the form of Asbestos Personal Injury Claimant Release attached hereto as Exhibit A and (ii) the requirement that the Asbestos PI Trust obtain a properly-executed Asbestos Personal Injury Claimant Release from any Direct Claimant or, in the case of an Indirect Claim, from any Indirect Claimant and the related Direct Claimant as a pre-condition to making a distribution to any Direct Claimant or Indirect Claimant shall not be modified in any way without the written consent of Tyco and Reorganized Yarway.

7.8 Third-Party Services. Nothing in this TDP shall preclude the Asbestos PI Trust from contracting with another asbestos claims resolution organization to provide services to the Asbestos PI Trust so long as decisions about the categorization and liquidated value of Asbestos Personal 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.

7.9 Asbestos PI Trust Disclosure of Information. Periodically, but not less often than once a year, the Asbestos PI Trust shall make available to claimants the number of claims by Disease Levels that have been resolved both by the Individual Review Process and by

arbitration as well as by litigation in the tort system indicating the amounts of the awards and the averages of the awards by jurisdiction.

SECTION VIII

Miscellaneous

8.1 Amendments. Except as otherwise provided herein, the Trustee 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 Trustee first obtains the consent of the TAC and the FCR 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 amend the Claims Payment Ratio is governed by the restrictions in Section 2.5 above, and the right to adjust the Payment Percentage is governed by Section 4.2 above. Nothing herein is intended to preclude the TAC or the FCR from proposing to the Trustee, in writing, amendments to this TDP. Any amendment proposed by the TAC or the FCR 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 or 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 the Debtor's obligations to any insurance company providing insurance coverage to the Debtor in respect of claims for personal injury based on exposure to an asbestos-containing product or to conduct for which the Debtor has legal responsibility, the Asbestos PI Trust with the consent of the TAC and the FCR may amend this TDP and/or the Trust Agreement to make the provisions of either or both documents consistent with the duties and obligations of the Debtor to said insurance company.

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

EXHIBIT D

Planet Depos®
We Make It Happen™

Transcript of Joseph W. Grier, III, Esquire

Date: September 3, 2020
Case: Aldrich Pump LLC, et al., In Re:

Planet Depos
Phone: 888.433.3767
Email:: transcripts@planetdepos.com
www.planetdepos.com

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

----------X
In re : Chapter 11
ALDRICH PUMP, LLC, : Case No.
et al., : 20-30608 (JCW)
----------X

VIDEOTAPED DEPOSITION
JOSEPH W. GRIER, III, ESQUIRE
CONDUCTED VIRTUALLY
THURSDAY, SEPTEMBER 3, 2020
9:59 a.m.

Job No.: 319107
Pages 1 - 128
Reported by: APRIL REID

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Videotaped Deposition of JOSEPH W. GRIER, III, ESQUIRE, held virtually. All appeared remotely.

A P P E A R A N C E S

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A P P E A R A N C E S cont'd

ALSO PRESENT:
WILL FREBURGER, Audio/Video Technician
COLLINS UKEGBU, Videographer

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* * * * *

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P R O C E E D I N G S

THE VIDEOGRAPHER: Here begins disk number one in the remote video deposition of Joseph W. Grier, III, Esquire, in the matter of In Relation: Aldrich Pump, LLC, et al, in the United States Bankruptcy Court, for the Western District of North Carolina, Charlotte Division, Chapter 11, Case No. 20-306068.

Today's date is August 3rd, 2020. The time on the video monitor is 10 a.m. The remote videographer is Collins Ukegbu, representing Planet Depos.

All participants of this video deposition are attending remotely.

Would all parties present in the video conference please voice identify themselves and state whom they represent.

MR. PHILLIPS: Sure. My name is Todd Phillips from Caplin Drysdale. I represent the Official Committee of Asbestos Personal Injury Claimants.

MR. DAVIS: Kevin Davis from Caplin Drysdale, also here on behalf of API.

MR. RAMSEY: Hi. Natalie Ramsey from Robinson & Cole, co-counsel to the Official

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Committee.

MR. HAMILTON: Robert Hamilton of Jones Day, counsel for the debtors.

MR. GUY: Jonathan Guy, Orrick, representing Mr. Grier.

MS. CAHOW: Caitlin Cahow, Jones Day, on behalf of the debtors.

THE VIDEOGRAPHER: The court reporter today is April Reid, representing Planet Depos.

Will the reporter please swear in the witness.

THEREUPON:

JOSEPH W. GRIER, III, ESQUIRE was called as a witness and, after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. PHILLIPS:

Q. Good morning, Mr. Grier.

A. Good morning, Mr. Phillips.

Q. As you know, my name is Todd Phillips and I'm with Caplin & Drysdale in Washington, D.C. and, along with Robinson Cole, we represent the Official Committee of Asbestos Personal Injury

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Claimants.
It's -- it's nice to speak with you again, Mr. Grier.
A. It's nice to speak with you.
Q. Do you have any applications open on your computer besides Zoom and the -- besides Zoom at this point?
A. Zoom. And I'm -- well, this is through -- was -- well, no. I have Office 365 open, but I can't -- it's not up -- up on the screen.
Q. Okay. Any other applications?
A. Chrome. I'm -- I -- I guess, I got here through Chrome. So only -- only -- only those applications.
Q. Okay. And is your cellular phone on right now?
A. It's on, but on silent.
Q. Okay. And do you have any applications currently open on your phone?
A. I don't know what open applications on the phone means.
It's -- it's silent and it's basically on so I can't see it.
Q. Okay. Thank you.

10

Is anyone else in the room with you, Mr. Grier?
A. No one else in the room.
Q. Okay. As you know, this deposition is taking place via Zoom software; that allows us to see and hear each other, but not in person, due to Covid-19 and the -- the applicable state procedures, federal procedures.
You're an attorney and you've sat through a deposition before so I expect you're generally familiar with the procedures for the deposition, Mr. Grier.
A. Yes, I am.
Q. Even though this isn't taking place in person, there is a court reporter and a videographer. The court reporter is taking down everything you say. And you were sworn in so it's like giving testimony in court except there's no judge, as you know.
I would remind you to answer your questions audibly. If you say uh-huh or make hand gestures, the reporter can't record them. So if you can keep your answers in words, that would be helpful.
If you need a break at any time, Mr.

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Grier, just let me know. I would just ask that you answer any pending question. But if you have to take a break or you need to grab water, just let us know, please.
And if you don't understand any one of my questions, please let me know and I'll do my best to rephrase it or give you a question that you do understand.
If you don't interrupt me or ask me to rephrase a question, I'll assume that you understand the question that -- that's been asked.
Is that fair?
A. That's fair.
Q. Okay. I'm going to be showing you some documents today. And the procedure is, we will move the -- we will move the exhibit, mark the exhibit and then show it on the screen. It's a little different than the format you're probably used to because we're doing this through Zoom. But we'll do our best to make it clear. And give you time to look at it. And hopefully, there won't be any technical issues by putting these on the screen. Okay?
You'll hear me referring to Grier Exhibit X, Grier Exhibit 1, Grier Exhibit 2. And

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we have the exhibit marked with the number so you'll know which document we're talking about. Okay?
A. Okay.
Q. Now, you've been deposed before; is that right?
A. That's correct.
Q. How many times?
A. Only one within recent memory, and that was by your law firm.
Q. Okay.
A. In my 40 years of experience, I've been deposed several other times.
Q. Okay. In which -- which cases have you been deposed in your career?
A. Well, you're familiar with the Fairbanks case in which your law firm deposed me.
Q. Uh-huh.
A. Other than that, I can't remember specific cases. I just know as -- as a bankruptcy lawyer and as a general lawyer, I've been deposed in a couple cases.
Q. When was the last time you were deposed, Mr. Grier?
A. Other than the Fairbanks case, I can't

13

1 **remember.**
2 Q. So since March 2019 you haven't been
3 part of any depositions where you were the
4 witness?
5 **A. No.**
6 Q. Are you represented by counsel today,
7 sir?
8 **A. Yes, I am; represented by Jonathan Guy.**
9 Q. And when did you retain Mr. Guy for this
10 matter?
11 **A. I don't know that I can pin it to an**
12 **exact date, but when there were first**
13 **conversations about me being a potential FCR I**
14 **talked to Mr. Guy and asked him if he would**
15 **represent me and he said yes.**
16 Q. Do you recall generally when that was?
17 **A. It would have been in probably late**
18 **July.**
19 Q. And where do you currently work, Mr.
20 Grier?
21 **A. I have offices in Charlotte. And the**
22 **street address is 521 East Morehead Street, Suite**
23 **440.**
24 Q. What is your current position?
25 **A. I am a practicing attorney and a member**

14

1 **of the firm.**
2 Q. And the name of that firm is? Sorry.
3 **A. Grier, Wright, Martinez.**
4 Q. Did you review the Notice of Deposition
5 that was served on your counsel, sir?
6 **A. I did.**
7 Q. We're going to mark as Exhibit 1 the
8 Notice of Deposition.
9 (THEREUPON, Grier Exhibit 1 was marked
10 for identification).
11 Q. And I've asked the court reporter to
12 mark as Ex -- Grier Exhibit Number 1 the Notice of
13 your deposition. It's dated August 28th, 2020.
14 Do you see that document, Mr. Grier?
15 **A. Yes.**
16 Q. Is this the Notice of Deposition you
17 saw?
18 **A. It appears to be. And I will take your**
19 **-- take it on your representation that it is.**
20 Q. Okay. Any reason to think it's not
21 accurate?
22 **A. No.**
23 Q. And -- and you reviewed this document;
24 correct?
25 **A. Yes.**

15

1 Q. Did you prepare for today's deposition?
2 **A. I did.**
3 Q. What did you do to prepare for the
4 deposition?
5 **A. I had conversations with my lawyer and I**
6 **reviewed a number of documents.**
7 Q. Did you meet with anyone in person or
8 through Zoom?
9 **A. We had -- I don't know that -- whether**
10 **counsel was preparing for the deposition or not.**
11 **There was one phone conference with some of the**
12 **lawyers for Jones Day in which we went over at a**
13 **very high level the request for production of**
14 **documents that you sent.**
15 **There -- I don't really believe that was**
16 **preparing for the deposition; we didn't talk about**
17 **the deposition at all.**
18 **Otherwise, I have not met with anyone in**
19 **person and not talked with anyone about my**
20 **deposition other than my lawyer.**
21 Q. Now, you said you had a phone
22 conversation with some Jones Day lawyers about
23 responding to document requests; is that right?
24 **A. Yes.**
25 Q. When was that phone conversation?

16

1 **A. That would have been -- it would have**
2 **been shortly after you sent the documents. So it**
3 **would have been after the 28th.**
4 **I think it would have been on August**
5 **21st. Let's see. No. I think it would have been**
6 **August 29th. I'm sorry. August 29th.**
7 Q. Okay. Did you review any documents to
8 prepare for the deposition today?
9 **A. I did.**
10 Q. What documents were those?
11 **A. I reviewed a number of documents. I**
12 **certainly cannot remember all of them. But I can**
13 **tell you that I reviewed the motion that has been**
14 **filed in this case to appoint me as FCR. I**
15 **reviewed the document request from you. I**
16 **reviewed my responses. I reviewed the transcript**
17 **of my deposition in March of 2019 in the Fairbanks**
18 **case. I reviewed the transcript of my testimony**
19 **in March of 2019 in that case. I reviewed the**
20 **Garlock estimation order. I reviewed the**
21 **PowerPoint presentation that Orrick and I prepared**
22 **in Garlock.**
23 **And I reviewed a -- a number of other**
24 **documents and I -- I just can't remember all the**
25 **documents I reviewed.**

17

1 Q. Okay. So those are -- the list that you
2 just gave me, those are the only documents you
3 recall reviewing?
4 **A. Those are the primary documents.**
5 **As we go along, I'm likely to say, oh,**
6 **yeah, I also looked at so-and-so. So I don't want**
7 **to -- those are certainly not all the documents I**
8 **looked at. I looked at a lot of documents.**
9 Q. Why did you look at that particular list
10 of documents?
11 **A. To -- because I thought they would be**
12 **helpful in preparing for the deposition.**
13 Q. Did anyone give you any documents to
14 review in preparation for that deposition?
15 **A. I don't -- not that I recall, no.**
16 Q. Okay. Did the Jones Day attorneys you
17 spoke with on August 29th, did they ask you to
18 review any particular documents?
19 **A. Not that I recall.**
20 Q. And you said you had a conversation with
21 Mr. Guy; is that right?
22 **A. I had several conversations with Mr.**
23 **Guy, yes.**
24 Q. Okay. Besides Mr. Guy and the Jones Day
25 lawyers, is there anyone else you talked to about

18

1 this deposition?
2 **A. I told other members of my law firm that**
3 **I was doing it, but we didn't discuss the**
4 **substance of the deposition.**
5 Q. Okay. Did you --
6 **A. Other -- otherwise, no.**
7 Q. Okay. Did you communicate via e-mail or
8 written -- other written communication with anyone
9 about this deposition?
10 **A. Not to my recollection.**
11 Q. How much time would you say you spent in
12 total preparing for this deposition today?
13 **A. I have no idea.**
14 Q. A day? Two days? An hour?
15 **A. Several -- several hours over several**
16 **days.**
17 Q. Okay.
18 **A. Several hours each over several days.**
19 Q. Okay.
20 MR. PHILLIPS: Mr. Guy, to the extent we
21 don't already have this, we'd like copies of
22 all documents that Mr. Grier has reviewed in
23 preparation for today's questioning. It
24 sounds like there are a few documents he
25 can't recall. To the extent we don't already

19

1 have those, we'd request you to produce those
2 to us. Thank you.
3 MR. GUY: Well, as the witness already
4 said, he can't remember all the documents he
5 looked at so that's going to be impossible.
6 But I can assure you that the documents
7 he looked at are all public documents,
8 they've either been filed with this court in
9 the connection with your case or in previous
10 cases. So there's nothing non-public that
11 Joe's needed to look at and that you don't
12 already have.
13 Q. Mr. Grier, when did you first learn
14 about the Aldrich, Murray bankruptcy?
15 **A. I can't give you an exact date, but**
16 **short -- shortly after it was filed.**
17 Q. And you understand when I say the
18 "Aldrich, Murray bankruptcy," that's the -- the
19 matter in which we're here today on?
20 **A. Yes.**
21 Q. So you -- you don't recall when -- the
22 first time you learned about it?
23 **A. I can't pin it down, but it would have**
24 **been shortly after it was filed.**
25 Q. How did you find out about the filing?

20

1 **A. Somebody in my law firm said, hey, did**
2 **you know there were two more -- two asbestos cases**
3 **just filed.**
4 **We're a small bar in Charlotte. When a**
5 **case like an asbestos case is filed, word gets**
6 **around pretty quickly. Lawyers in our firm are**
7 **talking to other bankruptcy lawyers every day and**
8 **we just -- we hear things like that.**
9 **But somebody in the firm said, hey, two**
10 **bankrupt -- two asbestos cases were just filed.**
11 Q. So that would have been generally around
12 the time the bankruptcies were filed?
13 **A. Shortly afterwards, yes.**
14 Q. Okay. Did you speak with anyone at that
15 time outside your firm about the bankruptcy?
16 **A. Probably spoke with Mr. Guy. Other than**
17 **Mr. Guy, no.**
18 Q. Did you have any written communications,
19 e-mails, anything of that nature with anyone
20 outside your firm, from Mr. Guy, about this --
21 this bankruptcy and when it was filed?
22 **A. No.**
23 Q. And you didn't speak with anyone besides
24 Mr. Guy and the lawyers at your firm at that time?
25 **A. Correct.**

21

1 Q. Okay. Let's -- we're going to mark as
2 Grier Exhibit 2 for identification a copy of the
3 Response of Joseph W. Grier, III, to the Official
4 Committee of Asbestos Personal Injury Claimants,
5 First Set of Requests for Production of Documents
6 Directed to Joseph W. Grier, III, a Nominee of the
7 Debtors for the Position of Future Claimants
8 Representative.
9 (THEREUPON, Grier Exhibit 2 was marked
10 for identification).
11 Q. Mr. Grier, we've displayed on the screen
12 what has been marked as Grier Exhibit Number 2.
13 Do you recognize that document?
14 **A. It looks like the document. And I'll**
15 **accept your representation that it is.**
16 Q. Okay. Do you have any reason to believe
17 it's not an accurate representation --
18 **A. I do not.**
19 Q. -- of the application?
20 **A. I do not.**
21 Q. Who assisted you with preparing these
22 responses?
23 **A. I prepared them, but I had conversations**
24 **with Mr. Guy.**
25 Q. Did the debtors, their affiliates or

22

1 counsel for the debtors or their affiliates assist
2 you with preparing these?
3 **A. My answer is no.**
4 **I told you that we had a conversation**
5 **shortly after we received it with some attorneys**
6 **for Jones Day at which we went over the request at**
7 **a very high level. And I don't count that as**
8 **having any assistance from them at all. But it**
9 **was a conversation in which we looked very briefly**
10 **at the questions and said basically what are they**
11 **getting at, generally what's the answer going to**
12 **be.**
13 Q. And this is the August 29th
14 conversation?
15 **A. Yes.**
16 Q. Okay. We'll come back to that.
17 Besides that August 29th conversation
18 with the debtors and your discussions with Mr.
19 Guy, did you discuss these responses with anyone
20 else?
21 **A. It's possible I had conversations with**
22 **other members of my firm, but they were prepared**
23 **by me.**
24 Q. Okay. I'd like to turn to page 7 of the
25 responses. Page 7 and 8 is your response to the

23

1 following request:
2 **A. Right.**
3 Q. "All communications between you and the
4 debtors or any other person related to the
5 above-captioned case" --
6 **A. Yes.**
7 Q. -- "and all documents referenced or
8 relied upon therein."
9 Do you see that, sir?
10 **A. Yes.**
11 Q. Okay. And do you see where you've
12 listed a number of telephone conversations in your
13 response --
14 **A. I do.**
15 Q. -- including the August 29th
16 conversation you referenced previously?
17 **A. I do.**
18 Q. The first conversation that you
19 reference is dated July 23rd, 2020, with R.
20 Rayburn --
21 **A. Yes.**
22 Q. -- is that correct?
23 **A. Yes.**
24 Q. Is that Rick Rayburn of Rayburn, Cooper
25 & Durham?

24

1 **A. Yes.**
2 Q. Okay. Is Mr. Durham -- I'm sorry.
3 Is Mr. Rayburn involved in the Aldrich
4 matter?
5 **A. I understand he is counsel to the**
6 **debtors.**
7 Q. Okay. How do you know Mr. Rayburn?
8 **A. Mr. Rayburn practices bankruptcy, lawyer**
9 **in Charlotte. I've been involved with him in**
10 **cases for my entire time, 40-plus years, in**
11 **Charlotte.**
12 Q. Have you worked with Mr. Rayburn on
13 other matters?
14 **A. Numerous matters, yes.**
15 Q. All right. Would -- would you consider
16 yourself personal friends with Mr. Rayburn?
17 **A. Yes.**
18 Q. Do you interact socially with him?
19 **A. Yes.**
20 Q. Okay. Let's mark as Grier Exhibit 3 for
21 identification a copy of the calendar of the 2019
22 WDNC Bankruptcy Seminar.
23 (THEREUPON, Grier Exhibit 3 was marked
24 for identification).
25 Q. At the top it says MCB Continuing Legal

25

1 Education.
2 **A. Right.**
3 Q. Do you see this, Mr. Grier?
4 **A. Yes.**
5 Q. Okay. So we've displayed what's been
6 marked as Grier Exhibit 3. Do you recognize this
7 document?
8 **A. I remember there was a seminar, a**
9 **Western District of North Carolina seminar, in**
10 **2019. It looks to be, and I'll take your**
11 **representation, that it's an accurate pamphlet**
12 **from that seminar.**
13 Q. Okay. Thank you.
14 Any reason to believe this isn't an
15 accurate reflection of the -- the itinerary for
16 the seminar?
17 **A. I have not looked at it in detail, but I**
18 **accept your representation that it is.**
19 Q. Okay. At the bottom of Grier Exhibit 3
20 there's a listing for CLE called Separating the
21 Wheat from the Chaff --
22 **A. Yes.**
23 Q. -- Client Selection. And it looks like
24 it was presented by yourself and Mr. Rayburn.
25 **A. Yes.**

26

1 Q. Did you present that CLA -- the CLE with
2 Mr. Rayburn?
3 **A. I did.**
4 Q. What was the content of that CLE?
5 **A. I mean, the title was -- was -- it had**
6 **to do with client selection in business bankruptcy**
7 **cases.**
8 **It's -- it's -- it's been awhile since**
9 **we did that. I'd have to go back and look at my**
10 **notes, if I have them, to see exactly what we**
11 **talked about.**
12 Q. Have you done other CLEs with Mr.
13 Rayburn?
14 **A. To my knowledge, that's the only one.**
15 Q. Okay. Looking back on page 7, your
16 responses --
17 **A. Yes.**
18 Q. -- this July 23rd call --
19 **A. Yes.**
20 Q. -- who initiated this call?
21 **A. Mr. Rayburn.**
22 Q. And what was the content of that July
23 23rd call?
24 **A. It was a very short call. It was, Joe,**
25 **did -- are you aware that we've recently filed two**

27

1 **asbestos bankruptcy cases, Aldrich Pump and**
2 **Murray, yes, I am; are you interested in being a**
3 **FCR, yes; we'll get back to you. That was the sum**
4 **and substance of the conversation.**
5 Q. Was that the first time you had talked
6 with anyone from the debtors or their affiliates
7 with respect to this bankruptcy?
8 **A. Yes.**
9 Q. Have you had any communications in
10 written form before this July 23rd, 2020,
11 conversation with Mr. Rayburn, with anyone from
12 the debtors or their affiliates with respect to
13 this bankruptcy?
14 **A. No.**
15 Q. So you mentioned it was a short call and
16 Mr. Rayburn asked if you had heard about the
17 bankruptcy and if you were interested in being a
18 FCR.
19 **A. Yes.**
20 Q. And -- and your response to Mr. Rayburn
21 when he asked that was?
22 **A. Yes, I would be interested.**
23 Q. Okay. Did he follow that up with
24 anything else?
25 **A. Not in that phone call. It was a very**

28

1 **brief phone call.**
2 Q. There was no other discussion during
3 that phone call?
4 Anything else?
5 It was just him asking you about your
6 knowledge of the bankruptcy and if you'd be
7 interested in FCR?
8 **A. That was it. No further discussion.**
9 Q. You next list a July 28th, 2020,
10 phone -- telephone conversation with Mr. Rayburn.
11 **A. Yes.**
12 Q. Do you see that?
13 Okay. Who initiated that call?
14 **A. Mr. Rayburn.**
15 Q. And what was the content of that call?
16 **A. It was also a very brief call. He said,**
17 **are you still interested in being the FCR, yes, I**
18 **am; okay, I'll send you an interested parties**
19 **list, take a look at it and get me a -- your**
20 **proposed declaration, please.**
21 Q. Okay. So five days later, after he had
22 asked if you're interested, he called to say if
23 you're still interested and -- and what -- and you
24 said yes, and then he said he would send you the
25 interested parties list; is that right?

29

1 **A. And -- and asked for my dec -- a draft**
2 **declaration, yes.**
3 Q. He asked about a draft declaration?
4 **A. He asked that I prepare and send him**
5 **one.**
6 Q. He asked if you would prepare a draft
7 declaration in support of the motion?
8 **A. Yes.**
9 Q. Okay. Was anything else discussed on
10 that call besides that which you've just laid out?
11 **A. No. It was a very brief call.**
12 Q. In between the 23rd and the 28th, did
13 you have any written communications with anyone
14 from the debtors or their affiliates with respect
15 to this matter?
16 **A. No.**
17 Q. You next list a phone call on August
18 6th, 2020, with Mr. Rayburn. Do you see that?
19 **A. Yes.**
20 Q. Okay. Who initiated that August 6th
21 call?
22 **A. Mr. Rayburn did.**
23 Q. And what was the content of that call?
24 **A. We had exchanged e-mails in between**
25 **which you've got. He had sent me a proposed**

30

1 **order. And I really -- I'm not sure what we**
2 **talked about in that call. I remember it was a**
3 **short call. We may have -- we may -- I think we**
4 **talked about the order. He -- he had said -- he**
5 **had sent by e-mail a proposed order. And I think**
6 **we talked briefly about the or -- form of the**
7 **order.**
8 Q. And -- and you mentioned between the 20
9 -- July 28th and this August 6th communication
10 with Mr. Rayburn you exchanged written
11 communications?
12 **A. Yes.**
13 Q. And -- and you have produced all of
14 those written communications to us?
15 **A. To the best of my ability and knowledge,**
16 **yes. My e-mail system is not perfect, but I think**
17 **I've got them all.**
18 Q. Is it possible that there's additional
19 -- that there are additional e-mails that we
20 haven't seen yet?
21 **A. I don't think so, but it's -- it's --**
22 **it's possible that e-mails come in that I don't**
23 **get in the right folder. But I don't believe so.**
24 Q. How did you search for e-mails
25 responsive to our document request, Mr. Grier?

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1 **A. When I get an e-mail on a matter, I**
2 **create a separate folder for that matter and I put**
3 **all the e-mails related to that matter in that**
4 **folder.**
5 **And I looked at that folder. And I also**
6 **reviewed the -- sort of the chain of the e-mails**
7 **in -- in preparing this response, just to see if I**
8 **caught them all, see if there were any obvious**
9 **that were missing.**
10 Q. Okay. So aside from e-mails between you
11 and your counsel, you produced all the e-mails
12 that you had put in this folder for this new
13 matter?
14 **A. Yes.**
15 Q. You next list a communication on August
16 14th with Mr. Rayburn.
17 **A. Yes.**
18 Q. Who initiated that call, sir?
19 **A. This is -- this is on August -- which**
20 **one you referring to?**
21 Q. August 14th.
22 **A. August 14th. Well, that's the one I**
23 **thought we were just talking about.**
24 Q. We were talking about August 6th.
25 **A. Oh, August 6th. Okay.**

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1 **August 14th. He would have initiated**
2 **the calls. All the calls with him were initiated**
3 **by him.**
4 Q. And what was the content of that
5 telephone conversation on August 14th?
6 **A. I don't have a specific memory.**
7 **I think it had to do with either we've**
8 **sent you the proposed motion and order, did you**
9 **get it. Something along those lines. I don't**
10 **think there was -- I don't think it had substance**
11 **to it.**
12 Q. Okay. And how long was that
13 communication on the 14th?
14 **A. It -- it would have been short. I would**
15 **have put it down as a tenth of an hour.**
16 Q. So besides exchanging dialogue about the
17 motion and proposed order, is there anything else
18 that you and Mr. Rayburn talked about on August
19 14th?
20 **A. Not that I recall.**
21 Q. Okay. And between August 6th and August
22 14th, did you exchange written communication with
23 Mr. Rayburn and/or anyone else from the debtors or
24 their affiliates?
25 **A. Whatever communications I've exchanged,**

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1 **you've got.**
2 Q. The next date on here is August 15th,
3 2020.
4 **A. Yeah.**
5 Q. And it references another telephone
6 conversation with Mr. Rayburn. Do you see that?
7 **A. I do.**
8 Q. Did Mr. Rayburn initiate that conversat
9 -- that phone call, as well?
10 **A. Yes.**
11 Q. What was the content of that August 15th
12 call?
13 **A. I -- I can't remember specifically what**
14 **it was.**
15 **But some of the conversations were him**
16 **telling me what the schedule was. So it would be**
17 **we're -- we're planning to -- to file it on**
18 **such-and-such a date and have a hearing on**
19 **such-and-such a date. Those sorts of things.**
20 Q. How long was that call?
21 **A. That would have been a short call.**
22 Q. Okay. Was anyone -- and was anyone else
23 on that call with you?
24 **A. No.**
25 Q. Okay. So on -- on these July 23rd

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1 through August 15th calls, it was just yourself
2 and Mr. Rayburn?
3 **A. Correct.**
4 Q. You list a -- the next -- on page 8 you
5 list a August 17th, 2020, telephone conversation
6 with Mr. Rayburn, B. Erens and J. Guy. Do you see
7 that?
8 **A. Yes.**
9 Q. Is "B. Erens" Brad Erens of Jones Day?
10 **A. Yes.**
11 Q. Is Mr. Erens involved in the Aldrich
12 matter?
13 **A. Yes.**
14 Q. Had you --
15 **A. Lawyer for the debtor.**
16 Q. Had you ever spoken with Mr. Erens
17 before this call?
18 **A. I had -- I had not.**
19 Q. Had you ever communicated in written
20 form with Mr. Erens before this call?
21 **A. I had not.**
22 Q. And J. Guy is your counsel, Mr. Jonathan
23 Guy; correct?
24 **A. Yes.**
25 Q. Okay. Who initiated this August 17th

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1 telephone communication?
2 **A. It was a conference call. And I don't**
3 **know whether -- probably Mr. Rayburn said Mr.**
4 **Erens wants to talk, can we set up a -- set up a**
5 **conference and we worked out a time. But it was a**
6 **-- it was a dial-in conference.**
7 **It was initiated by the debtors.**
8 Q. What was the content of that call on
9 August 17th?
10 **A. Mr. Erens gave me some background of the**
11 **decision by Aldrich to nominate me as FCR. He**
12 **indicated that he had had multiple conversations**
13 **with Mr. Maclay at your law firm. And he didn't**
14 **relate all those conversations, but he said he had**
15 **said to Mr. Maclay that the debtor proposed me,**
16 **that Mr. Maclay had listened, said we'll get back**
17 **to you. At some point, gotten back and said Mr.**
18 **Grier's not acceptable; that Mr. Maclay had**
19 **proposed another candidate. At that point Mr.**
20 **Erens didn't identify that other candidate.**
21 **Mr. Erens said that he was interested in**
22 **an independent FCR, he expressed some frustration**
23 **with the way some of the other cases were going**
24 **and he also talked about the -- the proposed**
25 **order.**

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1 **It was about a 30-minute conversation.**
2 Q. Besides Mr. Erens, did anyone else speak
3 on that call?
4 **A. Yes. Every -- everybody who was on the**
5 **call spoke at some point.**
6 Q. Now, you -- you noted what Mr. Erens
7 said.
8 What did Mr. Rayburn communicate during
9 that call?
10 **A. I can't remember specifically what --**
11 **what he said or what Mr. Guy said. I just -- what**
12 **I gave you were the...**
13 Q. Okay.
14 **A. Mr. Erens was -- was leading the**
15 **conversation. And that generally was -- was what**
16 **was talked about, but other people would have made**
17 **comments from time to time.**
18 Q. You mentioned that Mr. Erens said that
19 the debtors were looking for an independent FCR.
20 **A. Yes.**
21 Q. Did he explain to you what it -- what he
22 meant by an independent FCR?
23 **A. He did not.**
24 **He -- he did say he was frustrated with**
25 **-- with the way some of the other cases were**

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1 **going, but he did not spell out what he meant by**
2 **independent FCR.**
3 Q. Did he tell you what he meant by being
4 frustrated with how the other cases were going?
5 **A. I want to be careful that I don't speak**
6 **for Mr. Erens. All I can say is my recollection**
7 **of the conversation.**
8 **I remember a reference to the case as**
9 **being mired in litigation and that to at least one**
10 **FCR taking the position jointly with the ACC that**
11 **he felt like was not in the interest-- interest of**
12 **futures.**
13 Q. And what position -- what case was he
14 referring to?
15 **A. I think he was referring to the DBMP**
16 **case.**
17 Q. Did he also reference the Bestwall case
18 or just DBMP?
19 **A. My recollection is just DBMP by name.**
20 **But again, I don't have a perfect**
21 **recollection of that position.**
22 Q. And when he said that the FCR was taking
23 a position jointly with the ACC, did he explain to
24 you what position that was?
25 **A. Had something to do with the preliminary**

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1 **-- with the FCR opposing the preliminary**
2 **injunction.**
3 **But we -- he didn't go into detail and I**
4 **didn't ask him to go into detail.**
5 Q. Did he -- did he provide any other
6 information about the preliminary injunction
7 proceeding?
8 **A. No.**
9 Q. He just mentioned to you that the FCR
10 had taken -- was opposing it jointly with the ACC?
11 **A. Yes. And he felt like that was not in**
12 **the interest of the futures.**
13 Q. Did he tell you why he believed that was
14 not in the interest of futures?
15 **A. We didn't go into that.**
16 Q. Did he express any other examples of how
17 he was frustrated with other cases?
18 **A. No specific examples.**
19 Q. And you -- you said that the only case
20 he was referencing is DBMP?
21 **A. That's my recollection.**
22 Q. And besides talking about an independent
23 FCR and his frustration with other cases, you
24 mentioned that Mr. Erens discussed the proposed
25 order?

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1 **A. Well, we all discussed the proposed**
2 **order.**
3 **They had sent a proposed order. And we,**
4 **by that I mean Mr. Guy and I, wanted some changes**
5 **to it. Basically, we proposed that they just use**
6 **the order that was entered in Garlock to appoint**
7 **the FCR.**
8 **That was heavily negotiated, it worked,**
9 **it had some provisions in it that -- that we**
10 **thought ought to be in there. And so the basic**
11 **argument was can't we use the Garlock order.**
12 Q. Okay. So you -- you thought -- your
13 side proposed the Garlock order?
14 **A. Yes.**
15 Q. You mentioned that Mr. Erens talked
16 about his communications with Mr. Maclay.
17 **A. Yes.**
18 Q. Do you recall exactly what he said to
19 you about those communications?
20 **A. He said he had had conversations with**
21 **Mr. Maclay. He didn't go into each one of them.**
22 **He said that he had talked to Mr. Maclay and**
23 **proposed me as a FCR, that Mr. Maclay had**
24 **listened, said I'll get back to you; had not**
25 **commented, one way or the other. And then after**

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1 **some period of time, Mr. Maclay got back to him**
2 **and said Mr. Grier's not acceptable to the**
3 **Committee.**
4 **He -- he also said that -- that Mr.**
5 **Maclay had suggested another name that was not**
6 **acceptable to the debtors.**
7 Q. Do you know what name that was?
8 **A. He did not tell me -- he did not**
9 **identify that name at the time.**
10 Q. Okay. And how do you know now?
11 **A. Either he or Mr. Rayburn told me in a**
12 **later conversation who it was.**
13 Q. Is that one of the conversations listed
14 on page -- pages 7 and 8?
15 **A. Yes.**
16 Q. Okay. Do you recall anything else that
17 was discussed on this August 17th call with Mr.
18 Rayburn, Erens and Mr. Guy?
19 **A. No.**
20 Q. Do you remember anything you said to the
21 debtors' counsel besides proposing the Garlock
22 order?
23 MR. GUY: Todd, you mean on this call?
24 MR. PHILLIPS: On the August 17th, 2020,
25 telephone communication.

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1 MR. GUY: Yeah. I think, Todd, you've
2 beaten this horse. He has said like twice
3 now he doesn't remember anything else than
4 what he's state.
5 Q. Is that right, Mr. Grier, I have your
6 full recollection?
7 **A. Yes.**
8 Q. You next list a telephone communication
9 with Mr. Rayburn August 19th, 2020. Do you see
10 that, sir?
11 **A. Yes.**
12 Q. Who initiated that call?
13 **A. Mr. Rayburn.**
14 Q. And what was the content of that call?
15 **A. My recollection is that the debtor had**
16 **talked about filing the FCR motion, I think, on**
17 **the 19th. Mr. Rayburn called and said we're going**
18 **to hold off filing it, the ACC has asked us to**
19 **hold off; they're going to be holding a meeting on**
20 **the 21st. They've asked us to hold off until**
21 **after we have that meeting and whatever**
22 **discussions need to be held after that meeting.**
23 **And Mr. Rayburn said we've agreed to do that.**
24 Q. Was this another short call or a longer
25 call?

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1 **A. Fairly short.**
2 Q. When he relayed this information about
3 holding off on filing a motion, what did you say
4 to him?
5 **A. I said okay, thanks for telling me; let**
6 **me know.**
7 Q. Was anything else discussed during that
8 August 19th call, sir?
9 **A. There may have been -- that may have**
10 **been the conversation in which he identified the**
11 **initial candidate proposed by the ACC. I don't**
12 **remember if it was that one or another one, but it**
13 **-- I think we talked a little bit about that**
14 **candidate on that conversation.**
15 Q. And who was that candidate?
16 **A. David Levi.**
17 Q. And what was discussed between you and
18 Mr. Rayburn about David Levi during that call?
19 **A. Number one, that he had not -- he was**
20 **not acceptable to the debtors and, number two, Mr.**
21 **Rayburn and I both expressed our great respect for**
22 **David Levi.**
23 Q. Do you know Mr. Levi?
24 **A. Not well, but I have -- I have met him**
25 **before, yes.**

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1 Q. And Mr. Rayburn expressed that he knew
2 him, as well?
3 **A. Yes. Yes.**
4 **We considered Mr. Levi very favorably as**
5 **a possible trustee in the Garlock case. And I --**
6 **I talked to him in connection with that; and had a**
7 **positive impression of him.**
8 **Mr. Rayburn knew him from Duke Law**
9 **School. Mr. Levi was the Dean of Duke Law School**
10 **when Mr. Rayburn was active in alumni affairs at**
11 **Duke.**
12 Q. Why -- did Mr. Rayburn explain to you
13 why he thought Mr. Levi was not an acceptable
14 candidate?
15 **A. He did not.**
16 Q. Was that the only time you discussed Mr.
17 Levi?
18 **A. I think so.**
19 Q. And that call -- there was no one else
20 on that call besides yourself and Mr. Rayburn;
21 correct?
22 **A. That's correct, no one else.**
23 Q. You next list a call with Mr. Rayburn on
24 August 21st, 2020, two days later. Do you see
25 that?

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1 **A. Yes.**
2 Q. Okay. Who initiated that August 21st
3 call?
4 **A. Mr. Rayburn would have.**
5 Q. And what was the content of that
6 telephone conversation?
7 **A. I think it was simply did you -- his**
8 **office had sent me the motion as filed. And I**
9 **think it was simply did you get the motion. I --**
10 **I may not be remembering all of it, but I -- I**
11 **don't remember anything substantive or unusual**
12 **about that conversation.**
13 Q. And was that a short or longer
14 conversation?
15 **A. My recollection, short conversation.**
16 Q. Did you and Mr. Rayburn discuss anything
17 else besides the filing of the motion?
18 **A. It's possible that we did. I don't**
19 **remember it, though.**
20 Q. Okay. And it was just the two of you on
21 that call?
22 **A. Just the two of us.**
23 Q. The last call that you referenced on
24 this discovery response is August 29th.
25 **A. Yes.**

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1 Q. Mr. Rayburn, Mr. Erens, Mr. Guy, R.
2 Hamilton and C. Cahow, and this was on August
3 29th; is that right?
4 **A. Yes.**
5 Q. Is "R. Hamilton" Robert Hamilton of
6 Jones Day?
7 **A. Yes.**
8 Q. Okay. Is "C. Cahow" Caitlin Cahow of
9 Jones Day?
10 **A. Yes.**
11 Q. Do they both represent the debtors here?
12 **A. Yes.**
13 Q. Who initiated this call?
14 **A. It was a conference call. I -- I think**
15 **the request for the conference came from Jones**
16 **Day.**
17 Q. And why did Jones Day request this
18 communication?
19 **A. We had gotten your discovery and there**
20 **was a discussion about responding to the**
21 **discovery. We had the Request for Production and**
22 **then the Notice of Deposition.**
23 Q. Can you explain to me how that
24 conversation went?
25 Did you go through each -- each

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1 discovery request and the -- and -- and the
2 responses that you had prepared?
3 **A. I had not prepared a response. In fact,**
4 **I had barely -- I had just skimmed the -- the**
5 **Request for Production.**
6 **But we went over the -- the nine -- I**
7 **believe there were nine requests. And we went**
8 **over those at a very high level what's the**
9 **response. But at a very high level.**
10 Q. Okay. So is it safe to say that you and
11 the -- the debtors in this discussed your
12 responses and then you put them together after
13 that phone call?
14 **A. Well, the discussion on that day, the**
15 **29th, was -- was -- we didn't discuss my response**
16 **in detail. It was a -- just a very general**
17 **response. And -- and then later I prepared my**
18 **response. But it was -- my response, it was not**
19 **something that we generated in that August 29th**
20 **phone call.**
21 Q. Was anyone else on that call with you
22 besides the people you've listed here?
23 **A. No.**
24 Q. Were you ever interviewed for the
25 position of FCR?

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1 **A. In this case or other cases?**
2 Q. In this case, Mr. Grier.
3 **A. No.**
4 Q. Besides your Declaration, did you
5 provide any materials to the debtors and their
6 affiliates related to the FCR position?
7 **A. Well, my Declaration and my C --**
8 **attached CV. But otherwise, no.**
9 Q. Did the debtors tell you why they
10 reached out to you about the FCR position?
11 **A. Said they wanted an independent FCR.**
12 Q. And did they ever tell you what
13 "independent" meant?
14 **A. Other than as I've already discussed,**
15 **no.**
16 Q. Do you have an understanding as to what
17 an independent FCR is?
18 **A. In my view, it's an FCR that zealously**
19 **represents it's clients and is not uninfluenced in**
20 **making decisions by relationships or hope for a**
21 **future recommendation or referrals from either the**
22 **ACC or the debtors or anyone else.**
23 **And also, someone who's -- who doesn't**
24 **mind taking a position -- a public position**
25 **adverse to either the ACC or the debtors.**

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1 Q. Did the debtors tell you what
2 qualifications they were looking for in you as a
3 FCR?
4 **A. They did not.**
5 Q. You -- you mentioned that they brought
6 up Mr. Levi. Did they mention any other
7 candidates?
8 **A. At some point they said that the ACC had**
9 **proposed Sandy Esserman as a -- as a FCR.**
10 Q. And what did they say about Mr.
11 Esserman?
12 **A. That he was not acceptable to the**
13 **debtors.**
14 Q. And when was this conversation?
15 **A. It would have been fairly late. And I**
16 **can't remember the exact date. But it would have**
17 **been -- it would not have been in the early**
18 **conversation, it would have been in the later**
19 **conversation.**
20 Q. Was that conversation about Mr.
21 Esserman -- is that referenced as one of the dates
22 that you have here?
23 **A. Yeah.**
24 **It -- and I don't know that they told me**
25 **directly.**

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1 **What I understand is that on the 19th**
2 **Mr. Rayburn said the debtors going to hold off**
3 **filing a motion because the AC's going to have a**
4 **meeting. And then on the 21st I think I heard --**
5 **and it may have been through Mr. Guy, that they**
6 **had proposed Mr. Esserman and he was not**
7 **acceptable. I don't think I heard that directly**
8 **from the debtors.**
9 Q. Okay. And -- and -- and why did they
10 say Mr. Esserman was unacceptable?
11 **A. They -- they did not say to me anything**
12 **other than the conversation I already related,**
13 **about frustration with Mr. Esserman.**
14 Q. Okay. And that's frustration about
15 taking a position in the PI jointly with the ACC
16 that they thought was against the interests of
17 future claimants?
18 Is that what you said?
19 **A. Yes.**
20 Q. Okay. Did you express an agreement with
21 Mr. Erens or otherwise comment on whether the
22 injunction was appropriate?
23 **A. I did not.**
24 **And I don't have a position on that. I**
25 **-- I do think the -- the -- it's appropriate for**

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1 **the FCR to -- to be able to take a position on**
2 **that. The -- yeah, I think it needs to be clear**
3 **that the FCR has standing to take that position.**
4 **But I do not have a position. And I have not**
5 **expressed a position on it.**
6 Q. Thank you.
7 Okay. You -- you were never contacted
8 prepetition by the debtors or their affiliates or
9 anyone else about this bankruptcy; is that right?
10 **A. Correct.**
11 Q. Besides the communications, the
12 conversations we've already discussed and
13 including your conversations with Mr. Guy and
14 other attorneys at the firm, have you spoken with
15 anyone else about these cases?
16 **A. Not that I recall.**
17 MR. PHILLIPS: Mr. Guy, to the extent we
18 don't have all the written communications
19 from Mr. Grier, we would request them.
20 It sounds like he's searched through his
21 e-mails. To the extent there are e-mails
22 that he has or other written documents that
23 have not already been produced, we would
24 request those items, sir.
25 MR. GUY: We're not aware of any.

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1 BY MR. PHILLIPS:
2 Q. Mr. Grier, what qualifications do you
3 believe are necessary for a FCR?
4 **A. That's a good question.**
5 **I think independence is important.**
6 **I think ultimately the judge makes the**
7 **decision about who's qualified. I think it's up**
8 **to the judge.**
9 Q. Besides independence and, you know,
10 whatever factors the judge has, any other
11 qualifications you think are -- are necessary?
12 **A. I can't say what a judge would consider**
13 **necessary.**
14 Q. And with respect to independence, you
15 just explained a few moments ago what -- what
16 independence means to you; is that right?
17 **A. Correct.**
18 Q. Do you believe that you, Mr. Grier, are
19 the most qualified person to be the FCR in this
20 case?
21 **A. I believe that I'm qualified. I would**
22 **not be so bold as to say I'm the most qualified.**
23 **I don't think that's a judgment I could make.**
24 Q. What experience do you rely on to
25 support your qualifications as a FCR in these

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1 bankruptcy cases?
2 **A. Well, I've been practicing bankruptcy**
3 **law in the Western District of North Carolina for**
4 **40 years. I was FCR in Garlock which is a case**
5 **that's now ten years old. I sat through a 17-day**
6 **hearing on estimation and science related to**
7 **asbestos. I've acted as a fiduciary in other**
8 **capacities. Maybe, life experience; I don't know.**
9 Q. Any other experience besides that that
10 you just listed?
11 **A. Again, I don't know what a judge would**
12 **consider, what -- in someone's career or life, but**
13 **I think the things I've listed are -- are**
14 **certainly important.**
15 Q. Thank you.
16 And you -- you know Mr. Esserman; right?
17 **A. I do know Mr. Esserman.**
18 Q. How do you know him?
19 **A. From the -- from two ways. One is he**
20 **made an appearance in the Garlock case. And I**
21 **can't remember exactly who he represented. But he**
22 **was in Charlotte several times for hearings and I**
23 **met him then. He also regularly attends the FCR**
24 **meetings and I've gotten to know him then. And I**
25 **think very highly of him.**

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1 Q. So your opinion of him is you think
2 highly of him?
3 **A. I think he's a very good lawyer.**
4 Q. Do you believe he would be qualified to
5 be the FCR in these cases?
6 **A. I don't think I'm qualified to answer**
7 **that question.**
8 Q. Why aren't you qualified to answer the
9 question?
10 **A. I don't know what qualities a -- a judge**
11 **is looking for.**
12 **And -- and while I know Mr. Esserman, I**
13 **don't -- I don't know him intimately and -- and so**
14 **I'm -- I'm just hesi -- hesitant to say whether**
15 **he's qualified or not. I don't think that's up to**
16 **me.**
17 Q. Do you believe that you are more
18 qualified than Mr. Esserman to be the FCR in these
19 cases?
20 **A. I think that's up to the judge.**
21 Q. You mentioned that you were the Future
22 Claims Representative in the Garlock case.
23 **A. Yes.**
24 Q. Aside from Garlock, have you ever
25 represented anyone in connection with a bankruptcy

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1 that involved asbestos claimants?
2 **A. Well, you know about my law firm's**
3 **representation of Truck Insurance in the Kaiser**
4 **case.**
5 Q. Any other representations but that?
6 **A. No.**
7 Q. Mr. Grier, have you ever participated in
8 any fashion in any legislative efforts related to
9 asbestos?
10 **A. No.**
11 Q. How about any legislative efforts
12 related to mass torts or tort reform? Anything
13 like that?
14 **A. No.**
15 Q. You were nominated for the FCR position
16 in the Marymount case; right?
17 **A. Yes, I was; by the U.S. Trustee.**
18 Q. And you ultimately withdrew from
19 consideration for that position?
20 **A. Yes.**
21 Q. What was the reason for that withdrawal?
22 **A. You're asking me to go back several**
23 **years.**
24 **My recollection is that events were**
25 **moving fairly quickly in that case and the**

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1 **schedule didn't work with my schedule and Mr.**
2 **Guy's schedule. There were going to be hearings**
3 **and so forth. And it just was happening too fast.**
4 Q. Anything else?
5 **A. That's my recollection.**
6 Q. And you were nominated for the FCR
7 position in the Paddock case that was filed in --
8 this year; is that right?
9 **A. Yes.**
10 MR. GUY: By the U.S. Trustee.
11 **A. Yes.**
12 Q. And you ultimately withdrew from
13 consideration for that position in the Paddock
14 case; is that correct?
15 **A. Correct.**
16 Q. Why did you withdraw in the Paddock
17 case?
18 **A. Ultimately, it -- it was -- it was a**
19 **decision that when I weighed the odds of -- of**
20 **success versus of -- of having to go through what**
21 **I was going to go through, it just didn't seem**
22 **worthwhile.**
23 **It seemed, to me, that the judge there**
24 **had a local candidate, Mr. Patton, whom she knew,**
25 **whom she had appointed in other cases; she was**

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1 **likely to appoint him. I didn't have the support**
2 **of either the debtor or the ACC. And it -- it**
3 **just didn't make any sense to go forward. It was**
4 **a waste of time.**
5 Q. You noted that you were approached by
6 FCR position in the Bestwall case; is that right?
7 **A. I had one phone call from Greg Gordon**
8 **and I don't -- I'm not even sure he identified the**
9 **case. I think he just said -- it was before the**
10 **case was filed -- would you be willing to be**
11 **considered as a FCR, I said yes. And that was the**
12 **sum and substance of it.**
13 Q. Do you recall when that happened, when
14 that call occurred?
15 **A. I don't. It would have been shortly**
16 **before the Bestwall case was filed.**
17 Q. So -- so you were approached prepetition
18 in Bestwall by Mr. Gordon?
19 MR. GUY: Hold on a second, Todd.
20 And I've been patient, but you're
21 covering issues that either could have been
22 covered or were covered by your colleague,
23 Kevin Maclay, during the March 2019
24 deposition.
25 I'm going to give you a little bit of

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1 slack, but I don't want to go over material
2 that's already been -- by Mr. Grier that's
3 already been asked by your colleague.
4 So if you could move on, that would be
5 good.
6 Q. I'm sorry. Did -- did you answer that,
7 Mr. Grier?
8 You were approached prepetition?
9 **A. That's my recollection, yes.**
10 Q. And there was just that one call?
11 **A. That one call.**
12 **I may have followed up with a -- with a**
13 **conversation with Garland Cassada who's also the**
14 **local attorney and said I'm interested. And that**
15 **would have been a very brief conversation. I'm**
16 **not sure whether I did that or not, but I may**
17 **have.**
18 Q. Were you ever nominated in that case for
19 FCR?
20 **A. I was not.**
21 Q. Okay. You're familiar with the DBMP
22 case; is that right?
23 **A. Yes. Not in detail, but yes.**
24 Q. When you -- when that case was filed, I
25 think you met -- you mentioned in your papers that

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1 you called Mr. Cassada of Robinson Bradshaw to
2 inquire about that case?
3 **A. Yes.**
4 Q. What -- when did you reach out to Mr.
5 Cassada?
6 **A. I think I gave you the date. I don't**
7 **recall it, off the top of my head.**
8 Q. You -- yeah, you gave January 27th, on
9 or about. Does that sound right?
10 **A. Yes.**
11 Q. All right. Why did you reach out to Mr.
12 Cassada in particular?
13 **A. To express my interest in the FCR**
14 **position.**
15 Q. And how do you know Mr. Cassada?
16 **A. Again, the bankruptcy bar in Charlotte**
17 **is pretty small. I know most of the lawyers,**
18 **particularly the lawyers that have been around**
19 **awhile.**
20 **Mr. Cassada and I have had offices in**
21 **the same building. And he has -- he was the one**
22 **who approached me about being the FCR in the**
23 **Garlock case. And I had worked with him in**
24 **Garlock for a number of years.**
25 Q. Besides the Garlock case, have you

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1 worked with Mr. Cassada on any other matters?
2 **A. Not recently. I'm sure we've worked on**
3 **bankruptcy matters years ago, but I couldn't tell**
4 **you what those are.**
5 Q. How long have you known Mr. Cassada?
6 **A. I couldn't tell you, but years.**
7 Q. Years.
8 Are you -- are you personal friends?
9 **A. I don't really see him outside of -- of**
10 **work, no.**
11 Q. Do you recall what was said in that
12 conversation about DBMP?
13 **A. My recollection is I said I'm interested**
14 **and Mr. Cassada said great, Joe, nice to hear,**
15 **you'd be great, but the decision's not up to me.**
16 Q. Did you have -- I'm sorry. Go ahead.
17 Did you have anymore conversations with
18 Mr. Cassada or anyone else from the debtors' side
19 about being the FCR in BPMP?
20 **A. Not that I recall.**
21 Q. Any written communications with anyone
22 about that case?
23 **A. Not that I recall.**
24 MR. GUY: Todd, are we going to ask
25 about this case at some point? I know this

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1 is very interesting to someone. I'm not sure
2 who, but...
3 Q. Mr. Grier, have you followed the
4 Bestwall and DBMP cases?
5 **A. Not in great detail. Occasionally.**
6 Q. Have you discussed those cases with any
7 counsel from those cases?
8 **A. I don't think so. Not that I recall.**
9 Q. Have you read any of the briefs in
10 Bestwall?
11 **A. I don't recall if there was an**
12 **information brief filed beginning of the case. I**
13 **may have read that. But I can't tell you for**
14 **sure, one way or the other. I'm -- I'm not really**
15 **-- I'm not following them at the level of reading**
16 **briefs right now.**
17 Q. Why would you have read the information
18 brief in Bestwall?
19 **A. Because I was interested in the FCR**
20 **position.**
21 Q. Did you --
22 **A. For understanding of the case.**
23 Q. Did you read anything else except the
24 information brief from the debtors?
25 **A. I have -- I have no idea.**

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1 **They didn't send -- no -- nothing -- the**
2 **debtors didn't send me anything. Anything I read**
3 **I would have pulled from the document.**
4 Q. Have you attended any hearings in the
5 Bestwall case?
6 **A. Not to my recollection, no.**
7 Q. Have you read any of the briefs in the
8 DBMP case?
9 MR. GUY: Todd, can you explain why this
10 is possibly relevant to his qualifications
11 and disinterest in this -- in this case?
12 MR. PHILLIPS: I'm just trying to
13 understand what he's read in preparation.
14 MR. GUY: He hasn't -- he said he hasn't
15 read anything that relates to those cases in
16 preparation for this deposition.
17 What bearing does this have on his
18 disinterestedness or his qualifications?
19 If we can move on, please.
20 MR. PHILLIPS: I'm -- I'm very close to
21 being done with this line of questioning.
22 MR. GUY: Okay. I'm being patient.
23 MR. PHILLIPS: Thank you.
24 Q. Mr. Grier, did you read any briefs in
25 the DBMP case?

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1 **A. I don't remember reading any briefs. I**
2 **-- to my best recollection, no.**
3 Q. Okay. Have you attended any hearings in
4 the DBMP case?
5 **A. No.**
6 Q. Are you familiar with the adversary
7 proceedings in the DBMP case and the Bestwall
8 case?
9 **A. I'm not.**
10 Q. Are you aware of a prepetition
11 restructuring that formed the Bestwall debtor?
12 **A. I do remember, I think, reading about**
13 **that somewhere. Perhaps, in the information**
14 **brief. I remember that there was such a**
15 **restructuring.**
16 Q. Are you aware of the prepetition
17 restructuring that formed the DBMP debtor?
18 **A. I'm aware that there was a prepetition**
19 **restructuring. I couldn't tell you any details**
20 **about it.**
21 Q. And you were nominated for the FCR
22 position in the Fairbanks case; is that right?
23 **A. Yes.**
24 Q. You were ultimately not selected by the
25 court for that position?

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1 **A. Correct.**
2 Q. Do you know why the court did not select
3 you in that case?
4 **A. All I know is what's in the order.**
5 Q. Let's mark as Exhibit 4 a copy of the
6 opinion of Jeff (sic) Bonapfel in his selection of
7 a FCR in the Fairbanks bankruptcy, recorded as In
8 Re: Fairbanks Company 601 B.R 831. And this is
9 Bankruptcy, Northern District of Georgia, 2019.
10 (THEREUPON, Grier Exhibit 4 was marked
11 for identification).
12 Q. Mr. Grier, you should have on the screen
13 in front of you what's been marked as Grier
14 Exhibit 4. Do you see that?
15 **A. I do.**
16 Q. Do you recognize this document?
17 **A. I don't think I've seen it in that form**
18 **before. I'll accept your representation that it**
19 **is what you say it is.**
20 Q. Thank you.
21 Do you have any reason to believe this
22 is not an accurate -- it's a Westlaw printout of
23 the Fairbanks opinion?
24 **A. I do not.**
25 Q. Have you read this opinion?

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1 **A. Yes.**
2 Q. If you turn to page 843 of the reporter,
3 do you see where the judge stated, "In the
4 circumstances of this case, Mr. Patton's
5 experience and expertise make him the best
6 choice"?
7 **A. Yes.**
8 Q. Okay. And on page 844 the Court wrote,
9 "The Court is confident that future claimants, if
10 asked who they would hire in this case, would
11 select Mr. Patton."
12 Do you see that?
13 **A. I'm having trouble seeing it, but I'll**
14 **take your word for it.**
15 Q. Okay.
16 **A. It says -- I mean, whatever it says, it**
17 **says.**
18 Q. Okay. Have you ever discussed
19 potentially serving as an FCR with any other
20 asbestos defendant or debtor apart from those that
21 we've discussed here today?
22 **A. As I think I've testified earlier, in**
23 **the Fairbanks case. And I had some initial**
24 **conversations with the U.S. Trustee about the Duro**
25 **Dyne case, but that never -- I mean, they never**

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1 **asked me formally to be -- to be nominated. There**
2 **were discussions.**
3 Q. What about since your March 19 -- your
4 March 2019 deposition, have you discussed
5 potentially serving as a FCR with any other
6 asbestos defendant or debtor other than those that
7 --
8 MR. GUY: Objection, asked and answered,
9 Todd. You asked that right at the very
10 beginning.
11 But you can answer, Joe.
12 **A. The answer's no.**
13 Q. Mr. Grier, what is your understanding of
14 the debtors' asbestos liabilities here?
15 **A. All I have -- my only understanding**
16 **comes from the debtors' information brief. And I**
17 **understand that's from the debtors' perspective.**
18 **I understand that there's an**
19 **encapsulated product similar to Garlock gaskets**
20 **and the Bunsen compressors in the case of Aldrich**
21 **and then air -- commercial air conditioning**
22 **systems in the case of Murray.**
23 **I understand that debtors have been**
24 **paying about $70 million in settlements a year and**
25 **about $25 million a year in defense costs over the**

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1 **recent past.**
2 **That, in summary, is my knowledge of the**
3 **asbestos in these cases.**
4 Q. Besides the debtors' information brief,
5 have you looked or researched anything else on the
6 debtors' asbestos liabilities?
7 **A. Not to my recollection, no.**
8 Q. Have you spoken with anyone outside the
9 debtors about the debtors' asbestos liabilities?
10 **A. I have not.**
11 Q. Are you familiar with the
12 asbestos-containing components and parts -- you
13 just mentioned a few, I believe -- that are
14 required in the -- for the Aldrich, Murray
15 products that they manufactured or sold?
16 **A. Repeat that question, please.**
17 Q. Are you familiar with the
18 asbestos-containing components and parts contained
19 or required for Aldrich, Murray products?
20 I think you named a few of them. So is
21 it safe to say you're familiar from the
22 information brief?
23 **A. I saw the diagram in the information**
24 **brief, but the diagram is very limited in the**
25 **information it conveys. So I -- you ask me**

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1 **detailed questions about where the product was**
2 **used, I -- other than to say it was a gasket used**
3 **in valves, I don't know what I could say. I mean,**
4 **I've seen the -- the diagrams in the information**
5 **brief.**
6 Q. Is that pretty much your entire
7 understanding of those component and parts?
8 **A. Yes.**
9 Q. Let's mark as Grier Exhibit 5 the
10 debtors' information brief filed in these cases.
11 (THEREUPON, Grier Exhibit 5 was marked
12 for identification).
13 Q. Mr. Grier, you should have displayed on
14 the screen what's been marked as Grier Exhibit
15 Number 5. Do you recognize that document?
16 **A. Again, I'll take your word that it is**
17 **what you represent it to be.**
18 Q. Okay. And it's got the ECF date stamp
19 on the top?
20 **A. Right.**
21 Q. Okay. Do you have any reason to believe
22 this is not an accurate depiction?
23 **A. No.**
24 Q. And you have reviewed this document
25 before today; that is -- that's correct, right?

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1 **A. Correct.**
2 Q. Turning to page 2 of this document.
3 "The debtors have stated that the type of asbestos
4 fiber used in gaskets purchased by Aldrich was
5 chrysotile."
6 That's on page 2.
7 **A. Right.**
8 Q. And if we look at page 12, it says,
9 "Where gas" -- and we're talking about Murray on
10 page 12. "Where Murray gaskets contained
11 asbestos, the asbestos was typically -- typically
12 was chrysotile and found in a matrix."
13 **A. Right.**
14 Q. Are you familiar with chrysotile
15 asbestos?
16 **A. I heard a lot of testimony about**
17 **chrysotile asbestos in the Garlock case.**
18 Q. What do you know about chrysotile
19 asbestos?
20 **A. I know it's different from amphibole.**
21 **The different experts in Garlock gave different**
22 **opinions about the relative potency of chrysotile**
23 **versus amphibole. Generally, they agreed that**
24 **amphibole was more potent then chryso --**
25 **chrysotile. Although, I think it -- it was --**

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1 **there was -- there were different opinions on it.**
2 **So I -- I've heard that testimony.**
3 Q. Okay. On pages 2 and 3 of the
4 information brief the debtors assert that,
5 "Chrysotile is a form of asbestos widely
6 recognized as either incapable of causing or far
7 less likely than other forms of asbestos, such as
8 amphibole, to cause mesothelioma."
9 **A. Right.**
10 Q. Do you agree with that statement?
11 **A. I'm not a scientist. I don't know**
12 **that -- first of all, I don't know that my opinion**
13 **on that makes any difference.**
14 **I've heard the testimony. And most of**
15 **the experts agreed that chrysotile was less potent**
16 **than amphibole.**
17 **What I do understand is that folks were**
18 **getting compensated in the tort system for product**
19 **exposure to chrysotile.**
20 Q. Mr. Grier, do you believe that exposure
21 to chrysotile asbestos can cause mesothelioma?
22 **A. You're asking me a question I'm not**
23 **competent to answer. I'm not a scientist.**
24 Q. Do you believe --
25 **A. I -- I -- I know the allegations on the**

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1 **ACC side are that it certainly does. And they had**
2 **some experts at the estimation trial who said**
3 **that.**
4 Q. Do you believe that exposure to
5 chrysotile asbestos can cause lung cancer?
6 MR. GUY: Objection.
7 Todd, are you asking him for his expert
8 opinion about the causation of cancer from
9 different types of asbestos? Because that
10 seems far afield from the issue and not
11 something that he's qualified to talk to. He
12 said three times now that that's a question
13 for the experts.
14 Q. Okay. Can you answer that question, Mr.
15 Grier?
16 **A. The answer is I'm -- I'm not qualified**
17 **to give an opinion on that.**
18 Q. If I asked you whether exposure to
19 chrysotile can cause other diseases or injuries,
20 would your answer be the same?
21 **A. My answer is there's disputed testimony**
22 **on it from the experts. I've heard it. I'm not**
23 **qualified to -- to say yes or no.**
24 Q. The debtors have said in their
25 information brief that the asbestos in some of the

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1 products was encapsulated. You mentioned that
2 earlier.
3 **A. Yes.**
4 Q. Do you know what encapsulated asbestos
5 means?
6 **A. I have a general understanding that it's**
7 **-- it's bound within a gasket and is not fryable.**
8 Q. And what does "fryable" mean?
9 **A. Loose, flying around. Just flying**
10 **around loose, like -- snowflakes was described in**
11 **the Garlock case. Dust storms.**
12 Q. And you heard about this during the
13 estimation trial?
14 **A. Yes.**
15 Q. Do you think it's possible for a person
16 to be exposed to asbestos that has been
17 encapsulated?
18 **A. Yes. Certainly.**
19 Q. And do you believe that asbestos
20 exposure can cause mesothelioma?
21 **A. Yes.**
22 Q. Do you believe that mesothelioma has
23 other causes?
24 MR. GUY: Objection, ambiguous.
25 Q. On page 3 --

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1 MR. GUY: What do you mean by that,
2 Todd?
3 MR. PHILLIPS: Sure. Let -- let me
4 rephrase that, John -- Mr. Guy.
5 Q. The debtors argue --
6 MR. GUY: You can call me John. That's
7 fine. We're not formal here.
8 Q. Mr. Grier, the debtors argue in their
9 information brief on page 3 that, "An increasing
10 percentage of mesotheliomas diagnosed in the
11 United states are unrelated to asbestos."
12 Do you agree with that statement?
13 MR. GUY: Same objection about calling
14 for scientific conclusions.
15 Q. Can you answer that question, Mr. Grier?
16 **A. Let me say that my understanding from**
17 **the testimony in Garlock was that the only cause**
18 **of mesothelioma is exposure to asbestos. If**
19 **there's an update on the science to that, I'm glad**
20 **to listen to it.**
21 **And I'm not a scientist and I'm not**
22 **really qualified to -- to answer that question.**
23 Q. Are you aware, Mr. Grier, of how the
24 debtors in these cases perform?
25 **A. I have read the information briefs.**

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1 **I've -- I've not studied them. I know there were**
2 **some prefiling restructurings, but don't ques --**
3 **don't try to question me on -- on what happened on**
4 **what day and so forth.**
5 Q. Let's mark as Grier Exhibit Number 6 the
6 First Day Declaration of Ray Pittard filed in
7 these cases at Docket No. 27.
8 MR. HAMILTON: Counsel, just -- just out
9 of respect for Mr. Pittard, there's two Ts
10 there. It's pronounced Pittard.
11 MR. PHILLIPS: Pittard. Thank you.
12 Thank you, counsel.
13 (THEREUPON, Grier Exhibit 6 was marked
14 for identification).
15 Q. Mr. Grier, we have displayed for you
16 what has been marked as Grier Exhibit 6. Do you
17 see that?
18 **A. Yes.**
19 Q. Do you recognize Grier Exhibit 6?
20 **A. I know there were two declarations,**
21 **first day declarations filed in the Aldrich case.**
22 **I think I skimmed both of them some time ago; not**
23 **in preparation for this deposition. So I'm aware**
24 **that they're there. I -- I cannot talk to you**
25 **about content.**

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1 Q. Okay. Do you have any reason to believe
2 this document before you is not accurate?
3 **A. I'll accept your representation that it**
4 **is.**
5 Q. Okay. And it has the ECF timestamp at
6 the top.
7 Have you ever seen this document before?
8 **A. Yes.**
9 Q. Okay. This is one of the documents
10 you've read to prepare yourself in this case?
11 **A. Not for this deposition. I think I read**
12 **this early on.**
13 Q. Turning to paragraph 14 on page 5.
14 **A. Right.**
15 Q. Do you see a reference -- it references
16 a 2020 corporate restructuring in the middle of
17 the page?
18 **A. Yes.**
19 Q. Okay. Are you familiar with that 2020
20 corporate restructuring?
21 **A. I know that a corporate restructuring**
22 **took place. I cannot cite you to details.**
23 Q. And how do you know that that
24 restructuring took place?
25 **A. From looking at -- at this document and**

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1 **other -- other documents filed in the case, either**
2 **the information brief or either of the two**
3 **declarations.**
4 Q. Did you discuss the 2020 corporate
5 restructuring with the debtors and their
6 affiliates?
7 **A. Did not. Have not.**
8 Q. Do you see where it says the, "The 2020
9 corporate restructuring was effectuated through a
10 series of transactions, including divisional
11 mergers under Texas law that resulted in the
12 creation of the debtors, both North Carolina
13 limited liability companies"?
14 **A. Yes.**
15 MR. GUY: Are you really asking Joe
16 about a corporate restructuring in this case
17 when he hasn't even been appointed yet?
18 MR. PHILLIPS: Yep.
19 MR. GUY: Because I'm not going to let
20 him answers -- ask -- answer questions
21 related to material matters, legal matters in
22 this case.
23 Frankly, Todd, I think for your benefit,
24 we're not taking a position on anything,
25 le -- any legal position in this case at this

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1 point in time.
2 MR. PHILLIPS: Okay.
3 Q. Do you see where it says that in the
4 middle -- that it was effectuated through
5 divisional mergers?
6 **A. Yes.**
7 Q. Are you familiar at all with divisional
8 mergers under Texas law?
9 **A. I am not.**
10 Q. Do you know what a divisional merger is?
11 **A. I do not.**
12 Q. Do you have any concerns about these
13 transactions as they are reflected in it's first
14 day affidavit?
15 MR. GUY: Objection. Same issue.
16 Q. Can you answer that question, Mr. Grier?
17 **A. Appointed as FCR, I would certainly want**
18 **to take a good look at them.**
19 Q. But today, as you sit here, you don't
20 have any concerns about these transactions?
21 MR. GUY: Objection. That's not what he
22 said. Asked and answered.
23 Q. Can you answer that question, Mr. Grier?
24 MR. HAMILTON: I -- yeah. This is
25 counsel for the debtor. I'm going to object

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to -- to form as well on that question and also the same grounds that Mr. Guy just articulated. He didn't say he didn't have any concerns. That's not what he said.

MR. PHILLIPS: I'll rephrase the question.

Q. Mr. Grier, do you have any concerns today, as you sit here, about the transaction listed in this declaration?

MR. GUY: Same objection.

A. I would want to look at -- I would want to look at them very closely if appointed as FCR. I don't have a conclusion, one way or the other, at this point.

Q. Okay. Have you been involved in a bankruptcy where the debtor performed a divisional merger prior to the bankruptcy?

A. I don't know whether -- not knowing exactly what a divisional merger is, I -- I don't know whether they did that in Garlock or not. In Garlock there was some notes and -- and some -- some transactions that both I, as FCR, and you challenged -- and the ACC challenged early on. I don't know whether that qualifies as a divisional merger or not. But certainly, what -- whatever

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there was in Garlock I was involved in.

Q. Do you know if Garlock involved Texas law divisional merger?

A. I do not.

Q. Besides the Garlock case that you referenced, have you been involved in any other bankruptcies where a debtor performed a divisional merger prebankruptcy?

MR. GUY: Under Texas law?

MR. PHILLIPS: Generally.

MR. GUY: We don't -- we haven't determined what a divisional merger is yet.

Q. Mr. Grier, can you answer that question?

A. Not to my knowledge, but...

Q. Have you -- have you ever investigated a debtor's divisional merger to determine whether it constituted a fraudulent transfer?

MR. GUY: Asked and answered. He already said he wasn't involved in a divisional merger to anyone under Texas law.

Q. Mr. Grier?

A. I've investigated lots of possible fraudulent transfers, possible things like that. I'm not sure what a divisional transfer is so I don't know how to answer the question. I -- I

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can't cite you to one where I've -- where I've done that, no.

Q. Are you familiar with the preliminary injunction proceeding that's ongoing, an adversary proceeding initiated by the debtors here?

A. Just the general concept from -- from my experience in Garlock. I've not looked at the papers at all in the Aldrich and Murray cases.

Q. What do you know about the injunction proceeding here?

A. I -- I don't know anything about it. I've not looked at the papers.

I -- I -- I know that -- that you can -- that it's -- the court can issue a prelim -- an injunction as part of an asbestos bankruptcy. And I understand that there's litigation out there asking for that. But again, I have not looked at the papers; I don't know what the issues are; I don't know who's taking what sides, if anybody.

MR. PHILLIPS: Would -- would you like to take a short break, grab some water or do you -- would you like to continue?

THE WITNESS: I'm fine keeping going, but I don't mind taking a break.

MR. GUY: How much --

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MR. PHILLIPS: Why don't we take a --

MR. GUY: How much time do you think you have, Todd?

MR. PHILLIPS: I don't know. Maybe less -- I would say less -- probably less than an hour, but I'm not sure yet. But probably less than an hour, but we'll see.

MR. HAMILTON: I vote for a -- I vote for a short break.

MR. PHILLIPS: It could be longer. I have to look at the documents.

MR. GUY: All right. Give me enough time to make a cup of tea; that will be five minutes.

MR. PHILLIPS: Okay. Let's take ten.

MR. GUY: I have to walk down the stairs and walk all the way up again. Okay.

MR. HAMILTON: So 11:30, right, we're back?

MR. GUY: Right.

MR. PHILLIPS: Yeah.

THE VIDEOGRAPHER: All right. This marks the end of disk number one in the remote Video Deposition of Joseph W. Grier. We're going off the record at 11:21 a.m.

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(A recess was taken).
THE VIDEOGRAPHER: Here begins disk number two in the remote video deposition of Joshua -- I'm sorry, so sorry -- Joseph W. Grier, III. We are going back on the record at 11:31 a.m.
BY MR. PHILLIPS:
Q. Mr. Grier, you are the FCR of the GST Settlement Facility or Garlock Trust; correct?
A. Correct.
Q. The Garlock Trust went active in 2017; is that right?
A. Yes.
Q. So it's been active for about three years?
A. Correct.
Q. Let's mark as Exhibit 7 the GST Settlement Facilities Notice of Filing of Annual Report for the Year Ended December 31, 2019. This document is dated April 30th, 2020.
(THEREUPON, Grier Exhibit 7 was marked for identification).
Q. Mr. Grier, do you see that publicly-filed Annual Report with the ECF date stamp at the top?

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A. I do.
Q. Do you recognize this document?
A. I'm guessing I've seen it before. I -- I don't remember -- I'll take your word that it is what you represent that it is.
Q. Do you look at the annual reports?
A. I do.
Q. Do you have any reason to believe that this is not an accurate depiction of the Annual Report?
A. I do not.
Q. On page 4 of this report in paragraph one it notes, "The trust extended its first offers on unliquidated claims in June 2019 and began issuing payments on accepted offers shortly thereafter."
A. Right.
Q. Do you know if it's usual for a trust to not pay any claims until over two years after it becomes active?
MR. GUY: Objection. Todd, we're not talking about Garlock.
And I'm going to instruct the witness not to answer any questions about how Garlock operates, what claims are being paid, what

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claims haven't been paid.
As you well know, you're counsel for the TAC in that case, and the information in that case is confidential in most instances, particularly concerning claims and how much they're paid and when they're paid. So I'm not going to allow any questions about Garlock.
Q. Mr. Grier, are you going to -- are you going to accept that instruction?
A. Yes.
Q. Okay. Let me repeat my question because it's not about Garlock.
Do you know if it is usual for a trust to not pay any claims until over two years after it becomes active?
A. I do not know.
Q. Would a two-year payment delay concern you?
A. You have to -- there has to be more context in that. Just say two years by itself, without anything else, is not enough to make a decis -- make any judgment about.
Q. Okay. Let's look at Exhibit 1.B. In Exhibit 1.B of the Annual Report it notes that the

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Garlock Trust has paid 279 claims at the end of 2019. Do you see that at the --
MR. HAMILTON: This is Bob Hamilton. I -- I need you to go a little slower. You guys may be really familiar with these things; I'm not, and it takes awhile for the screen to catch up to where you are.
I have no reason to believe that you're not accurately characterizing any of your questions, but just I would like to be able to follow it. So if you could give us a little bit of time for your colleague and -- and the -- and the screen to catch up to you, that would be helpful.
MR. PHILLIPS: Absolutely.
I think we -- we have it now.
Q. And you see a column that's Number of Approved Claims Paid in this publicly-filed document and it says 279?
Do you see that, Mr. Grier?
A. Yes.
Q. Do you know why the trust has only paid 279 claims?
MR. GUY: Objection.
I'm instructing the witness not to

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1 answer because it concerns the operations of
2 the Garlock Trust and why claims are paid.
3 And how they're claimed is a matter of
4 confidentiality between the TAC, the trustee
5 and the FCR.
6 If you want to contact the trustee,
7 Lewis Seifert and if you want to contact your
8 TAC members and you want to ask them to agree
9 to waive confidentiality as to these issues,
10 that's great; but we can't.
11 So Todd, move on.
12 Q. And Mr. Grier, you'll accept that
13 instruction?
14 **A. Yes.**
15 Q. Would you accept that instruction for
16 any questions I ask for Exhibit 1.B?
17 MR. GUY: We don't know what the
18 questions are.
19 MR. PHILLIPS: Okay. Well, let's ask
20 them.
21 Q. Exhibit 1.B showed that 734 claims
22 approved for payment in 2019. Do you see that
23 Number of Claims Approved for Payment, 734?
24 **A. Yes.**
25 Q. And 279 were paid as of the end of the

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1 year. Do you see that?
2 **A. I see -- I see the number you've**
3 **highlighted, yes.**
4 Q. Okay. Have you talked with any claimant
5 about the claims resolutions procedures in
6 Garlock?
7 MR. GUY: You can answer yes or no, Joe.
8 **A. I have had a few phone calls from people**
9 **who believe they have claims in Garlock. And I**
10 **really couldn't answer their questions. I mean,**
11 **they wanted to know what do I need to do to file a**
12 **claim, how can I get money.**
13 **Aside from -- from those sorts of con --**
14 **and I said you need to find -- you need to go to**
15 **your lawyer; you can't talk to me about that, I**
16 **can't help you.**
17 Q. Okay. So when claim -- so claimants --
18 several claimants have called you and you referred
19 them -- you referred them out?
20 **A. Whether they're claimants as defined in**
21 **the settlement facility, I -- I don't know.**
22 **They're people who believe they have**
23 **claims in Garlock and want to know what they need**
24 **to do. I basically said please go talk to your**
25 **lawyer.**

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1 Q. Do you believe there are any problems
2 with the claims resolution procedures in Garlock?
3 MR. GUY: Objection.
4 Instruct the witness not to answer.
5 You're asking him to talk about the
6 operation of a confidential trust, one that
7 operates under a CRP that the ACC has agreed
8 to and is operating under confidentiality
9 restrictions with Lewis Seif -- Seifert.
10 So if you want to call those parties to
11 waive those confidentiality restrictions so
12 Joe can fully answer, we can, but I don't
13 think it's appropriate.
14 Q. And Mr. Grier, will you accept that
15 instruction?
16 **A. Yes.**
17 Q. Is there anything you would change in
18 the Garlock CRP?
19 MR. GUY: Same instruction.
20 Q. Same answer, Mr. Grier?
21 **A. Same answer.**
22 MR. GUY: If you want to ask generic
23 questions, Todd, you're welcome to. But you
24 can't link them back to the Garlock Trust for
25 reasons that I know you are well aware of.

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1 We're not going to have Joe be asked a
2 question by you as a counsel for the TAC in
3 the same trust and then turn around and say,
4 ah, look, Joe violated his confidentiality
5 restrictions.
6 And the fact that you're even trying to
7 get him to do that is -- well, you know, it's
8 just not polite.
9 Q. Mr. Grier, you're familiar with Bates
10 White; correct?
11 **A. Yes.**
12 Q. What do they do?
13 **A. In Garlock, they were the estimator for**
14 **Garlock.**
15 Q. Have you had any -- any communications
16 with anyone from Bates White regarding these
17 cases?
18 **A. No.**
19 Q. Have you discussed any other asbestos
20 bankruptcy other than Garlock with Bates White?
21 **A. No.**
22 Q. In Garlock Bates White offered a, quote,
23 "legal liability," end quote, theory --
24 **A. Yes.**
25 Q. -- in the context of estimation. Do you

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1 recall that?
2 **A. I do.**
3 Q. What is your understanding of the legal
4 liability period?
5 **A. First of all, I didn't agree with it.**
6 **It was in opposition to the theory I --**
7 **to my theory that -- and the ACC's theory that the**
8 **evaluation should be done based on settlement**
9 **values.**
10 **I -- I'm not sure I ever really**
11 **understood it. It seemed, to me, it was based on**
12 **assumption, based on assumption, based on**
13 **assumption that I just didn't agree with.**
14 Q. If you were appointed FCR on these cases
15 and the debtors raised the same legal liability
16 theory, would you contest that?
17 MR. GUY: Objection.
18 Instructing the witness not to answer.
19 You're asking him potential work product
20 in a case to which he's not been appointed.
21 MR. PHILLIPS: Okay.
22 Q. Let me -- let me rephrase that, Mr.
23 Grier.
24 Mr. Grier, in your opinion, if a debtor
25 asserted the legal liability theory to reduce

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1 claims for current and future claimants, should a
2 FCR contest the application of that theory?
3 MR. HAMILTON: I am going to object to
4 form. You can --
5 **A. I think --**
6 Q. Can you answer that?
7 **A. Best to answer that by saying, in the**
8 **only time it's come before me I have opposed,**
9 **objected to that -- that particular theory.**
10 Q. In your opinion, Mr. Grier, is there any
11 situation where the assertion of the, quote,
12 "legal liability," end quote, theory would benefit
13 future claimants?
14 **A. Well, you say any situation. I -- I --**
15 **I don't know that I can answer for any possible**
16 **situation in the world.**
17 **The position I took in Garlock, which I**
18 **believe that to this day is reasonable, is that**
19 **there's a market value of -- that settlements**
20 **establish a market value. That you've got**
21 **sophisticated parties on both sides of numerous**
22 **transactions and that establishes the market for**
23 **settlement values, and that's what ought to be**
24 **looked at.**
25 **But in any case I'm going to look at**

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1 **that particular case and I'm willing to listen to**
2 **anything.**
3 Q. So -- so could there be a situation
4 where you supported the legal liability theory?
5 MR. GUY: Objection, speculation.
6 He's answered the question, Todd. He's
7 already said that he doesn't agree with it.
8 That should be more than enough for you.
9 Q. Can you answer that question, Mr. Grier?
10 MR. HAMILTON: Object to form.
11 **A. If you say are there any circumstances,**
12 **I don't know how I can possibly say that there**
13 **would be no circumstances in the world.**
14 **But I disagreed with it in Garlock.**
15 **I -- I still disagree with it in Garlock. Like --**
16 **Like I said, I -- I listen to anybody, I look at**
17 **anything, but I don't -- I believe my reasons in**
18 **Garlock were sound.**
19 Q. Are you aware that Bates White has been
20 retained by the debtors here?
21 **A. I think I knew that. I'm not sure.**
22 Q. Okay. Let's mark as Grier Exhibit 8 for
23 identification a copy of your Dec -- of your
24 Declaration that was submitted in these cases in
25 support of the debtors' motion to appoint you as

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1 FCR.
2 **A. Right.**
3 (THEREUPON, Grier Exhibit 8 was marked
4 for identification).
5 Q. Mr. Grier, we have on the screen
6 Declaration of Joseph W. Grier, III in the Aldrich
7 Pump case. There's an ECF date -- timestamp at
8 the top. Do you see that?
9 **A. I do.**
10 Q. Do you have any reason to believe it's
11 not accurate?
12 **A. I do not. I'll accept your**
13 **representation that it is.**
14 Q. Okay. In paragraph five, according to
15 your Declaration your law firm performed a
16 conflicts check based on the information based --
17 provided by the debtors, including Interested
18 Parties List attached hereto as Schedule 2.
19 **A. Yes.**
20 Q. Do you see that in paragraph 5?
21 **A. Yes.**
22 Q. Did your firm also perform a conflicts
23 check against the Debt -- Debtors' Consolidated
24 Master Creditor List which was filed at Docket No.
25 31?

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1 **A. We did not.**
2 Q. Why -- why not?
3 **A. Nobody's given us that list and asked us**
4 **to.**
5 Q. Let's mark as Grier Exhibit 9 for
6 identification a copy of the Proposed Order
7 attached to the Debtors' Motion to Appoint you,
8 Mr. Grier, as FCR.
9 (THEREUPON, Grier Exhibit 9 was marked
10 for identification).
11 Q. Do you see that on the screen, Mr.
12 Grier?
13 **A. I do. And accept your representation**
14 **that it's what you say it is.**
15 Q. Okay. And do you recognize this
16 document?
17 **A. I do.**
18 Q. And it has ECF timestamp at the top?
19 **A. Does it? I can't see it from here.**
20 **Yes.**
21 Q. Okay. Any reason to believe this isn't
22 accurate?
23 **A. No.**
24 Q. Looking at this order, in paragraph 4
25 this order would allow you to utilize the services

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1 of your firm, Grier, Wright & Martinez without
2 further court approval --
3 **A. Right.**
4 Q. -- is that correct?
5 **A. Correct.**
6 Q. Do you intend to use your firm in
7 connection with these cases if selected as FCR?
8 **A. Yes.**
9 Q. Let's turn back to Exhibit 8 which is
10 the Declaration.
11 **A. Right.**
12 Q. On page 3 of the Declaration, still D,
13 at the top --
14 **A. That's right.**
15 Q. -- it's, "The firm represents Truck
16 Insurance Exchange."
17 Do you see that?
18 **A. I do.**
19 Q. You understand that there's an adversity
20 of interest between asbestos insurance companies
21 and asbestos claimants in bankruptcy; right?
22 MR. GUY: Objection, asks for a legal
23 conclusion.
24 He's here as a witness on his
25 disinterestedness and qualifications.

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1 Q. Can you answer that question, Mr. Grier?
2 **A. I understand that in a specific case**
3 **there's an adverse interest between an insurance**
4 **company and folks who have claims in that case,**
5 **yes.**
6 Q. If made FCR here, would your firm
7 withdraw from representing Truck in the Kaiser
8 Gypsum bankruptcy?
9 **A. First of all, I don't believe it's a**
10 **conflict.**
11 **If -- if -- if the Court were concerned**
12 **about it, then -- then I would be willing to see**
13 **if we could do that.**
14 **As I think you know, that case is, I**
15 **think, nearing the end. The Court confirmed the**
16 **plan recently. It's got to go to the District**
17 **Court. So I don't think there's a lot left in**
18 **that case. But again, I don't know.**
19 Q. What is your role in that case?
20 **A. I have no present role, have had no**
21 **present role for the last several years.**
22 **I was initially contacted by a lawyer in**
23 **Los Angeles named David Neal who represents Truck**
24 **and asked me to be Truck's local counsel; and**
25 **agreed to that representation in, I think, October**

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1 **of 2017. Made one appearance in court and**
2 **promptly turned it over to Michael Martinez in my**
3 **law firm to handle.**
4 **And I've had very minor things to do**
5 **with that case since that time and have had no**
6 **billable entry in the case in, I think -- since**
7 **2018.**
8 Q. Would you withdraw your appearance on
9 behalf of Truck in that case?
10 **A. I have not.**
11 **If the Court was concerned -- it gave**
12 **concern to the Court, I would be glad to.**
13 Q. Have you ever been screened off from
14 that case?
15 **A. I have not been screened off.**
16 Q. How many attorneys are there at your law
17 firm?
18 **A. Five.**
19 Q. Let's turn back to Exhibit 2. This is
20 the -- your responses to our discovery requests.
21 **A. Yes.**
22 Q. On page 4 to 5, at the very bottom, in
23 response to question "Documents sufficient to
24 identify each case," in re -- that's document
25 request 1, at the very bottom of page 4 starts

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1 with the "the" and carries on to the next page.
2 **A. Right.**
3 Q. I'm going to read it out loud for you.
4 It says, "The foregoing does not concede or agree
5 that Truck Insurance Exchange is necessarily
6 adverse to future claimants in that case."
7 **A. Right.**
8 Q. What did you mean when you wrote that
9 sentence?
10 **A. I'm making a disclosure here in response**
11 **to your question, but in -- I'm not coming to any**
12 **legal conclusion about whether there's an adverse**
13 **interest.**
14 Q. Do you believe that Truck is advocating
15 for the interests of future claimants in the
16 Kaiser Gypsum bankruptcy?
17 **A. I think there's adversity. I -- I**
18 **can't -- can't speak to Truck's position. I'm so**
19 **far out of that case that I can't say other than**
20 **what I've already said, that generally there's an**
21 **adverse relationship between an insurance company**
22 **and the claimants.**
23 Q. Is Truck adverse to future claimants in
24 that case?
25 MR. GUY: Asked and answered.

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1 You can see his deposition -- his
2 document response, Todd. So why are you
3 asking him again?
4 Q. Can you answer that question, Mr. Grier?
5 **A. I'll stick by what I've said so far.**
6 Q. Okay. Are you aware that the ACC, FCR
7 and the debtors in the Kaiser Gypsum case filed a
8 Proposed Joint Plan of Reorganization?
9 **A. I know generally that they, yes, filed a**
10 **-- yes.**
11 Q. Are you aware that that plan passes
12 through insured asbestos claims being litigated in
13 the tort system?
14 **A. Yes.**
15 Q. Do you believe, Mr. Grier, that such a
16 plan is or is not in the interest of future
17 claimants?
18 MR. GUY: Objection.
19 You're asking him to give a legal
20 opinion about a plan that he doesn't know
21 about, doesn't have the details about and is
22 not the FCR.
23 I instruct the witness not to answer.
24 You're fishing to get the statement from
25 Joe Grier to buttress arguments you're trying

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1 to make in another case, Todd. It's
2 improper.
3 You can ask him about his qualifications
4 and his disinterestedness. And as you well
5 know, Truck isn't even in this case.
6 Q. Are you going to follow --
7 MR. GUY: The Aldrich case.
8 Q. Are you going to follow that
9 instruction, Mr. Grier?
10 **A. Yes.**
11 Q. Let's mark as Exhibit 10 for
12 identification a copy of the Objection of Truck
13 Insurance Exchange to Confirmation of the Third
14 Amended Joint Plan for Reorganization in the
15 Kaiser Gypsum Bankruptcy. We're going to mark
16 this as Exhibit 10. It has an ECF timestamp at
17 the top.
18 (THEREUPON, Grier Exhibit 10 was marked
19 for identification).
20 Q. Do you recognize Grier Exhibit 10?
21 **A. I do not.**
22 Q. Have you ever seen this document before?
23 **A. Not to my knowledge.**
24 Q. Okay. It's dated February the 24th,
25 2020; right?

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1 **A. Yes, that -- that's the ECF stamp at the**
2 **top.**
3 Q. If you turn to the last page, page 36,
4 do you see that it has the date February 24th,
5 2020?
6 **A. Yes.**
7 Q. And, "Respectfully submitted, Michael L.
8 Martinez"?
9 **A. Yes.**
10 Q. And that's your partner, right?
11 **A. Yes.**
12 Q. Okay. Do you have any reason to believe
13 this is not an accurate depiction of this
14 document?
15 **A. I'll accept your representation that it**
16 **is what you say it is.**
17 Q. Okay. Turn to page 7. At the bottom of
18 the page it's a -- it's at heading, 1. It says,
19 "Suppression and manipulation of exposure evidence
20 is rampant in the tort system."
21 Do you see that?
22 **A. Yes.**
23 Q. Do you agree with that statement made by
24 Truck?
25 **A. First of all, I don't know what the**

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1 **statement is. It's not my statement. So I don't**
2 **-- I don't -- I don't have a position with respect**
3 **to it.**
4 **I also don't think the FCR is -- is --**
5 **is considered -- worried about the tort system,**
6 **so.**
7 Q. Okay.
8 **A. It's completely separate from whatever a**
9 **FCR is supposed to do.**
10 Q. The -- the next sentence says, "By now,
11 no one can credibly deny the systemic practice of
12 evidence manipulation and suppression by
13 plaintiffs and their counsel in asbestos cases
14 litigated in the tort system."
15 Do you see that?
16 **A. I do.**
17 Q. Do you agree with that statement?
18 **A. It's not my statement.**
19 Q. Turning to page 3 there's a sentence,
20 "The debtors have never denied."
21 Do you see that?
22 **A. Yes.**
23 Q. Do you agree with Truck's statement on
24 page 3 that, "The effect of such evidence
25 manipulation and suppression is to fraudulently

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1 and artificially inflate claim values"?
2 MR. GUY: I want a continuing objection,
3 Todd.
4 This, obviously, isn't his document. He
5 didn't write it, he's not adopting it and
6 he's not agreeing to it. And he said that
7 already. You can go through the whole
8 document and ask the same questions, but I
9 think the answer's going to be the same.
10 MR. PHILLIPS: Noted. Noted, John.
11 Q. Mr. Grier, can you answer that?
12 **A. Same answer, not my statement.**
13 Q. Okay. Go to page 13. At the very
14 bottom of 13 you see where it says, "One thing is
15 clear"?
16 **A. Yes.**
17 Q. Do you agree with Truck's statement on
18 the bottom of page 13 that, "The only conceivable
19 reason why an FCR would refuse to require asbestos
20 claimants to submit to additional procedures in
21 the state tort system is, quote, 'the FCR's desire
22 to allow their constituents to continue
23 manipulating, suppressing exposure evidence so
24 that they can obtain improperly inflated
25 recoveries in the tort system'"?

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1 Do you agree with that statement?
2 **A. Same answers. Not my statement.**
3 Q. Are you aware, Mr. Grier, that the
4 debtors here have argued in their information
5 brief that they have been subject to evidence
6 suppression and inflated settlement values in the
7 tort system?
8 **A. Are you talking about in the Aldrich**
9 **case?**
10 Q. Correct.
11 **A. I -- yes.**
12 Q. You are aware that they've made those
13 statements?
14 **A. Yes.**
15 Q. Are you aware of the insurance component
16 in the Aldrich case?
17 **A. Am not.**
18 Q. Do you have any experience engaging with
19 insurers in asbestos bankruptcy?
20 **A. No, other than the experience with Truck**
21 **which we've already discussed.**
22 Q. But besides Truck, no experience
23 engaging with insurers?
24 **A. Correct. Right. Yes. Correct.**
25 Q. In -- in your opinion, Mr. Grier, are

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1 future claimants' interests more aligned with
2 those of current claims in asbestos bankruptcy or
3 with asbestos debtors' insurers?
4 **A. I think it shifts around. I think it**
5 **depends on the issue.**
6 **I think on the issue of -- of what the**
7 **ultimate check is for and the size of the trust,**
8 **the interests are aligned. I think when it comes**
9 **to allocating the trust proceeds between present**
10 **and futures, they're adverse.**
11 Q. Let me ask my question again.
12 Are future claimants' interests more
13 aligned with those of current claimants or with
14 asbestos debtors' insurers?
15 **A. All right. Repeat the question one more**
16 **time.**
17 Q. Are future claimants' interests more
18 aligned with those of current claimants or with an
19 asbestos defendant's insurers?
20 MR. HAMILTON: Object to form.
21 **A. Well, I think with current claimants.**
22 Q. In your opinion, are future claimants'
23 interests more aligned with those of current
24 claimants or with the debtor?
25 MR. PHILLIPS: Object to form.

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A. Again, the interests are the same when you're talking about how much money is going to be in the trust; they're adverse when you're talking about how you're going to allocate between presents and futures.

I think on any given issue you need to look at the context and the particular issues that -- that are involved in that issue.

Q. Mr. Grier, you're being represented by Orrick, Herrington & Sutcliffe in this deposition; right?

A. Yes, sir.

Q. Do you intend to retain them as counsel if selected as FCR in these cases?

A. Yes.

Q. Are you aware that Orrick currently represents asbestos defendants, such as Union Carbide and Johnson & Johnson, in the tort system?

A. I know that they have.

In the past I had a defense practice where they represented defendants in the tort system, asbestos defendants.

I can't tell you who they presently represent. That was disclosed in Garlock. It was known in Garlock. There's nothing different about

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their position now than there was in Garlock in 2010 and all the years between then.

Q. In -- in your responses to the discovery we served, you stated that Orrick's tort trial team joined King & Spalding in February --

A. Yes.

Q. -- is that right?

A. Yes.

Q. What does that mean?

A. It means a bunch of lawyers from Orrick left Orrick and they're no longer there, they're at King & Spalding.

Q. Let's mark as Exhibit 11 for identification -- that is compilation of professional biographies from the Orrick website of certain Orrick partners.

And we downloaded this in the last 24 hours.

(THEREUPON, Grier Exhibit 11 was marked for identification).

MR. GUY: I told you, you're welcome to ask him about anything new, but you covered Jim Stengel in the prior deposition. I could happily tell you more about what is the context with the tort trial team lose --

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leaving the firm, but I don't know because I'm separated off from it. But it's on Law360; you can see it just as easily as I can.

MR. PHILLIPS: I'm just going to ask a few questions about this.

MR. GUY: Okay. If it's post March 19 -- March 2019, that's fine. But if not, it's repetitive of what you've already covered.

So I will instruct the -- the witness not to answer.

Q. Do you have any reason to believe that Exhibit 11 is not accurate, Mr. Grier?

A. I -- I don't recognize it. But I'll take your representation that it is what you say it is.

Q. Okay. This was downloaded yesterday.

And if you go to Johnson & Johnson Talc Litigation --

A. Uh-huh.

Q. -- it says, "Jim is a member of the Orrick team representing..."

"Is a member of the Orrick team," so he's -- the website reflects that he's currently

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representing Johnson & Johnson; right?

MR. GUY: Ob -- I'm laughing here, Todd. You're assuming that it's been updated.

Q. On the lower -- down under Union Carbide it says, "Jim is the leader of the Orrick team serving as National Counsel for Union Carbide."

Do you see that?

A. Yes.

Q. Okay. Let's look real quick at his publi -- a few of his publications. And he's had some recent ones.

MR. GUY: You can ask him about anything post March 2019.

Q. Okay. Looking at this, at these publications, do -- do you know who IRL is?

A. Not off the top of my head.

Q. Do you know who the U.S. Chamber Institute for Legal Reform is?

A. I've heard of it. I couldn't tell you anything about it.

Q. On these publications Mr. Stengel wrote an article titled Insights and Inconsistencies: Lessons from the Garlock Trust Claims for ILR. And this is in 2016. Have you read that article, Mr. Grier?

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1 **A. I have not.**
2 Q. Have you discussed that article with
3 anyone?
4 **A. I have not.**
5 Q. Let's move to Peter Bicks which is the
6 next in this compilation.
7 If you go down to Union Carbide, it
8 says, "Peter is and has been lead trial counsel
9 for some of the company's biggest cases."
10 So at least --
11 **A. All right.**
12 Q. At least with respect to the website it
13 says, "Peter is and has been..."
14 Do you see that?
15 **A. I see that.**
16 Q. Okay. If you go to his publications,
17 he's got some publications on there on punitive
18 damages.
19 **A. I'll take your word for it.**
20 Q. Okay. One of them is titled Defending a
21 Company in a Punitive Damages Case: A
22 Comprehensive Approach to Defeating Punitive
23 Damages in Light of Present-Day Juror Attitudes
24 and other articles like that.
25 Are punitive damages a positive result

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1 for asbestos claims in the tort system?
2 MR. GUY: Objection.
3 You're asking him for some sort of
4 philosophical view of that or a legal
5 conclusion.
6 MR. HAMILTON: I'll object to form on
7 that one.
8 Q. Can you answer that question, Mr. Grier?
9 **A. From a -- from a plaintiff's**
10 **perspective, the more money a plaintiff gets the**
11 **better. So plaintiff gets punitive damages,**
12 **that's better for the plaintiff.**
13 Q. Yeah.
14 So an article like this, would you
15 characterize it as anti-plaintiffs?
16 **A. I have not read the article. I cannot**
17 **comment.**
18 Q. The next -- next in this compilation is
19 Lisa Simpson. On her bio, where it says, "Lisa
20 serves as National Trial Counsel for Johnson &
21 Johnson in cases asserting claims arising from the
22 use of talcum powder products, including claims of
23 mesothelioma and ovarian cancer."
24 Do you see that?
25 **A. Yes.**

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1 Q. Okay. The next one is Laurie Strauch
2 Weiss.
3 MR. GUY: I am going to have a standing
4 objection, Todd, because I know that you are
5 well aware that the national tort group
6 within Orrick left to King & Spalding.
7 You're asking questions about current --
8 I assume, current buyers that have not been
9 updated to reflect that reality. So if you
10 want to waste your time on it, you can, but
11 you know it doesn't reflect reality.
12 Q. Laurie Strauch Weiss --
13 MR. PHILLIPS: Noted, Mr. -- noted,
14 John.
15 Q. Laurie Strauch Weiss, it notes on here
16 that she acts as counsel to Union Carbide in
17 connection with asbestos-related personal injury
18 lawsuits and in that capacity has developed a
19 coordinated national scientific and medical
20 defense for Union Carbide.
21 Do you see that?
22 **A. Yes.**
23 Q. Okay. All right. So these bios, these
24 current bios for Orrick reflect that Orrick is
25 currently advertising an asbestos defense

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1 practice; isn't that right?
2 MR. GUY: Objection.
3 **A. They are whatever they are.**
4 Q. Do you believe that Orrick's asbestos
5 defense practice creates a conflict, positional or
6 otherwise, with --
7 **A. I do not.**
8 Q. -- the future claimants in this case?
9 **A. I do not.**
10 Q. Why not?
11 **A. I don't believe that anything else about**
12 **the things you've described or anything else the**
13 **firm is doing has an impact on Mr. Guy's**
14 **representation.**
15 **I've been working with Mr. Guy since --**
16 **for the last ten years. I -- I know his**
17 **decision-making process. He's -- he's the lawyer,**
18 **not the decision maker. But I -- but I believe he**
19 **is not influenced by positions that other lawyers**
20 **in his firm take.**
21 Q. Let's go back to Exhibit 9, the proposed
22 order. And again, this is the proposed order
23 pointing Joseph W. Grier, III as legal
24 representative; right?
25 **A. Right.**

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1 Q. On page 2 of this order in the middle of
2 the page it -- it says, "The future claimants'
3 representative shall represent interests of,
4 appear and act on behalf of and be a fiduciary to
5 future claimants to protect the rights and
6 interests of such future claimants"--
7 **A. Right.**
8 Q. -- "and shall be entitled to
9 compensation in connection therewith from the date
10 of the filing of this motion."
11 **A. Right.**
12 Q. Do you see that?
13 **A. Yes.**
14 Q. From your documents, it looks like you
15 insisted that this sentence include the term
16 "act".
17 **A. Yes.**
18 Q. Why?
19 MR. GUY: I'm instructing the witness
20 not to answer.
21 You're asking his work product and it
22 will probably also implicate attorney-client
23 privilege communications in the context of
24 what would be his future appointment in a
25 future case. We're not going to talk about

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1 what if, he could do or couldn't do or why he
2 couldn't do it and the support for it in a
3 future case. No more than you would let us
4 depose your members of the TAC, ACC and ask
5 them the same questions.
6 Instruct the witness not to answer.
7 Q. Are you going to follow that
8 instruction, Mr. Grier?
9 **A. Yes.**
10 Q. Okay. Do you think that this order
11 would allow you, as FCR, to bind future claimants?
12 MR. GUY: Objection.
13 Same instruction.
14 Q. Same answer, Mr. Grier?
15 **A. Same answer.**
16 Q. Okay. Do you think that it would allow
17 you, as FCR, to vote the asbestos claims of future
18 claimants in a non-524(g) plan?
19 MR. GUY: Objection.
20 Same instruction.
21 Q. Same answer, Mr. Grier?
22 **A. Same answer.**
23 Q. Do you believe that future asbestos
24 claims can be channeled through a trust or
25 settlement facility, through a plan that does not

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1 comply with 524(g)?
2 MR. GUY: Objection.
3 You're asking him to give you a legal
4 conclusion about something that could be
5 relevant in a future case.
6 I instruct the witness not to answer.
7 Anymore than you would let us depose one
8 of your members of the ACC and ask them what
9 their legal views were about issues like
10 this, on the record.
11 Q. Do you follow that instruction, Mr.
12 Grier?
13 **A. I do.**
14 Q. Okay. Have you ever spoken with an
15 asbestos claimant?
16 MR. GUY: Objection, asked and answered.
17 Q. Beyond claimants calling you with
18 respect to the CRP.
19 **A. You're talking about a claimant, not a**
20 **lawyer; right?**
21 Q. Yeah.
22 Have you ever spoken with an asbestos
23 claimant?
24 **A. To -- just the odd phone calls that I've**
25 **had because folks with various asbestos diseases**

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1 **have seen my name as the FCR in Garlock and have**
2 **somehow gotten my number and called me.**
3 Q. Okay. Have you ever talked to someone
4 who was a future claimant and then became a
5 current claimant?
6 **A. Well, I don't know of the people who I**
7 **talked to on the phone. I don't know when their**
8 **-- their disease has manifested. So I can't**
9 **answer that.**
10 Q. When you spoke with those individuals
11 who called you, besides referring them out,
12 telling them to -- to contact a lawyer, did you
13 have any other discussion with them?
14 MR. HAMILTON: Object to form.
15 I don't believe that's what he said
16 before.
17 **A. These -- these were not soph -- on the**
18 **whole, folks who called me were not sophisticated.**
19 **Some of them had apparently had lawyers and**
20 **separated from those lawyers and wanted to file**
21 **claims on their own. And even though the Garlock**
22 **Trust provides that you don't have to have a**
23 **lawyer, in my experience you need a lawyer. And**
24 **so I would spend some time talking to folks about,**
25 **yes, no, no, you need a lawyer, you need a lawyer,**

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1 **you cannot do this on your own. So those kind of**
2 **conversations.**
3 Q. But besides those conversations, have
4 you ever talked to someone that was a future
5 claimant and became a current claimant?
6 MR. GUY: Objection.
7 A future claimant is someone who doesn't
8 know they're sick yet. So how could he have
9 done that?
10 Q. Can you answer that, Mr. Grier?
11 **A. Everybody I've talked to has believed --**
12 **has manifested and believed that they had a claim.**
13 **Whether they were at one point a future**
14 **claimant -- I don't know when they manifested.**
15 Q. But besides the group of calls you
16 received requesting information?
17 **A. No. Those are the only folks I've --**
18 **only -- only claimants I've talked to.**
19 Q. What measures, Mr. Grier, would you take
20 to ensure a cost effective and efficient
21 representation in these cases?
22 **A. I think if you look at the -- the FCR**
23 **costs in the Garlock case, you'll see that our --**
24 **our charges were reasonable; the experts we hired**
25 **were reasonable; our costs compared to other folks**

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1 **were reasonable. So I -- you know, I think that**
2 **-- that says the most.**
3 **There may be issues which my interests**
4 **as FCR and the interests of the ACC are aligned**
5 **and it doesn't make sense to hire two sets of**
6 **experts. I'm open to -- to saying let's have the**
7 **same expert. I don't believe the FCR needs to**
8 **hire every expert just because somebody else has**
9 **hired a expert.**
10 **You know, I -- but I think generally the**
11 **practice is what we used in Garlock. We'd follow**
12 **the same practice.**
13 Q. Going back to talking about your
14 discussions or -- with future claimants who became
15 current claimants --
16 MR. GUY: Objection.
17 He didn't characterize them as future
18 claimants. He didn't know.
19 Q. Going back to my question if he had ever
20 spoken with a future claimant that became a
21 current claimant and you -- you said no. Why not?
22 MR. HAMILTON: Object to form.
23 **A. I'm not sure I understand the question.**
24 Q. Why haven't you ever talked to someone
25 who was a future claimant that became a current

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1 claimant?
2 **A. Well, I may have. I may have had**
3 **occasion to.**
4 Q. Do you have a proposed staffing plan for
5 the Aldrich bankruptcy, Mr. Grier?
6 **A. I'm sorry. Re-ask the question.**
7 Q. Do you have a proposed staffing plan for
8 the Aldrich bankruptcy?
9 **A. I do not.**
10 Q. Would you plan -- have you considered
11 hiring any counsel besides tort?
12 **A. I have not.**
13 Q. Would you hire local counsel?
14 **A. My own firm can serve as local counsel.**
15 Q. Would you hire insurance counsel?
16 **A. I don't know.**
17 Q. Would you plan to hire experts?
18 **A. Generally, yes. But I would also look**
19 **at whether the FCR and the ACC need two sets of**
20 **experts.**
21 Q. What do you --
22 **A. I would consider hiring experts, yes.**
23 Q. What do you see as the challenges or
24 obstacles in these cases generally?
25 MR. GUY: Objection.

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1 Instruct the witness not to answer.
2 You've asking him about possible legal
3 conclusions, work product and the like.
4 You can ask him generically about
5 challenges in confirming asbestos cases as
6 long as you don't get into his legal
7 conclusions or legal thinking.
8 Q. Mr. Grier, are you aware of the
9 financial condition of the debtors in these cases?
10 **A. Only so much as set forth in the**
11 **information brief. I have not seen a balance**
12 **sheet, income statement; anything like that.**
13 Q. Generally speaking, are there things
14 that you consider non-negotiable in the plan to
15 protect future claimants?
16 MR. GUY: Objection.
17 Same instruction.
18 Q. Are you going to follow that
19 instruction, Mr. Grier?
20 **A. Yes.**
21 Q. Okay. Generally speaking, are there
22 other things that you consider non-negotiable in
23 trust documents to protect future claimants?
24 MR. GUY: Objection.
25 Same answer.

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1 You're trying to bind him to a future
2 settlement discussion that hasn't taken place
3 yet. It's improper.
4 Q. Are you going to follow that
5 instruction, Mr. Grier?
6 **A. Yes.**
7 MR. PHILLIPS: Let's take a five-minute
8 break and -- and see if I have anything else.
9 We're going off the record.
10 THE VIDEOGRAPHER: All right. We are
11 going off the record at 12:30 -- 12:13 p.m.
12 (Off Video Record).
13 MR. ERENS: I just want -- this is Brad
14 Erens, Jones Day. I just want to make a
15 point that the debtors reserve the right to
16 ask questions once the -- once the ACC is
17 finished.
18 (A recess was taken).
19 THE VIDEOGRAPHER: We are back on the
20 record at 12:19 p.m.
21 MR. PHILLIPS: Thank you, Mr. Grier. I
22 have no further questions at this time.
23 We will leave the deposition open and
24 reserve the right to recall you. But
25 otherwise, we have no further questions at

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1 this time.
2 MR. ERENS: Okay. This is Brad Erens on
3 behalf of the debtors. We have a couple of
4 followup questions.
5 EXAMINATION
6 BY MR. ERENS:
7 Q. Mr. Grier, in the beginning of the
8 deposition, I don't remember what exhibit number
9 it was, you were shown the responses that you
10 prepared. I think you testified to the discovery
11 requests from the ACC.
12 **A. Right.**
13 Q. Do you -- do you recall that?
14 **A. Yes.**
15 Q. Did you or your counsel share drafts of
16 those prior to filing -- did you or your counsel
17 share with the debtors drafts of those responses
18 prior to sending them to the ACC?
19 **A. I did not. To my knowledge, my counsel**
20 **did not.**
21 Q. Okay. Thank you.
22 Secondly, I want to go to, I think, what
23 was Exhibit 9. I don't know who's in control of
24 the exhibits, but it's the -- the proposed order
25 for your appointment.

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1 **A. Right.**
2 MR. ERENS: Can someone bring that up on
3 the screen? Thank you.
4 Q. I think it's paragraph 4 you were shown,
5 if we go back to that, which is a statement that
6 you could use your law firm in this case without
7 being -- that firm being appointed by the court.
8 **A. Right.**
9 Q. Can you read the relevant sentence?
10 **A. "Mr. Grier may utilize the services of**
11 **his firm, Grier, Wright & Martinez, P.A., without**
12 **further court approval but subject to terms of the**
13 **Interim Compensation Order with respect to the**
14 **payment of any of Grier, Wright & Martinez's fees**
15 **or the reimbursement of any of Grier, Wright &**
16 **Martinez's expenses."**
17 Q. And if you could read a little bit above
18 that, what the scope of that retention would be
19 without court approval of your firm?
20 **A. Where do you want me to start?**
21 Q. Start at the beginning, in the -- the
22 sentence that says, "In addition..."
23 **A. "In addition, without prejudice to the**
24 **rights of Mr. Grier separately to seek employment**
25 **of his firm in these Chapter 11 cases on a more**

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1 **broad basis, absent such retention, solely for**
2 **administrative purposes, Mr. Grier may utilize the**
3 **services of his firm, Grier, Wright & Martinez,**
4 **P.A., without" -- and then the rest of it I've**
5 **already read.**
6 Q. Okay. So as a reference to
7 administrative purposes, what's your understanding
8 of that term in this proposed order and what the
9 scope of your firm would be absent further order
10 of court?
11 **A. Limited purposes. I suppose, filing**
12 **motions to -- to confirm the -- to approve the**
13 **firm as -- as -- as attorneys, to approve Orrick;**
14 **to do things like that. But non --**
15 **non-substantive matters.**
16 Q. Okay. Thank you.
17 Final question, Mr. Grier. I think you
18 testified that the in -- in an asbestos case the
19 interests of insurers could be adverse to the
20 interests of current claimants and maybe future
21 claimants.
22 **A. Yes.**
23 Q. Could the interest of insurers also be
24 in the same or other cases adverse to the interest
25 of the debtors?

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A. Yes.
MR. ERENS: Okay. No further question from my end.
I'd ask Mr. Hamilton of Jones Day if he has any further questions.
MR. HAMILTON: No. No. That's -- that's my work. We're done.
MR. GUY: All right. This is Jonathan.
Assuming there are no questions from the ACC, I think we're done here, too.
I heard you say you have subject to right of recall. I have no idea what -- what that is. But Todd, if you have questions, I urge you to ask them all now because as far as we're concerned this deposition will be final once you finish your questions.
MR. PHILLIPS: No further questions at this time. But as I said, we reserve the right to recall the witness and keep it open.
MR. GUY: I don't think you have that right, Todd. If you want to issue another notice of deposition, you can. But you've issued a Notice, you've had full and ample opportunity to ask any questions. Mr. Grier is here. If you want to ask him anything,

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ask him. But once you finish asking, this deposition is closed. You do not have the unilateral option to say I want to recall a witness. You can serve a second Notice of Deposition if necessary.
MR. ERENS: Yeah. And for the record, since this is all in relation to the debtors' motion, the debtor adopts that position and agrees with that, as well.
MR. PHILLIPS: Your position -- your position's noted. Thank you. We are -- we are finished for today.
MR. GUY: Thank you.
MR. ERENS: Thank you.
MR. GUY: Take care, everyone.
THE VIDEOGRAPHER: All right. This ends -- this marks the end of the remote video deposition of Joseph W. Grier, III. We are going off the record at 12:24 p.m.
THE COURT REPORTER: And then counsel for Jones Day, I know there is a few of you, would you like to order a copy?
MR. HAMILTON: Yes.
THE COURT REPORTER: And Mr. Guy, did you want to order a copy?

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MR. GUY: No, I don't need a separate copy from the one that Jones' is going to get.

AND FURTHER THIS DEPONENT SAITH NOT.
SIGNATURE RIGHTS RESERVED.
(Deposition concluded at 12:24 p.m.)
* * * * *

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STATE OF NORTH CAROLINA:
COUNTY OF MECKLENBURG :
I, April Reid, Court Reporter and Notary Public in and for the State of North Carolina, and whose commission expires March 4, 2025, do certify that the aforementioned appeared before me, was sworn by me, and was thereupon examined by counsel; and that the foregoing is a true, correct, and full transcript of the testimony adduced.
I further certify that I am neither related to nor associated with any counsel or party to this proceeding, nor otherwise interested in the event thereof.
Given under my hand and notarial seal in Charlotte, North Carolina, this 3rd day of September, 2020.

April Reid, RPR, CRR, Notary Public
State of North Carolina, County of Mecklenburg
Notary Registration No. 20012210079

EXHIBIT
E

Planet Depos®
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Transcript of Joseph W. Grier, III, Esquire

Date: March 18, 2019
Case: The Fairbanks Company/In Re:

Planet Depos
Phone: 888.433.3767
Email: transcripts@planetdepos.com
planetdepos.com

1

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

- - - - - - - - - - - - - - x
IN RE: : Chapter 11
THE FAIRBANKS COMPANY, : Case No. 18-41768-PWB
Debtor. :
- - - - - - - - - - - - - - X

Videotaped Deposition of JOSEPH W. GRIER, III, ESQ.
Washington, DC
Monday, March 18, 2019
10:07 a.m.

Job No.: 230750
Pages 1 - 111
Reported by: Debra A. Whitehead

2

Videotaped Deposition of JOSEPH W. GRIER, III, ESQ., held at the offices of:

CAPLIN & DRYSDALE, CHARTERED
One Thomas Circle, NW
Suite 1100
Washington, DC 20005
(202) 862-5000

Pursuant to notice, before Debra A. Whitehead, an Approved Reporter of the United States District Court and Notary Public of the District of Columbia.

3

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4

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5

A P P E A R A N C E S C O N T I N U E D

ALSO PRESENT:

CRYSTAL STRAWBRIDGE, Video Specialist

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C O N T E N T S

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E X H I B I T S

(Attached to the Transcript)

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Exhibit 2	Notice of Candidates for the Legal Representative for Future Asbestos Claimants Submitted by the United States Trustee	17
Exhibit 3	Orrick Bio of Jonathan Guy	66
Exhibit 4	Orrick Website Printout, "Client Johnson & Johnson Wins Defense Verdict in Major Product Liability Trial," 11/17/17	68
Exhibit 5	Orrick Bio of Matthew L. Bush	69
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E X H I B I T S C O N T I N U E D

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Exhibit 7	Fourth Amended Disclosure Statement for Fourth Amended Chapter 11 Plan of Reorganization For Kaiser Gypsum Company, Inc., and Hanson Permanente Cement, Inc., Proposed by Truck Insurance Exchange	78
Exhibit 8	In Re: Kaiser Gypsum Company, Inc., et al., Truck Insurance Exchange's Memorandum of law in Support of Its Opposition to the Motion of the Debtors, the Official Committee of Asbestos Personal Injury Claimants, and The Future Claims Representative to Life the Stay Under 11 U.S.C., Section 362 as to Certain Asbestos Personal Injury Claims	79
Exhibit 9	In Re: Kaiser Gypsum Company, Inc., et al., Notice of Filing Fourth Revised Plan Supplement Documents	83

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P R O C E E D I N G S

VIDEO SPECIALIST: Here begins Disk Number 1 in the videotaped deposition of Joseph Grier in the matter of In Re The Fairbanks Company, in the United States Bankruptcy Court for the Northern District of Georgia, Rome Division; Chapter 11; Case Number 18-41768-PWB.

Today's date is March 18, 2019. The time on the video monitor is 10:07 a.m. The videographer today is Crystal Strawbridge, representing Planet Depos. This video deposition is taking place at One Thomas Circle, Northwest, Washington, DC.

Would counsel please voice-identify themselves and state whom they represent.

MR. OCHS: Which end of the room do you want to start on?

VIDEO SPECIALIST: Whatever you prefer.

We can start on this end.

MR. SHEAHAN: John Sheahan, for the United States Trustee.

MR. OCHS: Martin Ochs, United States Trustee. Good morning.

MR. GUY: Jonathan Guy, Orrick, Herrington, & Sutcliffe. I'm here defending

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1 Mr. Grier.
2 MR. MACLAY: Kevin Maclay, for the
3 Official Committee of Asbestos Claimants, from
4 Caplin & Drysdale.
5 MR. PHILLIPS: Todd Phillips, on behalf
6 of the Official Committee of Asbestos Claimants,
7 also from Caplin & Drysdale.
8 MR. KRISTAL: Jerry Kristal, from Weitz &
9 Luxenberg, on behalf of the Committee.
10 MR. SINGER: Paul Singer from Reed Smith,
11 representing Fairbanks, the debtor in this case.
12 VIDEO SPECIALIST: The court reporter
13 today is Debbie Whitehead, representing Planet
14 Depos.
15 Would the court reporter please swear in
16 the witness.
17 JOSEPH W. GRIER, III, ESQ.,
18 having been duly sworn, testified as follows:
19 MR. GUY: So, Kevin, as you know, Joe is
20 the FCR in the Garlock case. The discussions that
21 Joe has with the Trustee and the CAC in Garlock
22 are confidential.
23 So of course feel free to ask questions
24 about things that were publicly filed in the case,
25 but we can't talk about anything that's ongoing

10

1 right now.
2 And in terms of potential engagement by
3 Mr. Grier as the FCR in this new case, which
4 hasn't happened yet, you can ask generic
5 questions; but we wouldn't be able to answer
6 questions about his specific strategy or thoughts,
7 legal work product of things that he might do in
8 that case, beyond sort of the basic initial
9 considerations.
10 MR. MACLAY: Let's just work our way
11 through it and see if we have any issues, or not.
12 MR. GUY: Sure.
13 MR. MACLAY: Good.
14 EXAMINATION BY COUNSEL FOR THE OFFICIAL
15 COMMITTEE OF ASBESTOS CLAIMANTS
16 BY MR. MACLAY:
17 Q Good morning, Mr. Grier.
18 **A Good morning.**
19 Q Have you ever been deposed before?
20 **A I have. It's been a long time.**
21 Q And have you taken depositions before?
22 **A I have.**
23 Q So are you generally familiar with the
24 process, or should I go through that with you?
25 **A I'm familiar with the process.**

11

1 Q Thank you.
2 Are you represented by counsel here
3 today?
4 **A I'm represented by Mr. Guy.**
5 Q And when did you retain Mr. Guy for this
6 matter?
7 **A I can't give you an exact date when the**
8 **U.S. Trustee asked whether I would consider being**
9 **nominated. At that point I asked Mr. Guy whether**
10 **he would represent me. It was some time in**
11 **January, I believe.**
12 Q And where do you currently work?
13 **A I currently work in Charlotte, North**
14 **Carolina.**
15 Q And do you work for a firm?
16 **A I work for a firm. The name of the firm**
17 **is Grier & Crisp, PA.**
18 Q And do you know the current business
19 address of -- of that firm?
20 **A 101 North Tryon Street, Suite 1240,**
21 **Charlotte, North Carolina, 28246.**
22 Q Have you reviewed the Notice of
23 Deposition for this case that was served on your
24 counsel?
25 **A I have.**

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1 MR. MACLAY: If you could please mark
2 this as Exhibit 1.
3 (Grier Deposition Exhibit 1 marked for
4 identification and is attached to the transcript.)
5 BY MR. MACLAY:
6 Q And is this that notice?
7 **A It appears to be that notice, yes.**
8 Q Did you prepare for today's deposition?
9 **A Yes.**
10 Q Did you meet with anyone?
11 **A Other than my counsel, no.**
12 Q All right. Did you talk on the phone
13 with anyone other than your counsel regarding this
14 deposition today?
15 **A Well, I guess I had very general**
16 **conversations with somebody from the U.S.**
17 **Trustee's office, Mr. Ochs.**
18 **We did not talk, to my recollection,**
19 **about the substance of the deposition at all.**
20 **Simply the ACC and the debtor want to depose you,**
21 **when is a good date, those sorts of conversations.**
22 Q Anything else that you can recall from
23 that conversation?
24 **A No.**
25 MR. OCHS: Kevin, if I could just

13

1 interrupt, just for the benefit of the court
2 reporter, Ochs and Ochs will be the same person.
3 That's me. Nobody pronounces it right. That's no
4 disrespect to you.
5 THE WITNESS: And the correct is Ochs?
6 MR. OCHS: Is Ochs, yes.
7 THE WITNESS: I'm sorry.
8 MR. OCHS: I just don't -- I just don't
9 want to throw off the court reporter. You can
10 call me anything you'd like.
11 THE WITNESS: Okay.
12 MR. OCHS: I just want the court reporter
13 to have an understanding as to that's a reference
14 to me.
15 BY MR. MACLAY:
16 Q And did you communicate via e-mail,
17 letters, or any other form of written
18 communication with anyone about this deposition
19 here today, other than your counsel?
20 **A Other than my counsel and the U.S.**
21 **Trustee, no.**
22 Q And with respect to your communications
23 with the U.S. Trustee in writing, was that about
24 the logistics of the deposition, or did it go
25 beyond that, do you know?

14

1 **A Logistics only.**
2 Q Did you review any documents in
3 preparation for this deposition?
4 **A Yes.**
5 Q And what were those documents?
6 **A I reviewed some of the documents on file**
7 **in the Fairbanks case, the first -- First Day**
8 **Declaration of Mr. Lahre, if I'm pronouncing that**
9 **right; the Plan Settlement Agreement. Reviewed my**
10 **declaration.**
11 **I reviewed -- there's a PowerPoint that**
12 **we prepared on the Garlock plan, which describes**
13 **that plan, which is part of my declaration which I**
14 **reviewed.**
15 **And I guess I read your objection to the**
16 **motion file -- filed by the U.S. Trustee, and the**
17 **debtor's objection. And I looked at some of**
18 **the -- some of the Garlock documents.**
19 Q Anything else that you can recall?
20 **A No. It's possible I looked at other**
21 **documents, but I -- that's generally what I**
22 **recall.**
23 Q Okay. Well, just to put a placeholder
24 here. If there are any documents that you
25 reviewed that we haven't talked about by the end

15

1 of the deposition, we would request copies of
2 those documents. That's the request that I'm
3 making.
4 Can you briefly describe for me,
5 Mr. Grier, your educational background?
6 **A Graduated undergraduate from the**
7 **University of North Carolina, Chapel Hill, major**
8 **in English. Went to law school. Graduated from**
9 **University of North Carolina Law School 1977.**
10 Q And in terms of your experience,
11 Mr. Grier, what aspects of your experience do you
12 rely on to support your qualifications as an FCR
13 in this case?
14 **A I've specialized in bankruptcy over my**
15 **career since 1977. Certified as a bankruptcy**
16 **specialist by the North Carolina State Bar, by the**
17 **American Bankruptcy -- American Bankruptcy**
18 **Certification, I don't remember the exact name of**
19 **the organization. But it's an ABI-related**
20 **organization.**
21 **I've done bankruptcy trustee work, I've**
22 **done other fiduciary work. I've acted as**
23 **receiver. And then I've acted as an FCR in the**
24 **Garlock case.**
25 Q And is there anything else that you rely

16

1 on, or are those the categories?
2 **A You say that I rely on. I'm not sure**
3 **what you mean by that I rely on.**
4 Q Is -- is there anything else that you
5 believe is relevant to your qualifications as an
6 FCR here?
7 **A You know, I think life experience is --**
8 **is relevant, so ...**
9 Q Sure. And just so I understand what you
10 mean by "life experience," what do you mean by
11 "life experience"?
12 **A Just who you are, what you've done all**
13 **your life.**
14 Q And is there anything else that you have
15 done that you haven't mentioned so far that you
16 think is relevant?
17 **A Well, I've done lots of things I haven't**
18 **mentioned, but ...**
19 Q And you -- and you think they're all
20 relevant to --
21 **A I don't know whether they're relevant or**
22 **not. I'm not sure what's relevant.**
23 Q Is there anything else that you believe
24 is relevant to your -- your potential appointment
25 as an FCR in this case?

17

1 **A You know, I don't know what various**
2 **people are looking at. I don't know how people**
3 **are judging who the FCR ought to be, you know, how**
4 **to pick the FCR. Some people may think something**
5 **is relevant that I don't.**
6 **The primary things I think are the things**
7 **I've described.**
8 Q And as we sit here today, you can't think
9 of anything else that you think in your view is
10 relevant. Is that correct?
11 **A Again, I don't know what's relevant. I**
12 **don't know what people are looking at.**
13 **Somebody may say, Were you an Eagle**
14 **Scout? Yes, I was. Okay. That's relevant.**
15 Q Right. No; I am just asking for your
16 opinion.
17 **A The things I would primarily say are the**
18 **things we've mentioned.**
19 MR. MACLAY: Could you mark this as
20 Exhibit 2, please.
21 (Grier Deposition Exhibit 2 marked for
22 identification and is attached to the transcript.)
23 Q Now, for the record, I have just handed
24 you Exhibit 2, Mr. Grier.
25 **A Yes.**

18

1 Q And what it is, is the Notice of
2 Candidates that was filed in this case by the
3 Trustee's office. That notice had four exhibits,
4 one each for each of the three candidates --
5 **A Right.**
6 Q -- that the Trustee put forward --
7 **A Right.**
8 Q -- and one of the U.S. Trustee interview
9 questions.
10 **A Yes.**
11 Q And what this document is, I'm
12 representing, is the notice -- Exhibit 2, which
13 are your materials.
14 **A Right.**
15 Q Not the other two persons' materials.
16 **A Right.**
17 Q And then Exhibit 4, the interview
18 questions.
19 **A Got it.**
20 Q If you could take a minute to review the
21 document and confirm your understanding of that's
22 what this is.
23 **A Right. I have not seen the notice**
24 **before. I have seen my materials before. And**
25 **this looks like my materials.**

19

1 **And while I haven't looked at the**
2 **interview questions, these look like the interview**
3 **questions that the U.S. Trustee sent to me and**
4 **then discussed with me over the telephone.**
5 Q So with respect to Exhibit 2 of this
6 document, which -- which has your name on it, the
7 Exhibit 2.
8 **A Right.**
9 Q Joe W. Grier. Is this Exhibit 2 a fair
10 and accurate copy of the materials that you've
11 provided to the U.S. Trustee?
12 **A Yes.**
13 Q Besides these documents, did you provide
14 anything else to the U.S. Trustee's office?
15 **A Not that I recall.**
16 Q So you mentioned that you first heard
17 about the Fairbanks bankruptcy on or about
18 January. Is that correct?
19 **A I believe that's correct. I can't**
20 **remember an exact date.**
21 Q And from whom did you learn about it?
22 **A That I don't recall.**
23 Q Do you know if it came via phone call or
24 e-mail or --
25 **A It would not have come by phone call. It**

20

1 **likely came by e-mail, but -- but I really don't**
2 **recall.**
3 Q Do you know if it came from Mr. Guy, your
4 attorney, or from the Trustee's office directly?
5 **A I don't -- I don't recall.**
6 COURT REPORTER: If you can just let him
7 finish the question.
8 THE WITNESS: Okay.
9 Q So after that initial contact that you
10 don't recall, what's the first thing that you do
11 recall in terms of becoming aware of the
12 engagement, or the potential engagement?
13 **A Recall that Mr. Guy and I had a**
14 **conversation with a number of -- or several people**
15 **from the U.S. Trustee's office, Mr. Ochs,**
16 **Ms. Eitel. Asked whether I would be willing to be**
17 **nominated. And I said yes.**
18 **There was some description of the -- of**
19 **the case, some very general sort of high-level**
20 **description.**
21 Q And is that discussion that you're
22 referencing the -- the interview for whom the
23 questions are -- for which the questions are
24 attached at the end of this document?
25 **A No. They actually did those in**

21

1 **connection with the Duro Dyne case. At least**
2 **that's my recollection.**
3 Q So it's your recollection then that the
4 questions at the end of this Exhibit 2 called
5 Interview Questions for FCR Candidates were not
6 asked of you in connection with the Fairbanks
7 case?
8 **A My recollection is they were asked of me**
9 **before I was aware of the Fairbanks case. I don't**
10 **know -- and I could be wrong on that, but that's**
11 **my recollection. I can't say whether the U.S.**
12 **Trustee's office was aware of the Fairbanks case**
13 **or not.**
14 Q So then it's your testimony that you were
15 asked these questions in connection with the Duro
16 Dyne bankruptcy? Is that correct?
17 **A That's my recollection.**
18 Q With respect to the Duro Dyne bankruptcy,
19 how did you find out about that bankruptcy?
20 **A I think I first saw it in a blurb from,**
21 **is it Law 360?**
22 Q And how is it that you came to talk with
23 people from the Trustee's office about that case?
24 **A I know that Mr. Guy sent to the U.S.**
25 **Trustee's office the -- what I call the PowerPoint**

22

1 **that's part of the exhibit here. And at some**
2 **point they asked whether I would be willing to put**
3 **my name in or be considered as an FCR in the Duro**
4 **Dyne case.**
5 Q And did that happen?
6 **A It did not.**
7 Q And do you know why?
8 **A I -- I don't remember. I don't remember**
9 **why, but it never occurred.**
10 Q So -- so you submitted materials in
11 connection with the Duro Dyne bankruptcy to the
12 Trustee's office to potentially be considered as
13 an FCR in that case?
14 **A Yes.**
15 Q And you're not sure why that process
16 didn't --
17 **A My recollection is the court never -- the**
18 **court said, we'll accept Mr. -- I guess it's**
19 **Fitzgerald, and we're not going to consider other**
20 **candidates. That's my recollection. Could be**
21 **wrong.**
22 Q And in connection with those
23 conversations with the Trustee's office, is it
24 accurate to say you went through the questions at
25 the end of this exhibit?

23

1 **A If those are the same questions, yes.**
2 **Mr. Ochs asked me those questions, and I**
3 **responded.**
4 Q Who else have you spoken with, other than
5 your counsel and the Trustee's office, about this
6 case, the Fairbanks case?
7 **A My recollection is Ms. Eitel. I don't**
8 **believe -- it's possible other people were on the**
9 **phone. Those are the people I remember.**
10 Q And that is the -- the interview that
11 we've discussed already with respect to the
12 questions at the end of this exhibit?
13 **A That was not about the Fairbanks case.**
14 **That was -- the interview was on the Duro Dyne**
15 **case.**
16 Q But it addressed the questions at the end
17 of this packet. Is that correct?
18 **A In that interview they asked me these,**
19 **this series of questions, yes.**
20 Q Right. And then after that point you had
21 a conversation with the Trustee's office about
22 this case.
23 **A Yes.**
24 Q Correct?
25 And what was the content of that

24

1 discussion?
2 **A Are you willing to be considered as the**
3 **FCR in the Fairbanks case.**
4 Q Anything else?
5 **A Well, there was -- as I said, there was a**
6 **general description of the case. You know,**
7 **general discussion. But substantively I don't**
8 **remember anything else.**
9 Q So you didn't replicate, in other words,
10 your prior discussion with them about your
11 qualifications, et cetera, from your discussions
12 with respect to the Duro Dyne case?
13 **A We didn't go through the interview again,**
14 **correct.**
15 Q All right. And with respect to the Duro
16 Dyne case, you, through your counsel, reached out
17 to the Trustee's office. Correct?
18 **A My understanding is Mr. Guy sent them a**
19 **copy of the -- what I call the PowerPoint**
20 **presentation.**
21 Q And do you know whether they reached out
22 to you first or you reached out to them first back
23 then?
24 **A My understanding is they then**
25 **reached out -- at some point later reached out to**

25

1 **us.**
2 Q So then the first communication of which
3 you're aware between you and the Trustee's office
4 with respect to an FCR position was your sending
5 to them of a packet in the Duro Dyne bankruptcy?
6 **A I was not asking that I be listed --**
7 **identified as a -- as a candidate. We were simply**
8 **giving them -- giving them information on the**
9 **Garlock plan.**
10 Q And why was that?
11 **A To help them understand why the Garlock**
12 **CRP was different than the standard TDP, what the**
13 **differences were.**
14 Q And why did you want them to understand
15 that?
16 **A Thought it would be helpful to them.**
17 Q And so at that point you didn't have it
18 in your mind that you could potentially become an
19 FCR in that case?
20 **A Knew it was a possibility.**
21 Q When did the topic of your potentially
22 becoming an FCR in the Duro Dyne case first arise?
23 **A I don't remember the date.**
24 Q Before or after you sent them the packet?
25 **A After.**

26

1 Q During the course of your communications
2 with attorneys at the U.S. Trustee's office or the
3 DOJ, did they ever discuss with you the
4 qualifications they were looking for for a
5 trustee?
6 **A Indicated they wanted a candidate who**
7 **was -- this is my word -- "independent." But --**
8 **yeah, independent.**
9 Q Did they explain to you what that meant
10 to them?
11 **A You know, I can -- I can say to you what**
12 **it means to me. I don't remember exactly what**
13 **they said. It's been several months since we had**
14 **that conversation.**
15 Q Can you do your best to -- to recall? I
16 mean, to the best of your recollection, what did
17 they say about that?
18 **A I really can't remember what they said.**
19 **My understanding was somebody who is independent,**
20 **somebody who will represent the futures, and**
21 **understands that there's adverse relationship with**
22 **the ACC on the issue of drafting the TDP.**
23 Q Anything else that you can recall about
24 that conversation?
25 **A No.**

27

1 Q Now, you were and are a future claimants'
2 representative in the Garlock case.
3 Is that right?
4 **A I am.**
5 Q Apart from the Garlock case, have you
6 served as a future claimants' representative in
7 any other asbestos bankruptcy?
8 **A I have not.**
9 Q Aside from Garlock, have you ever
10 represented anyone in a bankruptcy that involved
11 asbestos liabilities?
12 **A My -- yes. My law firm is involved in --**
13 **there's a bankruptcy case in Charlotte called**
14 **Kaiser in the Western District of North Carolina,**
15 **and my law firm represents Truck Insurance in that**
16 **case.**
17 **I made some initial appearances on behalf**
18 **of Truck early on, and then handed it off to**
19 **another lawyer in my firm.**
20 Q Other than Garlock and Kaiser Gypsum, are
21 there any other asbestos bankruptcy in which
22 you've represented a party?
23 **A No.**
24 Q Have you ever represented clients in
25 asbestos personal injury litigation in the tort

28

1 system?
2 **A I have not.**
3 Q Have you ever represented anyone in
4 insurance coverage litigation?
5 **A Started practicing law in 1977. When I**
6 **first started out, I did anything that would walk**
7 **through the door, whether it would pay or not.**
8 **And I did a little bit of personal injury work,**
9 **but not enough to claim any expertise in it.**
10 Q And that was back in the late '70s?
11 **A It would be the late '70s, early '80s,**
12 **yes.**
13 Q Do you recall anything about the nature
14 of that insurance coverage work that you did?
15 **A And it was plaintiff's work, it was not**
16 **defendant's work.**
17 Q Uh-huh. When you say plaintiffs, do you
18 mean insureds? On behalf of insureds?
19 **A On behalf of a plaintiff suing -- suing a**
20 **defendant which -- who was covered by insurance.**
21 Q Okay.
22 **A One case I was involved with was wrongful**
23 **death case. I was co-counsel in a -- actually a**
24 **wrongful death trial. That would have been**
25 **sometime in the early '80s.**

29

1 Q Okay.
2 **A A few automobile accident cases.**
3 Q Other than Truck Insurance Company in the
4 Kaiser bankruptcy, have you ever represented any
5 other insurance companies?
6 **A You know, I've been practicing law for**
7 **probably 40 years. And it's hard to remember**
8 **every client.**
9 **My practice does not generally include**
10 **representing insurance companies. The law firm**
11 **represented Zurich Insurance Company in a**
12 **bankruptcy in Charlotte maybe ten years ago. It**
13 **was a J.A. Jones bankruptcy case, I think. I was**
14 **not directly involved in that, but my law firm**
15 **was.**
16 **It's possible I've represented some**
17 **insurance companies. I don't want to say to you I**
18 **never have, but nothing that sticks out.**
19 Q Have you reviewed the proposed insurance
20 settlement in the Fairbanks case?
21 **A I've reviewed it. I can't say I've**
22 **mastered it, but I've reviewed it.**
23 Q Do you have any views about it?
24 **A My views generally are that the ACC and**
25 **the FCR are aligned in the issue of how much**

30

1 **money, on the dollar figure that the debtor ought**
2 **to pay. And -- and so I -- I view it in that**
3 **light.**
4 **In other words, ACC does a pretty good**
5 **job of -- of negotiating numbers.**
6 Q Right. And -- and just to close the loop
7 on that. Do you have any particular views as to
8 the merits of the settlement at this point?
9 **A I do not.**
10 Q When you served as an FCR during the
11 pendency of the Garlock bankruptcy case, while the
12 case was still --
13 **A Right.**
14 Q -- in the bankruptcy court, whom were you
15 representing?
16 **A Future claimants.**
17 Q And what is a future claimant?
18 **A Well, there are two components. One is a**
19 **demand. And the term "demand" is -- I'm not sure**
20 **it's defined. But as I understand it, it's --**
21 **it's somebody who could be exposed post-bankruptcy**
22 **and then later get sick. Of which there are not**
23 **many people now, because the asbestos has been off**
24 **the market for such a long period of time.**
25 **I also represented future claimants,**

31

1 **people who were exposed prebankruptcy but had not**
2 **become sick and would eventually get sick at some**
3 **point in the future.**
4 Q When you were serving as an FCR in the
5 bankruptcy case, did you represent the entire
6 class of people who would in the future claim
7 exposure to the relevant Garlock products?
8 MR. GUY: Objection. Ambiguous. "Who
9 would claim exposure"?
10 Q Do you understand the question?
11 **A "Claim exposure" sounds too broad to me.**
12 **I represent people who have legitimate claims.**
13 Q And when you say you "represent people
14 who have legitimate claims," can you help me
15 understand what you mean by "legitimate claims"?
16 **A Yeah. Two factors. One that they have**
17 **been exposed to Garlock asbestos; and, two,**
18 **they've gotten sick because of the -- because of**
19 **the exposure.**
20 Q So do you represent people who have been
21 composed to Garlock -- or did you represent people
22 who have been exposed to Garlock asbestos who
23 might get sick in the future, or only those who
24 ended up having a claim compensable by the trust?
25 MR. GUY: Objection. Asked and answered.

32

1 Q Can you answer?
2 **A My understanding is I represent people**
3 **who were exposed and then who at some -- who at**
4 **some point will get sick because of that exposure.**
5 Q When you were serving as the FCR in the
6 Garlock bankruptcy, did you represent anyone who
7 would not eventually get paid money by the Garlock
8 Trust?
9 **A I don't know how to answer that question.**
10 **Because I don't know who is the Garlock trust is**
11 **going to pay and not pay and ...**
12 **I mean, theoretically if somebody is sick**
13 **because of exposure to Garlock and gets -- and**
14 **gets sick, then they would have a legitimate claim**
15 **against the Garlock Trust and ought to get paid.**
16 Q So when you were the FCR in the Garlock
17 bankruptcy, you represented those who, in your
18 view, would in the future have a legitimate claim
19 against the Garlock Trust? Is that fair?
20 **A I think that's fair.**
21 Q And then in terms of defining what is a
22 legitimate claim, you said it was someone who's
23 been exposed to Garlock asbestos and gotten sick
24 as a result of that exposure. Is that correct?
25 **A Correct.**

33

1 Q And is there anyone in that category who
2 will not get paid by the Garlock Trust, in your
3 view?
4 MR. GUY: Objection. Calls for
5 speculation.
6 **A Somebody may not file a claim, therefore**
7 **they won't get paid.**
8 Q Other than people who don't file a claim,
9 with respect to people that file a claim, who were
10 exposed to Garlock asbestos, and who have gotten
11 sick as a result as a result of that exposure, is
12 there anyone in that category who, in your view,
13 will not get paid by the Garlock Trust?
14 MR. GUY: Objection. Calls for
15 speculation. You're talking about something that
16 hasn't happened yet.
17 Q Can you answer the question?
18 **A That person ought to get paid by the**
19 **Garlock Trust. It would be my hope.**
20 Q As the FCR of the Garlock Trust, do you
21 view your constituency as including people who,
22 under the terms of the Garlock Trust documents,
23 will not be compensated?
24 **A No. Client -- again, you're asking me to**
25 **speculate. I don't know where the people will**

34

1 **file claims.**
2 **But -- but my hope is that if somebody**
3 **has been exposed to Garlock asbestos and as a**
4 **reason gotten sick, that they will be paid by the**
5 **trust.**
6 MR. MACLAY: Can you read that last
7 question and answer back, please.
8 (Last question and answer read.)
9 Q And as a followup question, just to --
10 for clarity of the record, do you view the future
11 claimants that you represent as including
12 people -- as including anyone who will not be
13 entitled to payment under the terms of the Garlock
14 Trust documents?
15 MR. GUY: Objection. You've asked that
16 question three times. There's no need to answer
17 it a third time.
18 Q Can you answer it?
19 **A Same answer as before.**
20 Q And what's that answer?
21 **A She can read it back.**
22 MR. GUY: Why don't you move on, Kevin.
23 Q Do the interests of current and future
24 claimants diverge in a bankruptcy, in your view?
25 **A They are -- they are adverse to each**

35

1 **other in terms of drafting the TDP, yes.**
2 Q In any other ways?
3 **A They are not adverse in the money that**
4 **they together ask for from the debtor.**
5 Q And are there any ways that the interests
6 of current and future claimants diverge in a
7 bankruptcy, other than with respect to the
8 drafting of the TDP?
9 **A Well, it's the -- it's the implementation**
10 **of the TDP. You know, the actions by the Trustee.**
11 **It's -- they are adverse in -- in how claims**
12 **are -- potentially how claims are treated, whether**
13 **that's through the drafting of the TDP or the**
14 **administration of the trust by the Trustee.**
15 Q Just dividing my question into its
16 chronological components.
17 In the bankruptcy itself, before we get
18 to the operation of the resulting trust --
19 **A Right.**
20 Q -- do the interests of current and future
21 claimants diverge in any way other than the
22 drafting of the TDP?
23 **A I think -- I mean, there may be someplace**
24 **where they do. But generally, no.**
25 **I mean, generally they diverge in -- in**

36

1 **how you allocate the -- how you allocate the**
2 **dollars that end up in the trust.**
3 Q And with respect to the TDP, do you
4 believe that the interests of the current and
5 futures diverge with respect to all aspects of the
6 TDP or only some of them?
7 **A Only some.**
8 Q And which aspects of the TDP do you think
9 their interests diverge with respect to?
10 **A How dollars are allocated between the two**
11 **groups, presents -- presents and futures.**
12 Q Any other way?
13 **A No. No. I think that's the -- that's**
14 **the -- from a high level, that's the -- that's the**
15 **point of divergence.**
16 Q Do the interests of current and future
17 claimants diverge in the bankruptcy trust context,
18 after the bankruptcy?
19 **A Yes. In -- in terms of how the trust is**
20 **implemented, how it's administered.**
21 Q And specifically what aspects of how the
22 trust is operated, administered, do their
23 interests diverge as to?
24 **A Anything that would impact how dollars**
25 **are allocated between presents and futures.**

37

1 **Whether that's how you set the -- the maximum**
2 **settlement value, whether it's -- it could be**
3 **audit procedures, it could be how claims are**
4 **reviewed. Anything that impacts how the dollars**
5 **are allocated.**
6 Q Have you ever discussed potentially
7 serving as an FCR with any entity other than the
8 Trustee's office or your counsel?
9 MR. GUY: Objection. As to what point in
10 time?
11 Q Since Garlock.
12 **A No.**
13 **Well, yes. Yes. Greg Gordon, who is the**
14 **lawyer for -- is it best -- for Bestwall, called**
15 **me and asked me would I consider being the FCR in**
16 **the Bestwall case.**
17 **And I said yes. And that was the last I**
18 **heard of it.**
19 Q Other than that phone conversation, any
20 other --
21 **A No.**
22 Q -- communications?
23 **A No.**
24 **I did have -- in the Bestwall case, Greg**
25 **Gordon is co-counsel with Garland Casada in**

38

1 **Charlotte. And so I had similar conversations**
2 **with Mr. Casada about Bestwall. None other than,**
3 **Joe, would you be willing to consider.**
4 Q So nothing substantive? Is that right?
5 **A Nothing substantive.**
6 Q How familiar would you say you are with
7 the operation of asbestos trusts and their
8 operation in general?
9 **A Not very familiar.**
10 Q Which ones are you familiar with?
11 **A Garlock, to the extent I'm familiar with**
12 **a trust.**
13 Q Any others?
14 **A No.**
15 Q Are you familiar with the claimants
16 advisory committee in the Garlock Trust?
17 **A I know there is a committee. I probably**
18 **met most of the lawyers on it while we were**
19 **negotiating the plan. I couldn't tell you today**
20 **who they are.**
21 Q Do you know what their responsibilities
22 are, the committee as a whole?
23 **A They have similar responsibilities to the**
24 **FCR under the trust documents. There are a number**
25 **of instances where the Trustee is required to**

39

1 **consult with both the CAC and the FCR on**
2 **decisions.**
3 **There are some decisions that the Trustee**
4 **cannot make without the consent of the CAC and**
5 **the -- and the FCR. I can't tell you exactly**
6 **which those decisions are.**
7 **And they also monitor the -- the**
8 **performance of the trust.**
9 Q So their responsibilities overlap to some
10 extent with those of the FCR? Is that fair?
11 **A Have similar responsibilities, yes.**
12 Q And you had mentioned that you're the FCR
13 for the Garlock Trust --
14 **A Yes.**
15 Q -- is that correct?
16 What do you view your responsibilities as
17 being in that role?
18 **A To monitor the performance of the trust.**
19 **And there -- as you know, I think quarterly**
20 **meetings of -- of the trust. To consult with the**
21 **Trustee both on matters required under the trust**
22 **documents and any other matter that I think is**
23 **material. And, when requested, to give consent to**
24 **consider whether or not to consent to whatever the**
25 **Trustee requests.**

40

1 Q Does a -- does the Garlock Trust project
2 the volume of claims it is expected to receive, do
3 you know?
4 **A I don't think the Garlock Trust itself**
5 **does. I think the Trustee -- the parties made**
6 **projections, the parties' experts made projections**
7 **during the course of the case. And I -- and I**
8 **understand the Trustee has retained someone to**
9 **help him make those projections.**
10 Q Do you know how the trust projects the
11 volume of claims?
12 MR. GUY: Kevin, you're talking about the
13 operations of the Garlock Trust, what's happening
14 in the Garlock Trust.
15 As you know, because you are co -- you
16 are counsel to the CAC in Garlock, you're
17 intimately familiar with what is happening there.
18 It's not appropriate for you to be asking the FCR,
19 who is your adverse party in that matter, about
20 what's happening in the Garlock case.
21 You can ask him generic questions about
22 what was done in the CRP. But if you're asking
23 him about what's going forward in the future,
24 that's improper.
25 And I will instruct the witness not to

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1 answer if you continue along this line.
2 MR. MACLAY: Just to be clear, the
3 pending question is are you aware of how the trust
4 projects the volume. There is nothing in my
5 question with any specificity of any data
6 contained by the trust or anything else that would
7 be confidential.
8 But --
9 MR. GUY: Kevin, you're asking questions
10 about the operation of the Garlock Trust. They're
11 confidential, among other things. And you're
12 asking him to put aside the confidentiality
13 restrictions that apply to him and the CAC
14 concerning the operations of the Garlock Trust,
15 what's going to happen in the future.
16 So please rephrase your question so it
17 doesn't concern the operations of the Garlock
18 Trust.
19 BY MR. MACLAY:
20 Q Mr. Grier, do you have an understanding
21 as to how asbestos trusts project the volume of
22 claims?
23 **A I went through an estimation trial where**
24 **I had an expert who projected the tort liability.**
25 **And I assume, but don't know for certain, that**

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1 **a -- that a trust uses similar procedures to -- to**
2 **project.**
3 **I mean, you look at how many -- how many**
4 **cases, for instance, in mesothelioma you think**
5 **they're going to be, and the people that predict**
6 **that. And how many of those will typically file**
7 **claims, how many of those claims will be allowed.**
8 **You make projections on all of those things and**
9 **come up with a number.**
10 **It requires expertise.**
11 Q And would that also be true with respect
12 to projecting the value of claims?
13 MR. GUY: Objection. Vague.
14 **A I'm not sure what you mean by the**
15 **question.**
16 Q What's your understanding of how a trust
17 projects the expected value of the claims it
18 expects to receive?
19 **A It estimates the number of claims that**
20 **will come in. It knows -- it knows the dollars in**
21 **the trust. And it knows -- it makes projections**
22 **about the administrative costs. And taking all**
23 **those numbers together, it can project settlement**
24 **values for each claim.**
25 Q Do you agree with the proposition,

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1 Mr. Grier, that reducing overhead is an
2 appropriate goal for an asbestos trust?
3 **A Yes.**
4 Q Have you heard of the term "payment
5 percentage"?
6 **A Yes.**
7 Q What's your understanding of that term?
8 **A A lot of the trust will set a value for a**
9 **claim. And the value is X. And then X is not**
10 **what people get. People get a percentage of X.**
11 **And that percentage is the payment percentage.**
12 Q And do you know why they only get a
13 percentage, as opposed to the full amount?
14 **A I don't know the full reasons. I**
15 **understand one of the reasons has to do with**
16 **income tax. That if there's a premium, there's**
17 **never interest, there's never taxable interest on**
18 **the -- on the award that's already been paid.**
19 **You're still just getting a percentage of what**
20 **you're entitled to.**
21 Q And do you ever get the rest of it from
22 the trust, do you know?
23 **A You'd hope to. If -- if the payment**
24 **percentage is all the trust can pay, that's all**
25 **you get.**

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1 Q So do you know under what circumstances a
2 claimant would ever get more than the payment
3 percentage?
4 **A If the trust increases the payment**
5 **percentage, the trust has -- is able to make a**
6 **higher distribution.**
7 Q And are there any other circumstances
8 that you can think of where a payment -- where a
9 claimant would get more money than that?
10 MR. GUY: Objection.
11 From the trust or in general?
12 MR. MACLAY: Yeah, from the trust.
13 **A From the trust, no.**
14 Q Are you familiar with the term "expedited
15 review"?
16 **A Yes.**
17 Q And what does that term mean to you?
18 **A It's a form of sort of summary review in**
19 **a trust where it's a fairly simple -- it's**
20 **designed to be fairly simple, straightforward,**
21 **streamlined. Where a -- a claimant or the**
22 **claimant's lawyer can send in requisite**
23 **information. You don't have to go through a**
24 **trial. You don't have to provide a lot of backup**
25 **information. There's -- there's certain things**

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1 that are required. And if you can meet those
2 requirements, then you get the -- whatever the
3 payment percentage is or whatever the claim amount
4 is.
5 Q Are you familiar with the phrase
6 "independent review"?
7 A I don't think we use that in the Garlock
8 Trust. I may have seen that in some of the other
9 trust documents for non-Garlock Trust, but I'm
10 not -- I couldn't tell you much about it.
11 Q Have you heard of the phrase
12 "extraordinary claims"?
13 A Yes.
14 Q And what does that phrase mean to you?
15 A In the Garlock Trust, an extraordinary
16 claim, it -- it describes a claim of someone whose
17 primary exposure is to Garlock. They don't have
18 substantial exposure to any other asbestos. And,
19 therefore, because they are not going to get money
20 from other trusts, they get an enhanced amount
21 from the Garlock Trust. In the Garlock case it's
22 five times what they would normally get under
23 expedited review.
24 Q Do you think it is important when
25 designing trust procedures to take account of how

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1 much money the asbestos trust will have?
2 A I think that's a factor, yes.
3 Q Do asbestos trusts have lifespans?
4 A Yes.
5 Q Should an asbestos trust, in your view,
6 have money left over at the end of its lifespan?
7 A No. No. It should give all its money to
8 those who are sick.
9 Q With -- with respect to asbestos, the
10 material, the substance, how familiar are you with
11 asbestos?
12 A I am far from an expert. I've listened
13 to 17 days of testimony in the estimation trial.
14 A lot of it about the science of asbestos. I
15 can't tell you that I recall very much.
16 Q So other than the Garlock estimation
17 trial, do you have any other exposure to the
18 science of asbestos?
19 A Well, other than the Garlock case. There
20 was an information brief filed by both sides early
21 in the case, which spent a lot of time talking
22 about asbestos.
23 There was testimony early in the case to
24 educate the judge, because he had never had an
25 asbestos case before. I sat through that.

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1 But other -- other than the Garlock case,
2 no.
3 MR. GUY: That was long enough.
4 Q So do you know what kinds of products
5 contained asbestos historically? Do you have a
6 general sense of that?
7 A It was used in -- generally in
8 insulation. Any time there was high -- well, not
9 any time. But to protect against high
10 temperatures, frequently. But I know it had other
11 uses, too.
12 Q Do you know if it was used in gaskets,
13 for example?
14 A Garlock was used -- Garlock was a gasket
15 case.
16 Q And was it used in valves, do you know?
17 A I think Fairbanks is a -- asbestos was
18 used in packing on valves.
19 Q Are you familiar with the different types
20 of asbestos? In other words, chrysotile,
21 et cetera?
22 A Very, very generally.
23 Q What's -- what's -- what do you know
24 about the different types of asbestos?
25 A I know what the testimony in Garlock was.

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1 And that was the primary difference in amphibole
2 and chrysotile, and that amphibole is -- I think
3 it's a longer fiber. And the testimony in Garlock
4 was that the body can absorb and deal with the
5 shorter chrysotile fiber easier than the longer
6 amphibole fiber.
7 Amphibole is considered more potent, more
8 dangerous, than the chrysotile. But my knowledge
9 is -- is -- is very general. And I don't claim to
10 be an expert in any sense.
11 Q Right. And when you say the testimony,
12 whose testimony or what side's testimony, do you
13 recall?
14 A There was -- there were experts on both
15 sides.
16 Q And so what you just said with respect to
17 the different fiber lengths and the -- and the
18 relevant dangers, do you know which side of the
19 case had that view?
20 A Probably the Garlock had -- was more
21 pronounced. I think -- certainly the ACC's
22 experts would have said chrysotile is dangerous.
23 My recollection is they all said that amphibole is
24 more dangerous than chrysotile. But, again, I
25 could be wrong.

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1 Q Are you familiar with the phrase
2 "encapsulated asbestos"?
3 **A Yes.**
4 Q And what does that mean to you?
5 **A The Garlock asbestos is encapsulated.**
6 **It's -- it's surrounded by some material. It's --**
7 **it's not exposed.**
8 **And so in a Garlock gasket, you and I can**
9 **pass a gasket back and forth and there's not going**
10 **to be any asbestos exposure. It's only exposed**
11 **when it's cut, abraded, and so forth.**
12 Q With respect to encapsulated asbestos, do
13 you think that encapsulated -- do you think that
14 someone who is exposed to encapsulated asbestos
15 should be entitled to payment from a trust?
16 MR. GUY: Objection. Vague.
17 What do you mean by "exposed"?
18 **A If they're exposed to the asbestos, yes.**
19 **Whether it's -- whether it was encapsulated or**
20 **not. If -- if ...**
21 Q Are you familiar with chrysotile
22 asbestos?
23 **A Very generally.**
24 Q Do you believe that someone exposed to
25 chrysotile asbestos should be entitled to payment

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1 from a trust?
2 **A If they're exposed to chrysotile**
3 **asbestos, and -- and there's evidence that they**
4 **got sick because of that exposure, yes.**
5 Q Do you believe that someone exposed to
6 any amount of asbestos, regardless of its quantity
7 or duration, should be entitled to a payment from
8 a trust if they got sick as a result of that
9 exposure?
10 **A Yes.**
11 Q Do you think it could work to the
12 detriment of asbestos claimants to require too
13 much exposure evidence?
14 MR. GUY: Objection. Now you're getting
15 totally beyond the scope of what we're talking
16 about here, which is his qualifications. Not what
17 he thinks about who should be paid and who
18 shouldn't you paid.
19 I'm going to instruct the witness not to
20 answer unless you ask him about his qualifications
21 to be an FCR, not what he thinks about asbestos.
22 Q The question pending is, do you think it
23 could work to the detriment of claimants to
24 require -- to require too much exposure evidence?
25 Can you answer that question?

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1 **A Yes.**
2 Q Do you believe that asbestos exposure
3 causes mesothelioma?
4 MR. GUY: Objection. Calls for a medical
5 conclusion.
6 **A I believe that it can.**
7 Q Do you believe that mesothelioma has any
8 other causes?
9 **A Again, I'm not an expert on mesothelioma.**
10 **The evidence I've heard is that there are not**
11 **really any other causes of mesothelioma other than**
12 **asbestos exposure.**
13 Q You had mentioned a minute ago that it
14 was your understanding that the Fairbanks case
15 involved valves containing asbestos.
16 Is that correct?
17 **A The packing around the valves, yes.**
18 Q How did you become familiar with -- with
19 that fact?
20 **A It was in one of the case documents. I**
21 **don't remember whether it was a First Day**
22 **Declaration or -- it was in one of the documents**
23 **on file.**
24 Q Okay. Now, turning back to Exhibit 2,
25 the materials that were submitted to the U.S.

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1 Trustee's office by you.
2 If you could turn to the PowerPoint
3 presentation.
4 **A Right.**
5 Q Which is essentially in the middle of
6 this document.
7 **A Right.**
8 Q So why was this document prepared?
9 **A To show the differences in the -- to**
10 **summarize the Garlock Trust and to show how it's**
11 **different than trusts that preceded it in other**
12 **cases.**
13 Q And -- and why was that something you
14 wanted to show?
15 **A Because I thought -- we thought it was**
16 **significant.**
17 Q And to whom was your intended audience?
18 Whom was your intended audience?
19 **A I think initially the bankruptcy court.**
20 Q In which case?
21 **A Garlock.**
22 Q So this presentation was a presentation
23 that you put together for the Garlock bankruptcy
24 court?
25 MR. GUY: I can -- I can help you here.

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1 MR. MACLAY: Sure.
2 MR. GUY: This was a presentation that
3 was made for the quarterly meetings of the future
4 claimants representatives, because they asked us
5 to explain the differences.
6 MR. MACLAY: Thank you.
7 MR. GUY: It wasn't prepared for the
8 bankruptcy court.
9 MR. MACLAY: Thank you.
10 BY MR. MACLAY:
11 Q And this document lists you and Jonathan
12 Guy as co-authors. Is that correct?
13 **A It lists both of us on the front. I**
14 **don't think it says who the author is.**
15 Q Were you and Jonathan the co-authors of
16 this document?
17 **A I think Mr. Guy primarily put it**
18 **together.**
19 Q Did you charge anyone fees for the
20 preparation of this document, do you know?
21 **A Yes.**
22 Q And -- and who did you charge?
23 **A Garlock.**
24 Q The Garlock Trust?
25 **A It would have been pre-trust, I believe.**

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1 Q And do you know if Jonathan Guy charged
2 anyone fees for its preparation?
3 **A I assume that he did. I ...**
4 MR. GUY: As I explained, we were asked
5 to present this -- present this to the future
6 claimants representatives who meet quarterly.
7 MR. MACLAY: Uh-huh.
8 Q Have you provided this presentation to
9 anyone other than the future claimants meeting or
10 the Trustee's office?
11 **A Mr. Guy is correcting me, in that we did**
12 **not provide it for the court. And so I'm not**
13 **aware of it being presented to anyone else. But I**
14 **can't tell you for certain.**
15 Q Turning to internal Page 6 of this
16 document.
17 **A Uh-huh.**
18 Q Do you see the -- the last bullet on the
19 page?
20 **A Yes.**
21 Q And there it says, "Repeated
22 underestimation of claims that qualify for payment
23 under terms of standard TDPs, often nonmalignant
24 claims."
25 Do you see that?

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1 **A Yes. Yes.**
2 Q What's the basis for that -- that
3 assertion, do you know?
4 **A I think it would be numerous sources. I**
5 **think the -- the problem of payment percentages**
6 **changing was first brought up at an FCR meeting.**
7 **There was a presentation by a person**
8 **named Timothy Wyant, who had looked at trusts and**
9 **determined that a number of trusts were reducing**
10 **their payment percentages some time into the**
11 **trust, and more were reducing than increasing, and**
12 **that the reductions were significant.**
13 **We then I think read some of the articles**
14 **cited above, the Todd Brown article and the**
15 **Scarcella article.**
16 **We then had discussions with the ACC**
17 **about it. We then actually had a meeting with Tom**
18 **Florence in which we specifically said, Why are**
19 **the payment percentages being reduced?**
20 **And as a result of all of those, our**
21 **conclusions were the primary reason was more**
22 **claims were coming in than had been anticipated.**
23 Q And the portion of this clause that says,
24 "often nonmalignant claims" --
25 **A Right.**

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1 Q -- is it your understanding that trusts
2 are paying a lot of nonmalignant claims these
3 days?
4 **A I couldn't tell what you trusts are doing**
5 **these days.**
6 Q Turning to the next page, Page 7.
7 **A Uh-huh.**
8 Q Do you see where it says at the top of
9 that document, first bullet, Discourage
10 Illegitimate Claims?
11 **A Yes.**
12 Q What is an illegitimate claim?
13 **A It would be a claim by somebody that was**
14 **not exposed -- in the Garlock case, was not**
15 **exposed to Garlock asbestos or somebody who wasn't**
16 **really sick.**
17 Q And how do you discourage claims like
18 that?
19 **A What this PowerPoint shows is -- is by**
20 **appropriate medical criteria, filing fees, trust**
21 **audits, the various protections that we were able**
22 **to -- that all the parties agreed to for this TDP.**
23 Q Do you know if there's typically a
24 relationship between the size of an asbestos
25 trust's assets and whether it has a filing fee and

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1 a TDP, or CRP?
2 **A Whether it has a T -- they all have TDPs**
3 **or CRPs. Right?**
4 Q Correct.
5 My question to you is, do you know if
6 there's a relationship between the size of an
7 asbestos trust assets, how much money it has --
8 **A Right.**
9 Q -- and whether or not it has a filing
10 fee.
11 **A My understanding is very few of the**
12 **trusts have had filing fees, period.**
13 Q And do you know whether, for example,
14 trusts that tend to have smaller asset pools are
15 more likely to have filing fees?
16 **A I do not know.**
17 Q Okay. Do you know which TDPs, other than
18 in Garlock, have had filing fees?
19 **A The Western MacArthur Trust have had**
20 **filing fees. Otherwise I don't know.**
21 Q Turning to Page 14 of this document.
22 Do you see the second bullet that says,
23 Medical Information Factors?
24 **A Yes.**
25 Q Can you explain for me how those medical

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1 information factors work?
2 **A Yes. So there's a -- a one for**
3 **mesothelioma. And if a -- the settlement value**
4 **for mesothelioma is $100,000, and then the maximum**
5 **settlement payment for lung cancer would be 25**
6 **percent of that, or $25,000, and on down.**
7 **But it describes the relationship between**
8 **the dollar amount of claims for the various**
9 **diseases.**
10 Q And do you know how those were arrived
11 at?
12 **A The -- the ones here, the ones put in the**
13 **plan, were -- were not binding on the Trustee.**
14 **Ultimately it's the Trustee of the Garlock Trust**
15 **who gets to determine what the medical information**
16 **factors ought to be.**
17 **These were reached by negotiation, by**
18 **agreement between -- among the parties.**
19 Q Turning your attention to the next page,
20 Page 15.
21 **A Uh-huh.**
22 Q You see the second bullet? You can take
23 a minute to -- to look through it.
24 **A Yes.**
25 Q So that your understanding of the Garlock

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1 TDP, called CRP in Garlock, is that a claimant has
2 to show they were, quote, "on a regular basis
3 engaged in activities that the court found
4 resulted in the release of asbestos fibers"?
5 Is that correct?
6 **A Yes.**
7 Q And what court is that bullet referring
8 to?
9 **A The Bankruptcy Court for the Western**
10 **District of North Carolina, the Garlock court.**
11 Q And is it accurate, as the fourth bullet
12 sets forth, that in a Garlock CRP, a site list is
13 not sufficient to establish exposure?
14 **A Site list by itself is not sufficient,**
15 **correct.**
16 Q How much time, if you know, is there
17 typically between the time of exposure and the
18 onset of illness?
19 MR. GUY: Objection. Vague as to which
20 illness.
21 Q Can you answer?
22 MR. GUY: And which product?
23 **A I know that the median latency for**
24 **mesothelioma is 35 years. I understand that other**
25 **diseases have a shorter period of time, a shorter**

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1 **latency period. I can't tell you what those**
2 **periods are.**
3 Q And in your view, were most exposures to
4 asbestos before 1982?
5 MR. GUY: Objection.
6 **A My understanding is yes.**
7 Q Turning to Page 21 of this document.
8 If you could take a minute to -- to look
9 it over.
10 **A Okay.**
11 Q Now, is it your understanding that with
12 respect to TDPs, at least some non-Garlock TDPs,
13 some of those have a catch-all provision, such
14 that plaintiffs can get paid for claims that
15 would be cognizable in the court -- tort system,
16 even if they would not otherwise be eligible for
17 reimbursement under the medical exposure criteria
18 of the TDP?
19 **A That's my understanding.**
20 Q And in Garlock, there is no such
21 catch-all provision. Is that correct?
22 **A Correct.**
23 Q And in your view, how does that benefit
24 future claimants?
25 **A What it says here, there are objective**

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1 **standards for the Trustee to apply. And so we --**
2 **we know who -- who's entitled to a claim and who's**
3 **not.**
4 **Objective, transparent requirements.**
5 Q And does that benefit a claimant who
6 would have recovered in the tort system but can't
7 recover under this TDP?
8 **A It does not.**
9 Q And do you represent those people?
10 **A I think generally not. Although I don't**
11 **understand who -- I mean, the attempt would be if**
12 **someone was -- would have recovered in the tort**
13 **system, that they should recover from the trust.**
14 **But in the end, to qualify for payment**
15 **under the trust, they have to meet the criteria**
16 **that are set out in the trust.**
17 Q What do you -- actually, do you know when
18 the Garlock Trust went effective?
19 **A It's in here. It's July of -- I'll get**
20 **the date wrong if I try to say it from memory.**
21 MR. GUY: I think it's ...
22 **A Where is it? Well, confirmation was in**
23 **May of '17. The trust I think went effective, it**
24 **was in the summer, but I don't remember which year**
25 **it was, whether it was '17 or '18.**

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1 **I think it was '17, but I'm not sure.**
2 Q And you had mentioned earlier that the
3 Garlock Trust meets quarterly. Is that correct?
4 **A I think they're quarterly meetings.**
5 **Either quarterly or semi-annually. I think**
6 **they're quarterly.**
7 Q And how many Garlock quarterly trust
8 meetings have you attended in person?
9 **A None in person. I've attended**
10 **telephonically all but one.**
11 MR. GUY: To save the trust money.
12 **A And my counsel has also attended --**
13 **somebody from my side has attended each of the**
14 **meetings telephonically.**
15 Q Right. And do you know if -- if Mr. Guy
16 has attended any of the trust meetings in person
17 for the Garlock Trust?
18 **A It's possible he attended one in DC in**
19 **person, I don't remember. But --**
20 Q And you believe he attended the others
21 telephonically?
22 **A Right. We have -- we have concluded**
23 **that, at least for most of the meetings, it**
24 **doesn't make sense to spend the money to go for**
25 **what's a 20-minute meeting.**

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1 Q How much does it cost the Garlock Trust
2 to process and pay a claim on average, do you
3 know?
4 **A I don't know.**
5 Q Do you know if the Garlock Trust has paid
6 any claims since it was set up?
7 **A It has not paid claims yet.**
8 Q Do you know how long it typically takes a
9 trust after it's set up to start paying claims?
10 **A I don't know.**
11 Q Do you think there are any problems with
12 the Garlock CRP?
13 **A I'm anxious to find out.**
14 Q So would you agree that it's currently
15 unproven whether the Garlock CRP is going to work
16 or not?
17 MR. GUY: Objection. Calls for
18 speculation.
19 **A It's -- to some extent it's an**
20 **experiment, and it's one I'm anxious to see what**
21 **works, doesn't work, how it works out.**
22 Q And if the Garlock CRP ultimately proves
23 unworkable, would you support revising it so that
24 it does work?
25 **A Absolutely.**

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1 Q To your knowledge, have claimants had any
2 difficulties with the CRP in Garlock?
3 **A The filing process is different. It's**
4 **intentionally different than a standard TDP.**
5 **And so it would not surprise me if some**
6 **people, because it's a different process, have**
7 **difficulty. But I don't -- I have not talked to**
8 **any plaintiff's lawyers about their -- their**
9 **experience in filing claims.**
10 Q Have you talked with anyone else about
11 potential claimant difficulty in filing claims
12 under the CRP?
13 **A Other than listen telephonically at**
14 **meetings, and I don't really recall conversations**
15 **about it. But other than that, no.**
16 Q So just to close the loop on this, are
17 you aware of reported difficulties in that
18 process?
19 **A No.**
20 MR. GUY: Objection to this line of
21 questioning.
22 You're asking about discussions that the
23 FCR has had with the Garlock Trust fiduciaries,
24 which are confidential.
25 You can't ask him questions. You're --

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you're a trust fiduciary, too. You're required to keep those communications confidential. And we're going to ask at the end of this deposition that all the discussions that he had concerning, to the extent you elicited questions concerning Garlock, be kept confidential.

Q Do you believe, Mr. Grier, that you have provided any confidential information from the perspective of the Garlock Trust in your answers so far today?

A I would have to ask my counsel, who would help me remember what's confidential and what's not.

MR. GUY: Mr. Grier only knows about what's happening with the trust through communications he's had with Mr. Sifford, who is the Trustee. And you know that. And those conversations are confidential. And you know all the answers yourself already because you're a member of that trust.

BY MR. MACLAY:

Q Mr. Grier, in your view is there any risk that a more rigorous CRP prevents some valid claims from being paid?

A Always that risk, yes.

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Q Have you participated in any fashion in any legislative efforts relating to asbestos?

A None.

Q If selected as the FCR in the Fairbanks case, do you intend to retain Jonathan Guy as your counsel?

A I do.

Q And then turning your attention to Exhibit 2 again. It's the -- right after it says Exhibit 2, Joseph Grier, at the top of the page. It's 2 of 31.

A Uh-huh.

Q And so it's accurate that in this case Jonathan Guy has already acted as your counsel, in addition to this deposition, with respect to this potential engagement. Is that right?

A Yes.

MR. MACLAY: If you could please mark this as Exhibit 3.

(Grier Deposition Exhibit 3 marked for identification and is attached to the transcript.)

MR. MACLAY: That is a handsome fellow.

MR. GUY: Oh, thank you. They had to take a lot of photos.

BY MR. MACLAY:

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Q And, Mr. Grier, I've just handed you what's been marked as Exhibit 3.

A Right.

Q Which is a copy of Jonathan Guy's bio from the Orrick, Herrington & Sutcliffe website.

A Right.

Q Do you -- do you recognize the -- the picture on the front of that?

A I do recognize the picture.

Q And who is that?

A That's Mr. Guy.

Q Okay. Do you have any reason to think this isn't what it appears to be, which is a printout of -- of Orrick's bios from their website?

A I take your word for it.

Q Do you know if Orrick currently represents asbestos defendants in the tort system?

A I don't know who else Orrick represents.

Q And so you don't know if they currently represent asbestos defendants in the tort system. Is that correct?

A I don't know.

Q Okay.

MR. MACLAY: Can you please mark this as

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Exhibit 4.

(Grier Deposition Exhibit 4 marked for identification and is attached to the transcript.)

Q I've just handed you, Mr. Grier, what's been marked as Exhibit 4.

A Right.

Q It's another printout from the Orrick website, is what I'm representing to you.

A Okay.

Q Do you recognize it?

A I do not.

Q Do you have any reason to believe it isn't what it appears to be?

A I'll take your word that it's a printout from the Orrick website.

Q And the title of this printout is, Client Johnson & Johnson Wins Defense Verdict in Major Product Liability Trial. Is that correct?

A Correct.

Q And as described in the information below, that was an asbestos defense verdict. Correct?

A It appears to be, yes.

MR. MACLAY: If you could please mark this.

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(Grier Deposition Exhibit 5 marked for identification and is attached to the transcript.)
Q Mr. Grier, I've just handed you what's been marked as Grier Exhibit 5.
A Right.
Q It is another printout from the Orrick website, of a Mr. Matthew Bush.
Do you see that?
A I see that.
Q If I could turn your attention to the -- well, before getting there.
Do you have any reason to believe that this isn't what it appears to be?
A I take your word that it's a printout from the Orrick website.
Q And turning to Page 2, do you see the third bullet, which says, Johnson & Johnson Talc Litigation?
A I do.
Q Would you mind reading that sentence for me, if you could.
A "Part of the Orrick team serving as National Coordinating Counsel for J&J on its asbestos-related talc litigation, Orrick recently prevailed on behalf of J&J in the first of these

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cases to go to trial."
Q And were you aware of -- of that prior to this deposition?
A No.
MR. MACLAY: If you could please mark this as Exhibit 6.
(Grier Deposition Exhibit 6 marked for identification and is attached to the transcript.)
Q You've just been handed, Mr. Grier, what's been marked as Exhibit 6.
A Yes.
Q It is an Orrick web bio -- web bio printout of a Mr. James Stengel.
Do you see that?
A I do.
Q Are you familiar with Mr. Stengel?
A I've heard his name many times.
Q And can you tell me the context in which you've heard his name?
A Complaints by Joe Rice.
Q So you -- you were contacted by Joe Rice complaining about Mr. Stengel. Is that correct?
A I don't know that I was contacted by Mr. Rice in that respect. But in various meetings Mr. Rice has complained about Jim Stengel several

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times.
Q And what's your understanding about the gravamen of those complaints?
A That he somehow -- that he favors the defense side in asbestos cases. That maybe he's testified or -- or spoken in various places on behalf of the defense side.
Q And do you remember when those communications took place, roughly?
A During the Garlock case.
Q Have you ever met Mr. Stengel?
A I have not.
Q Have you ever talked with him?
A I have not.
Q Have you ever communicated with him in written fashion?
A I have not.
Q Is Mr. Stengel screened off from Mr. Guy's representation of you as the Garlock FCR, to your knowledge?
A You would have to ask Mr. Guy that.
I'm not aware that he has any connection with the Garlock case at all.
Q If I could turn your attention to Page 2 of this exhibit.

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Do you see the bullet that says, Union Carbide Corporation?
A I do.
Q Would you mind reading the sentence is that comes after that.
A "Jim is the leader of the Orrick team serving as national counsel for Union Carbide in asbestos litigation."
Q And is that the information of which you were previously aware, or is this something you've just learned from this document?
A I think I had heard that he had -- that he represented Union Carbide.
Q Do you know of any other asbestos defendants that Orrick represents?
A I do not.
Now, I say that I don't recall any. There were -- Mr. Guy made written disclosures to me early in the Garlock case about potential conflicts.
And I simply -- after seeing those, I was not concerned about them. And I can't tell you what was in them or not, because I don't remember. That would have been nine years ago.
Q Right. And do you know whether --

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1 whether your counsel, Mr. Guy, has communicated
2 with Mr. Stengel about the packet that's part of
3 your presentation to the Trustee's office --
4 **A Ask that question again, please?**
5 Q Sure. Are you -- do you know whether
6 your attorney, Mr. Guy, has communicated with
7 Mr. Stengel about anything in the packet you
8 presented to the Trustee's Office in connection
9 with the Duro Dyne case and in this case?
10 **A I do not know.**
11 Q Okay. Have you ever spoken with or met
12 with any of Orrick's clients about your work as an
13 FCR?
14 **A No.**
15 Q Have you had any communications with
16 anyone regarding asbestos litigation in the tort
17 system?
18 MR. GUY: Objection.
19 **A I have lots --**
20 MR. GUY: Anyone?
21 **A Lots of -- lots of communications.**
22 **People ask what case -- what interesting cases are**
23 **you working on.**
24 Q Okay. Well, let me be more precise.
25 That was an overly broad question.

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1 What communications have you had since
2 the Garlock case with respect to asbestos
3 litigation generally in the tort system? If you
4 could categorize them, and we can get more
5 specific if need be.
6 **A Right. Lots of general conversations in**
7 **the -- in the line of, What cases have you been**
8 **working on?**
9 **People -- when you mention asbestos,**
10 **people have seen asbestos ads on TV. And so they**
11 **want to know how does -- how does asbestos work,**
12 **what are these ads about, how does the trust**
13 **system work.**
14 **Most of these are -- are nonlawyers.**
15 **It's -- it's sort of general conversation about**
16 **the asbestos system.**
17 Q Have you had any communications with
18 other lawyers, other than in a social context,
19 with respect to asbestos litigation in the tort
20 system?
21 **A I --**
22 MR. GUY: Objection. Can you try to
23 focus this? Because we meet regularly with the
24 FCRs, and that's all we talk about.
25 BY MR. MACLAY:

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1 Q If I could --
2 MR. MACLAY: Thank you, Jonathan.
3 Q Excluding your work as an FCR in the
4 Garlock Trust, have you had communications other
5 than in a social context with anyone about
6 asbestos litigation in the tort system?
7 **A And we're excluding conversations at the**
8 **FCR meetings.**
9 Q That's correct.
10 **A Yeah. I will sometimes run into lawyers**
11 **who are involved in the Garlock case in Charlotte,**
12 **the bankruptcy bar is a small bar there. And**
13 **there are sometimes conversations about Garlock.**
14 **I don't consider them substantive.**
15 Q Have you billed any clients for any
16 communications with anyone regarding asbestos
17 litigation in the tort system?
18 **A No.**
19 Q Have you communicated with the U.S.
20 Trustee's office of the DOJ regarding asbestos
21 litigation in the trust system?
22 **A Yes.**
23 Q In what context?
24 **A The context we've discussed earlier.**
25 Q And what were the content of those

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1 discussions?
2 **A There were initial conversations around**
3 **this PowerPoint, what was the -- what did you do**
4 **in the Garlock Trust.**
5 **There were subsequent conversations,**
6 **would you be willing to -- to be a -- nominated**
7 **for an FCR position in Duro Dyne, in various**
8 **cases.**
9 **And then there were the interview**
10 **questions that you showed.**
11 Q And did you have any discussion with the
12 attorneys at the DOJ or U.S. Trustee's office
13 regarding the asbestos litigation in the tort
14 system, in the state law tort system?
15 **A Not that I recall.**
16 Q Okay. Do you believe that there's an
17 adversity of interest between asbestos insurance
18 companies and asbestos claimants in a bankruptcy?
19 **A Yes.**
20 Q Do you believe that insurance companies
21 often take positions in bankruptcy cases that are
22 adverse to asbestos claimants?
23 **A Well, the insurance company wants to pay**
24 **as little money as possible. The claimants want**
25 **as much money as possible. That's about as**

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1 **adverse as you can get.**
2 Q You had mentioned earlier today that you
3 represent trunk -- Truck Insurance Company in the
4 Kaiser Gypsum bankruptcy. Is that correct?
5 **A That's correct.**
6 Q Does Truck defend against the claims of
7 asbestos claimants in the tort system?
8 **A I understand that they do. I'm really**
9 **pretty -- at this point I'm pretty far removed**
10 **from that case.**
11 Q Are you screened off of that case at this
12 point?
13 **A No.**
14 Q Are you aware in the Kaiser Gypsum
15 bankruptcy that the ACC, the FCR, and the debtors
16 in that case filed a proposed joint plan of
17 reorganization?
18 **A I'm generally aware that they filed a**
19 **plan and that Truck filed a plan.**
20 Q And are you aware that Truck objected to
21 the joint plan?
22 **A I'm not aware, but it doesn't surprise**
23 **me.**
24 Q Did you ever review or have input into
25 Truck's objection to the joint plan?

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1 **A I did not.**
2 **We're -- we're local counsel, and there's**
3 **other counsel calling the shots, drafting the**
4 **pleadings. We're -- we're not doing anything of**
5 **substance other than appearing.**
6 Q Right. And so you didn't review those
7 documents prior to their being filed.
8 **A So far as I recall, no.**
9 Q And you mentioned that Truck has filed
10 its own plan. Correct?
11 **A Correct.**
12 MR. MACLAY: If you could mark this as
13 exhibit -- what is it? Exhibit 7 now?
14 (Grier Deposition Exhibit 7 marked for
15 identification and is attached to the transcript.)
16 Q You've just been handed what's been
17 marked as Exhibit 7 --
18 **A Right.**
19 Q -- Mr. Grier.
20 Is this the -- the -- does this contain
21 the Truck plan that you were discussing?
22 **A Again, I couldn't identify the plan.**
23 **I'll take your word that it's the plan that was**
24 **filed.**
25 Q Did you have any role with respect to

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1 drafting the Truck plan?
2 **A I did not.**
3 Q Did you have any role with respect to
4 drafting the Truck disclosure statement?
5 **A No, did not.**
6 Q And did you have any role with respect to
7 drafting the Truck CRP?
8 **A I did not.**
9 Q Have you withdrawn your appearance on
10 behalf of Truck in the Kaiser Gypsum bankruptcy?
11 **A I have not.**
12 MR. MACLAY: Would you please mark this
13 as Exhibit 8.
14 (Grier Deposition Exhibit 8 marked for
15 identification and is attached to the transcript.)
16 Q Mr. Grier, I've handed you what's been
17 marked as Grier Exhibit 8.
18 **A Right.**
19 Q Is this a document that you -- well, take
20 a minute to look at it first.
21 **A Okay.**
22 Q Okay. Do you -- do you recognize this
23 document?
24 **A I do not.**
25 Q Do you have any reason to believe it

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1 isn't what it purports to be, which is a filing by
2 Truck in the Kaiser bankruptcy?
3 **A I do not. I'll take your word for it.**
4 Q And turning to the end of the document,
5 Pages 26 and 27.
6 **A Uh-huh.**
7 Q Is -- is that your firm, Grier, Furr &
8 Crisp, on the --
9 **A Right. The firm has changed its name**
10 **since this was filed, it's now Grier & Crisp. But**
11 **it's the same firm.**
12 Q Thank you.
13 On the top of Page 18, do you see where
14 it says, See supra at 4-8, with a period?
15 **A I do.**
16 Q Would you mind reading the sentence that
17 immediately follows that reference.
18 **A "The fact that so many of these cases are**
19 **of dubious merit, if not outright fraudulent, is**
20 **all the more reason to keep the stay in place to**
21 **further judicial economy."**
22 Q Do you understand what that sentence is
23 talking about?
24 **A I would have to read the entire -- I**
25 **mean, I would have to read more of the paper.**

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1 Q Are you familiar with the assertion that
2 Truck has made in the Kaiser case that many of the
3 tort cases filed against Kaiser prepetition are of
4 dubious merit and/or fraudulent?
5 **A I'm not familiar with that.**
6 Q Do you believe that as a general matter
7 many asbestos cases in the court system are of
8 dubious merit, if not outright fraudulent?
9 **A Judge Hodges in the estimation trial in**
10 **Garlock found evidence in a few select cases that**
11 **there were issues which are described in the**
12 **estimation opinion.**
13 **I -- I know that the cases that he looked**
14 **at then were not randomly selected. They were**
15 **selected by the debtor.**
16 **What I don't know is what cases beyond**
17 **that look like. My understanding is that most**
18 **cases are not like that, most cases are**
19 **legitimate. Most cases are -- you've got somebody**
20 **who was sick, and in order to get to a jury**
21 **they're going to have to prove they were exposed**
22 **to whoever they've sued.**
23 Q Mr. Grier, would you like to take a break
24 at this point, or would you like to continue?
25 **A I'm fine continuing. Take a break, if**

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1 **you want to. Up to you.**
2 MR. MACLAY: Off the record for a second.
3 VIDEO SPECIALIST: We are going off the
4 record at 11:34.
5 (A recess was taken.)
6 VIDEO SPECIALIST: We are back on the
7 record at 11:51.
8 BY MR. MACLAY:
9 Q Mr. Grier, if selected as the FCR in this
10 case, would you continue to represent Truck in the
11 KG bankruptcy?
12 **A So far as I know, yes. That's not an**
13 **absolute yes.**
14 **If the judge in this case said, I would**
15 **appoint you if you stopped representing Truck,**
16 **then I would be willing to consider that.**
17 Q Have you made the determination that you
18 can represent both Truck and future asbestos
19 claimants?
20 **A I believe I can, yes.**
21 **Not in the same case, but in different**
22 **cases.**
23 Q Have you ever checked the list of
24 claimants that have filed with the Garlock Trust
25 to make sure none of them have also filed claims

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1 in the Fairbanks case, the prepetition claims?
2 **A I have not seen the list of people who**
3 **have filed claims against the Garlock Trust.**
4 Q Have you done that -- have you checked
5 the list of claimants that have filed with the
6 Garlock Trust to make sure none of them also have
7 claims in the Kaiser Gypsum case?
8 **A I have not seen the list of people who**
9 **have filed claims in the Garlock Trust.**
10 MR. MACLAY: If you could please mark
11 this as Exhibit 9.
12 (Grier Deposition Exhibit 9 marked for
13 identification and is attached to the transcript.)
14 Q Mr. Grier, you've just been handed what's
15 been marked as Exhibit 9.
16 Do you see it?
17 **A I do.**
18 Q I will represent to you that this is a
19 filing with an exhibit marker added to it from the
20 Kaiser Gypsum bankruptcy.
21 **A Right.**
22 Q And it's a filing by Truck Insurance
23 Exchange. Which, if you look at the second page
24 of this document, you'll see the Grier, Furr &
25 Crisp signature block on.

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1 **A Yes.**
2 Q Now, do you have any reason to believe
3 that this isn't what it appears to be?
4 **A I'll take your word that it's a document**
5 **filed in the Kaiser case by Truck.**
6 Q If I could turn your attention, please,
7 to Page 55 of the document, which is Page 163 of
8 the PDF.
9 **A Okay.**
10 Q Now, this document, turning to the front
11 of this document, which is Page 102 of the PDF,
12 sorry, it says, Kaiser/HPCI Settlement Facility
13 Claims Resolution Procedures.
14 **A Yes.**
15 Q Do you see that?
16 **A Uh-huh.**
17 Q And then this is a page within that
18 document.
19 **A Okay.**
20 Q In this Section 7.5 on Page 55, it says
21 that the settlement facility may publish on its
22 website certain information.
23 Do you see that?
24 **A Tell me where you're looking.**
25 Q The second line of Section 7.5 on Page

85

1 55.
2 **A Settlement facility may publish on its**
3 **website the names of claimants. Uh-huh. Yes.**
4 Q Do you mind reading that, that clause,
5 starting with "The settlement facility"?
6 **A Let me start at the beginning of the**
7 **sentence.**
8 Q Okay.
9 **A The --**
10 MR. GUY: Does he need to read the whole
11 thing? It's already an exhibit. And he's not
12 familiar with the document.
13 MR. MACLAY: I'll read the relevant
14 portion of it, and then ask a focused question.
15 Q This says, "The settlement facility may
16 publish on its website certain information,
17 including the names of claimants and associated
18 injured parties; the last four digits of their
19 Social Security numbers; their claimed disease;
20 the nature of their alleged Kaiser Gypsum product
21 contact, including the dates of such contact; the
22 claimant's choice of settlement review; the status
23 of the claim; and if applicable, the settlement
24 offer made and the amount paid to the claimant."
25 Do you see that?

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1 **A I do.**
2 Q If selected as the FCR in this
3 bankruptcy, would you support a provision like
4 this in the Truck case?
5 MR. GUY: Objection. You're asking him
6 for his work product as to what he might or might
7 not do in a case where he hasn't even been
8 retained by the court.
9 Q Can you answer?
10 MR. GUY: Well, no. Because I'm
11 instructing him not to answer because that's his
12 work product. That was the rule at the very
13 beginning.
14 You're asking him what he would do in a
15 case.
16 Q Do you have any views as to the
17 appropriateness of this provision in a case like
18 Fairbanks?
19 **A I do not.**
20 Q Is it your position that trust claims
21 should not be considered confidential?
22 **A I come from a bankruptcy world where the**
23 **rules are disclose, disclose, disclose.**
24 **Everything is disclosed. And that's my**
25 **background.**

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1 **I have no hard-and-fast opinion on, in a**
2 **particular case, what the -- what the -- what the**
3 **rules, what the process ought to be. I think**
4 **that's -- that would be a product of negotiation.**
5 Q In your view, is it likely that future
6 claimants to a trust will make misrepresentation
7 to -- misrepresentations to that trust?
8 **A I have no idea. I hope not.**
9 Q Are you aware of any trusts in which that
10 sort of fraud or misbehavior has been alleged?
11 **A When you say -- well, first of all, I'm**
12 **not -- I'm not familiar with other trusts. And,**
13 **also, I'm not sure what you mean by "that sort of**
14 **fraud."**
15 Q Are you aware of any trusts in which
16 allegations have been made that fraudulent claims
17 have been submitted to those trusts?
18 **A I'm not, because I'm not familiar with**
19 **other trusts. Wouldn't know whether those sorts**
20 **of claims have been made or not made.**
21 Q Would you agree that settlements in the
22 tort system are routinely treated as confidential
23 by plaintiffs and defendants?
24 **A I would agree.**
25 Q Would you agree that asbestos defendants

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1 typically demand that their settlement agreements
2 be kept confidential?
3 **A I'm not familiar with asbestos**
4 **defendants, but that would not surprise me.**
5 Q Do you think it's in the interest of
6 asbestos claimants for their trust claims to not
7 receive the same confidential treatment?
8 **A I think there are different**
9 **considerations at play in a trust. And I think**
10 **because of the allegations that have been made**
11 **about inconsistent filings with different trusts,**
12 **there's an argument to be made that claim**
13 **information should be disclosed.**
14 **Whether it's ultimately disclosed I think**
15 **is -- would be a product of negotiation among the**
16 **parties.**
17 Q And do you think it's in the interest of
18 asbestos claimants that those disclosures be made,
19 or not?
20 **A I don't know how to answer what's**
21 **generally in the interest of claimants.**
22 **If -- if disclosure results in more money**
23 **for those who are genuinely sick and genuinely**
24 **injured by a product because claims that are not**
25 **valid don't dilute the funds that are available,**

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1 **yes, it is in their interest.**
2 **But there may be arguments that it's not**
3 **in their interest. I think there are arguments**
4 **both ways.**
5 Q Is it your position that a claimant
6 seeking a trust payment should have to disclose
7 evidence of all other trust claims that claimant
8 has made?
9 **A In the Garlock case, Garlock Trust does**
10 **not require that for expedited review. And my**
11 **understanding is expedited review assumes there**
12 **are other claims against other trusts and,**
13 **therefore, there's no need to disclose.**
14 **For the extraordinary review, there is a**
15 **requirement of the Garlock Trust that other --**
16 **that claims against other trusts be disclosed, and**
17 **I thought that was a good solution.**
18 Q Do you have a view as to whether persons
19 sickened by asbestos can always identify all of
20 the asbestos products they were exposed to?
21 **A No, I don't think they can. I think**
22 **that's very difficult.**
23 Q Do you believe that asbestos claimants
24 should be permitted to seek recovery from
25 defendants in the tort system, as well as through

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1 the bankruptcy trust system?
2 MR. GUY: Objection. Vague.
3 Q Do you understand the question?
4 **A As I understand the question, I agree. I**
5 **don't -- you're saying should a -- someone who is**
6 **sick from asbestos be able to both sue somebody**
7 **they believe responsible in the tort system and**
8 **make claims against somebody they believe**
9 **responsible in the trust system.**
10 Q That's correct.
11 **A Yes.**
12 Q And -- and why is that?
13 **A They should be able to make claims**
14 **against anybody that's responsible for their**
15 **illness, whether it's tort system or trust.**
16 Q If I could turn your attention back to
17 Exhibit 2, which was the packet?
18 **A Uh-huh.**
19 Q It's the last page, the interview
20 questions for FCR candidates.
21 **A Uh-huh.**
22 Q Question 7 of those interview questions
23 is, "What measures would you take to ensure a
24 cost-effective and efficient representation; i.e.,
25 what is your proposed staffing plan and how would

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1 you control costs."
2 **A Right.**
3 Q When you were asked that question by the
4 Trustee's office, do you recall your -- your
5 answer?
6 **A I don't recall my exact answer. I can**
7 **answer it today, and answer -- the answer is**
8 **probably similar.**
9 **And I understand the reason for it being**
10 **that this is a company that's -- it's a small**
11 **company, its funds are limited.**
12 **I think a limited staffing plan. I think**
13 **appearing telephonically when the substance of the**
14 **hearing is not material.**
15 **In the Garlock case I went to almost**
16 **every hearing. I think in a case in Atlanta maybe**
17 **I don't -- as FCR wouldn't need to go to every**
18 **hearing. Or could appear telephonically.**
19 **You know, there -- and I really don't**
20 **have a good handle on the case yet, but there may**
21 **be an opportunity for arbitration, if -- I mean,**
22 **in a case, as I understand the Fairbanks case, it**
23 **needs a resolution pretty quickly. It can't**
24 **afford to go on and on. It can't afford to go the**
25 **many years that Garlock went.**

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1 **And so maybe there are means like**
2 **arbitration to get to -- get to closure.**
3 **And then other means. But it seems to me**
4 **the parties ought to focus on how can we resolve**
5 **this case efficiently.**
6 Q Would you plan to hire any counsel in
7 addition to Orrick?
8 **A I don't know what I would do. It -- at**
9 **this point I would -- I don't see a need to hire**
10 **additional counsel other than Orrick. And I would**
11 **hope that on many issues the FCR and the ACC would**
12 **have exactly the same interests, and the FCR could**
13 **rely on experts that the ACC had retained.**
14 Q Would you plan to hire -- well, you
15 basically got into my next question. Would you
16 plan to hire any experts?
17 **A I think -- again, I don't know what I**
18 **would do. But I think generally if -- if**
19 **there's -- if there's not an adverse interest**
20 **between the FCR and the ACC, then what I would**
21 **hope is the FCR could rely on the experts that ACC**
22 **had retained.**
23 **To the extent there's an adverse**
24 **interest, then, yes, I would -- would retain an**
25 **expert.**

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1 Q What do you see as the role -- I'm just
2 going to basically go through the questions, make
3 sure I understand what --
4 **A Sure.**
5 Q -- your conversation consisted of, to the
6 extent you can remember, and also so I know your
7 answers to the questions.
8 What did you see -- what do you see as
9 the role of the FCR in a bankruptcy case?
10 **A It's to protect the interests of the**
11 **futures, of the future claimants, in the ways**
12 **we've discussed.**
13 Q What do you see as the challenges or
14 obstacles in the Fairbanks case in general and in
15 representing future claimants in the case in
16 particular?
17 **A The challenge in the Fairbanks case is**
18 **it's a small case with limited funds, and how can**
19 **you efficiently get to resolution I think is the**
20 **main challenge.**
21 **The other challenge is to come to an**
22 **agreement with ACC on terms of a TDP or CRP. And**
23 **I hope that could be done fairly simply.**
24 Q With respect to the third question here,
25 what particular skills, experience and qualities

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1 do you bring that are relevant to serving as an
2 independent and effective FCR, I think we've --
3 we've already talked about that here today.
4 Do you have anything to add to your
5 previous answers?
6 **A I don't.**
7 Q Okay. What specific things would you do
8 to protect the interests of future claimants?
9 **A And again I don't want to commit myself**
10 **ahead of time because I don't know what I would do**
11 **until I get in the case.**
12 **But I think if you look at the PowerPoint**
13 **we've looked at, that's a road map as to the types**
14 **of protections that -- that I ask for and that we**
15 **obtained by consent in the Garlock case. And**
16 **would every one of them apply in the Fairbanks**
17 **case? I don't know. I don't know that they would**
18 **need to be -- that I would even ask for a**
19 **borrower, for example. Might not be appropriate.**
20 **But I think -- I think those protections**
21 **are a general road map of what I would look for.**
22 Q And to the best of your recollection, is
23 the answer you've just given consistent with the
24 answer you gave to the Trustee's office before?
25 **A To the best of my recollection, but it's**

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1 **been several months, and I probably expressed**
2 **things differently.**
3 Q Okay. Then with respect to the fifth
4 question on this list, do you have any insights
5 based on the Garlock case or other related
6 litigation it has generated. If you could start
7 with your recollection of the answer you gave to
8 the Trustee's office if you can, and then answer
9 it more broadly if you are also able to.
10 **A Right. So in the Garlock case, we**
11 **negotiated with the ACC. And most of those**
12 **negotiations took place in this office. And it**
13 **was with the whole committee.**
14 **And we had lots of tough questions**
15 **that -- lots of issues that we argued over, and --**
16 **and both sides argued over. And in the end we sat**
17 **down and came to a consensus. And -- and both**
18 **sides agreed on what ultimately became the Garlock**
19 **Trust.**
20 **So I think that process is -- is an**
21 **insight that would I hope help in the Fairbanks**
22 **case.**
23 Q And do you have any insights based on any
24 related litigation generated from the Garlock
25 case?

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1 **A No.**
2 Q Okay.
3 **A There might be some in -- insights from**
4 **attending the FCR meetings. In other words, when**
5 **we attend the FCR meetings, common issues are**
6 **raised such as, the Medicare requirements about**
7 **making payments to Medicare, and those sorts of**
8 **issues.**
9 Q Right. That actually isn't this
10 question.
11 **A Okay.**
12 Q I don't want to get into the --
13 **A Okay.**
14 Q -- any confidential details of trust
15 meetings, but thank you.
16 With respect to the -- the sixth item,
17 are there things that you consider nonnegotiable
18 in a plan to protect the future claimants?
19 **A My goal is a plan that pays valid claims,**
20 **people who have been made sick by, in this case**
21 **the Fairbanks asbestos, have been exposed to it,**
22 **gotten sick, pays them in an efficient basis.**
23 **The claims are not diluted by -- or**
24 **payments to those folks are not diluted by claims**
25 **of other people who either weren't exposed to**

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Fairbanks asbestos or didn't get sick because of it.

To achieve those goals, there's lots -- lots of different possibilities, lots of different protections. And it's hard to say that any one thing is -- is sacred.

I think compromise means you have an open mind and willing to talk and listen to the other side, and try to come up with a solution that all the parties can live with.

Q And to the best of your recollection, is that the same answer you gave to the Trustee's office earlier?

A I think generally.

Q Can you recall any differences?

A No.

Q Item 8 on this list is, other than the UST, have you had any discussions with parties or professionals at Fairbanks or in other asbestos cases about serving in this case?

A No.

Q We've already covered Number 9. Unless is there anything in Number 9 that you think we haven't covered?

A Let me reread that.

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No. Tort victims, the only case is future unknown -- future unknown tort victims, Garlock is the only case.

Q Okay. And with respect to Item 10, is the results of your review, is that what's attached in Exhibit 2 --

A Yes.

Q -- to the notice you've seen today?

A Yes.

Q Which is also Exhibit 2 to the deposition.

And I guess ten is obviously -- well, the first half -- 11 seems to assume some facts. But with respect to Question 11, do you recall what your answer -- what your answers were to those two questions in Section 11 when asked by the Trustee's office?

A My answer was I was willing to be cross-examined and possibly deposed.

Q And did you answer the question about how you would expect your candidacy to be opposed?

A I'm not surprised that you've raised the Jim Stengel issues and the Truck issues. And I think I mentioned both of those issues as potential issues to be raised.

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Q Right. Were there any other issues that you raised at that time?

A Not that I recall.

Q And then with respect to the -- the hearing on March 28, do you have any knowledge of what you plan to testify about at that hearing?

A I didn't even know I was going to testify.

Q Are you --

A So, no, I have not plan -- I have not even thought about what I will testify to.

Q Okay.

A If called upon to testify.

EXAMINATION BY COUNSEL FOR DEBTOR BY MR. SINGER:

Q Good morning, Mr. Grier, my name is Paul Singer.

A Good morning, Mr. Singer.

Q Counsel to the Debtor Fairbanks. And I appreciate your -- your being here and describing your qualifications to become the FCR in the case.

(A discussion was held off the record.)

BY MR. SINGER:

Q I'll say good morning again, because they made me switch seats.

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A Good morning, Mr. Singer.

Q So you can recognize who I am.

I have just a few questions.

A Certainly.

Q You indicated in your testimony, in response to questions by Mr. Maclay, that you recognize that the Fairbanks case was a small case.

A Yes, sir.

Q Can you explain to me what you meant by "small case"?

A Based on what I have read, the annual gross income is something like $6 million. That's a small company.

Q It is a small company.

A And I understand this insurance, in a settlement with Liberty Mutual, roughly $40 million, and a portion of that has been allocated to professional fees. And at least from what we see so far, that's it, that's the money that's available.

Q I believe you indicated you read the First Day Affidavit that Mr. Lahre, just pronunciation, issued in this case?

A Yes.

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1 Q And I assume you're aware that there is
2 36 or 37 employees?
3 A Yes.
4 Q Who were employed by this company --
5 A Yes.
6 Q -- in Rome, Georgia.
7 A Yes.
8 Q And can you tell me the nature of the
9 business, if you recall from the First Day
10 Affidavit?
11 A Like things related to transportation of
12 materials; wheels, casters, platforms, and that
13 sort of stuff. And it's been going on since the
14 late 1800s.
15 Q And not much has changed, I can tell you
16 that.
17 A I gathered.
18 Q If you see the building and see the
19 factory --
20 A Right.
21 Q -- and see what they produce.
22 I, in reading the presentation that you
23 and Orrick did concerning the negotiation --
24 A Right.
25 Q -- of the TDP in the Garlock case --

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1 A Right.
2 Q -- there was an indication that it took
3 many years --
4 A Yes.
5 Q -- to get to that conclusion.
6 A It did.
7 Q Can you tell me what were the nature of
8 the matters that caused that long a period to
9 reach a conclusion on the TDP?
10 A Oh, I don't know that I will remember
11 them all.
12 On one side it's how much money will the
13 debtor pay. In that case both the ACC and I had
14 experts who opined something like a billion, a
15 billion dollars. And that's what we had our
16 sights on.
17 The debtor came in, and their expert said
18 125 million. And so there was a huge difference.
19 And so the estimation trial was all about what --
20 what does the court think, where does the court
21 think that number ought to be.
22 So the first couple of years I think were
23 taken up in -- in getting to the estimation
24 decision. Then the estimation decision came out,
25 and the court sided completely with the debtors,

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1 125 million, which was a shock to -- to both me
2 and I think I can safely say the ACC. And so then
3 there was a question of how to -- how to deal with
4 a number that was a lot lower than we wanted. So
5 that took up a lot of time.
6 The other issue, though, was -- was the
7 issue of allocation of dollars between presents
8 and futures. And I wanted protections such as the
9 filing fees, the bar date, and the other items
10 that were listed in that PowerPoint.
11 And so for a good period of time we had
12 to negotiate over those protections. It's -- it's
13 a different -- the CRP is different than the sort
14 of standard TDPs, which had been approved in the
15 past. And so there was, I think it's fair to say,
16 resistance to -- to what I was asking for.
17 Q Can you tell me as part of the process
18 approximately how long it took to negotiate those
19 TDP provisions that you wanted to see inserted?
20 A You know, I -- I can't remember the
21 dates. I could go back and -- and reconstruct
22 them.
23 There -- it seems like for -- at a -- for
24 a while it was no, no, no, no, no. And then at
25 some point negotiations changed and it was, all

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1 right, let's talk. And it was interesting,
2 because we actually met in this office. And met
3 not just with the lawyers, but all the members of
4 the -- of the committee. We had a table full of
5 people.
6 And once we started that, it seems like
7 fairly quickly -- I mean it was a couple of
8 months, maybe longer than that, but fairly quickly
9 we were able to come to an agreement where
10 everybody agreed, all right, here, these
11 protections are acceptable.
12 Q In this connection, going back to the
13 Fairbanks case --
14 A Yes.
15 Q -- in considering the size of the
16 company, have you had any occasion to look at
17 monthly operating reports that --
18 A I have not.
19 Q Have you understood from reading the
20 First Day Affidavit of Mr. Lahre that it is the
21 intention to sell the company?
22 A I saw that from the -- there was a -- a
23 plan summary sheet, and it talked about I think a
24 year period in which the debtor would try to sell
25 it. And if that didn't work out, then the trust

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1 could sell the company.
2 Q That year period has begun to run --
3 A Right.
4 Q -- in my view.
5 A Right.
6 Q And I assume you understand that.
7 A Right.
8 Q That we have been looking for
9 investors --
10 A Right.
11 Q -- to sell the company.
12 In terms of the reorganization process
13 generally, obviously we're all here because there
14 were asbestos claims against Fairbanks. But
15 there's also a company there that we're trying to
16 save.
17 A With employees and equity and owners and
18 so forth. Yes.
19 Q That is correct.
20 And -- and I wonder if you could, based
21 on your experience, tell us, have you participated
22 in situations where companies have been sold?
23 A Yes. I have a general bankruptcy
24 practice. And of course we try to sell company --
25 try to keep companies alive all the time. Don't

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1 always succeed, but -- but try.
2 Yes, certainly. I mean, that's the --
3 that's -- that's typically a goal, and a very
4 important goal, in a bankruptcy process.
5 And what I understand here is if you
6 could remove the asbestos liability, there's no
7 problem with the company. I mean, its -- its
8 nonasbestos creditors are -- are current, and the
9 company's making a profit.
10 Q Do you have any idea of the size of the
11 profit and the company's cash flow?
12 A Well, I can assume that with $6 million
13 in gross sales, the profit is not huge.
14 Q I think "modest" would be a --
15 A Okay.
16 Q -- generous term.
17 A Okay.
18 Q The -- so we are concerned here about the
19 time that it will take to negotiate a TDP. To
20 obviously do the allocation --
21 A Right.
22 Q -- establish the payment percentage, and
23 negotiate a TDP.
24 Based on what you know to date, do you
25 have any sense about how long that might take?

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1 A Well, I can tell you that the things I
2 ask for I believe are the things that the ACC
3 agreed to in Garlock. So there's that case where
4 many of the same parties have agreed to the same
5 protections that I would likely ask for.
6 In other words, I don't -- I don't plan
7 on something for something that is brand-new.
8 Q Are there any of those protections that
9 you think are so sacrosanct that you can't agree
10 to not include them or to change them?
11 A My goal is a process, that as I've said,
12 that pays people who have legitimate claims, who
13 are sick. And as long as I can get to that point,
14 none are sacrosanct or sacred.
15 Q Excuse me a minute.
16 MR. SINGER: Those are the only questions
17 I have, Mr. Grier. Thank you for your time.
18 THE WITNESS: Okay. Yes, sir.
19 MR. GUY: Do you have any more questions?
20 MR. MACLAY: I do not.
21 MR. GUY: I just have a couple of closing
22 questions. And I will keep them very short so
23 hopefully it won't spawn many more.
24 EXAMINATION BY COUNSEL FOR THE WITNESS
25 BY MR. GUY:

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1 Q Mr. Grier --
2 MR. KRISTAL: Famous last words.
3 Q Mr. Grier, do you have a bias against
4 plaintiffs in the tort system or plaintiff firms?
5 A No.
6 Q The issues that Mr. Maclay raised
7 concerning Mr. Stengel, were those disclosed in
8 the Garlock bankruptcy case?
9 A Yes, they were disclosed in the Garlock
10 bankruptcy case.
11 Q Did the ACC or any other party raise any
12 issue with the court as to those issues?
13 A No issue ever raised with the court on
14 those issues.
15 Q At what point in time in the case did
16 Mr. Rice raise his concerns with regards to
17 Mr. Stengel?
18 A When we became adverse to the ACC.
19 Q The negotiations that took place that you
20 were just asked about concerning the TDP, they --
21 just before the motion for summary judgement was
22 filed, they took place over a couple of months.
23 Correct?
24 A Correct.
25 Q Now, do you expect to have -- to have

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multi-month negotiations again over the exact same issues that were discussed and resulted in the consent over the CRP in the Garlock case?

A I would hope not.

Q In the -- to the extent that the debtors and the ACC have negotiated a -- an amount for funding the trust, do you expect to have any need to revisit that, having confidence in the ACC to negotiate the best number?

A I certainly want to look at -- would certainly want to look at it. But I think the parties are not -- the FCR and ACC are not adverse on that. And I would expect that the FCR would be content with that number.

Q If the court or the parties determined that you should be the FCR in the case, would you be committed to working as expeditiously and as efficiently as possible to resolve the case to everybody's satisfaction?

A Yes.

MR. GUY: No further questions.

MR. MACLAY: No further questions.

MR. SINGER: No further questions.

MR. GUY: Paul, thank you.

VIDEO SPECIALIST: This concludes today's

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deposition. We are off the record at 12:23.

(Off the record at 12:23 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

I, Debra Ann Whitehead, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; that reading and signing was not requested; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 18th day of March, 2019.

My commission expires:
September 14, 2023

NOTARY PUBLIC IN AND FOR THE DISTRICT OF COLUMBIA

EXHIBIT
F

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From: Guy, Jonathan P. <jguy@orrick.com>
Sent: Monday, August 17, 2020 11:25 AM
To: Erens, Brad B. <bberens@JonesDay.com>; C. Richard Rayburn, Jr. <rrayburn@rcdlaw.net>
Cc: Joseph W. Grier III Esquire (jgrier@grierlaw.com) <jgrier@grierlaw.com>
Subject: Confidential Settlement Communication

** External mail **

Pls find attached the FCR motion and order in Garlock and same for Orrick. The FCR order adopts the definition of Future Asbestos PI Claimants from the motion. See para 2. It also notes in para 2 that the FCR "shall represent, appear on behalf of, and be a fiduciary to Future Asbestos PI Claimants." I would modify that language to say that the FCR "shall represent, appear and act on behalf of, and be a fiduciary to Future Asbestos PI Claimants to protect the rights and interests of such Claimants." It also includes detailed indemnification language in paragraph 5 and standing language in paragraph 6. The standing language says that the FCR shall have standing to be heard on any issue in these cases. We think that is appropriate. It avoids distracting arguments from other parties down the road as to whether future claimant interests are

implicated. Moreover, it is hard to envisage an issue where they are not. For example, while a PI injunction against existing claimants does not extend to future claimants, it does serve to preserve debtor, affiliate, and insurer funds for settlement on a future trust. Further, the second sentence in para 6 makes clear that the FCR shall have the powers and duties of a committee "as are appropriate" for an FCR. In sum, with the one modification, the form of the Garlock FCR order is acceptable to Joe, with the related definition of future claimants from the Motion. I also recommend tracking the language from the Garlock Motion as well, given its detailed discussion of AH Robins etc. I believe that motion was unopposed. Regards, Jonathan

Jonathan Guy

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EXHIBIT
G

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE:	)	Chapter 11
	)	
THE FAIRBANKS COMPANY,	)	Case No. 18-41768-pwb
	)	
	)	
Debtor.	)	

TRANSCRIPT OF TRIAL ON THE DEBTOR'S MOTION FOR ORDER APPOINTING JAMES PATTON AS LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS AND THE UNITED STATES TRUSTEE'S MOTION TO APPOINT LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS

BEFORE: **Judge Paul W. Bonapfel**
DATE: **March 28, 2019**
PLACE: **Courtroom 1401**
United States Bankruptcy Court
Atlanta, Georgia

IN ATTENDANCE:

Counsel for Debtor:

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Proceedings recorded by electronic sound recording, transcript produced by transcription service

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P R O C E E D I N G S

10:00 a.m.

THE COURTROOM DEPUTY: This is case number 18-41768, The Fairbanks Company. This is the trial on the Debtor's Motion for Order Appointing James Patton as Legal Representative for Future Asbestos Claimants and the United States Trustee's Motion to Appoint Legal Representative for Future Asbestos Claimants. We also have Courtcall on the line with a listen-only party.

THE COURT: Okay.

MR. OCHS: Your Honor, can I just ask who the listen-only party is?

THE COURTROOM DEPUTY: Uh, there's a list on the podium.

MR. OCHS: Oh, I'm sorry. Thank you.

THE COURTROOM DEPUTY: His name for the record is Nicholas Velonis, V-E-L-O-N-I-S with Hughes, Hubbard & Reed.

THE COURT: Okay. Parties ready to proceed?

MR. SINGER: Yes, Your Honor.

THE COURT: I guess let's just have appearances so that I know who's here.

MR. OCHS: Okay. Good morning, Your Honor, Martin Ochs, United States Trustee. I'm joined today by my colleague from the United States Trustee's Office, John Sheahan and David Weidenbaum.

MR. WEIDENBAUM: Good morning, Your Honor.

MR. SHEAHAN: Good morning.

MR. ROTHSCHILD: Bill Rothschild for the Debtor-in-Possession. Paul Singer, who has been in this Court before is to my left and Luke Sizemore is to his left.

MS. PINEYRO: Good morning, Your Honor. Leslie Pineyro with the local counsel for the Committee of Asbestos Claimants and Mr. Kevin Maclay and Todd Phillips are present in the courtroom as well, Your Honor.

MR. LEVIN: Good morning, Your Honor. Matthew Levin on behalf of one of the proposed future claim representatives Jim Patton. And with me in Court is Mr. Ed Harron, uh, who was just admitted pro hac this morning.

THE COURT: Okay.

MR. HARRON: Thank you, Your Honor.

MR. MILLNER: Good morning, Your Honor, Robert Millner for the Liberty Mutual Insurance Company.

THE COURT: Anyone else? Okay. Go ahead, Mr. Singer?

MR. SINGER: Thank you and good morning again, Your Honor. Paul Singer from Reed Smith on behalf of the Debtor, The Fairbanks Company. As I will relate we have worked with U.S. Trustee on the order for presentation this morning. And, uh, that is how the four candidates for future claims representatives will be examined before the Court.

But before we do that I would like to alert the Court that we do have Robert Lahre in the courtroom. Mr. Lahre is the CEO of Fairbanks and we had intended to present Mr. Lahre to indicate the current status of the company, but in speaking to Mr. Ochs and the other counsel here we thought it might be quicker if I had made a short proffer of what Mr. Lahre would testify to. So it would be up the Court whether you want to hear from Mr. Lahre directly or whether I can relay the proffer.

THE COURT: I'm happy to have a proffer if that's acceptable to the parties.

MR. OCHS: Your Honor, Martin Ochs, The United States Trustee. Good morning. The United States Trustee has no objection to the proffer. What I've agreed to with my colleague, Mr. Singer, is that Mr. Lahre will remain through the proceeding and that the United States Trustee may examine him later on in the proceeding. I'm happy if it eases the Court and we have worked out some other issues, which I think we should present in a moment as well. But I'm happy to [audio skip 10:17:56] if that pleases the Court or wait until later in the presentation.

THE COURT: Okay.

MR. OCHS: This is as we know, it's not a jury trial. And we know Your Honor can assimilate all of the information in whatever order its presented.

THE COURT: I'm flexible as far as [audio skip 10:18:12] represent your case.

MR. OCHS: Okay. Fair enough. So then what I would do is I'll just ask Mr. Lahre to remain in the courtroom unless I hear something during - I don't know what the proffer is. I haven't seen it yet or read it. So I'll reserve the right to cross him, otherwise I reserve to call him later on.

THE COURT: Okay.

MR. OCHS: Your Honor, I think we've also agreed and Mr. Singer can confirm and Mr. Maclay, what we're going to do early on in this case and, you know, in response to the United Trustee's Motion, the Court had indicated that, you know, this is something of a job interview. And so it's the view of The United States Trustee that, you know the motions are inextricably intertwined. They both relate to the same topic matter. The Debtor seeks to have Mr. Patton appointed and The United States Trustee seeks to have Your Honor consider in addition to Mr. Patton, uh, Peggy Ableman, Joseph Whitley and Joseph Grier who are all here as well today.

So what I thought the best presentation approach would be is that the Debtor and the Committee are going to call Mr. Patton. I'll have an opportunity to cross Mr. Patton and then we'll run in seriatim through this. And I

1 believe that --

2 MR. SINGER: That is correct.

3 MR. OCHS: -- we're in agreement with that. And I

4 think that it makes - it may not meet the traditional sense

5 of how this might be done, but I think it'll be a lot easier

6 and a lot faster in given the population [audio skip

7 10:19:32] in the Court - mean a lot less missed flights for

8 everybody as well. Had I known we were going to have so many

9 people here today, I probably would have sold tickets and

10 that might have avoided the next shutdown.

11 THE COURT: I'm not sure you could have done that,

12 but --

13 MR. SINGER: I think they would have found better

14 --

15 THE COURT: -- you'd have to give the money to the

16 judiciary (indiscernible).

17 MR. SINGER: Tickets to the NCA final 16 would be

18 much more interesting.

19 MR. OCHS: Wait we haven't negotiated this deal

20 yet, Your Honor.

21 PROFFER

22 MR. SINGER: Your Honor, going back to trying to

23 ease the presentation, Mr. Lahre, if he were called to

24 testify would indicate that he is the chief executive

25 officer of Fairbanks. He has been in that position since

1985. He would describe the company as a relatively small company with six million in sales, making products like hand trucks and dollies, employs 36 people in Rome, Georgia. He would indicate that the reasons for this filing or the time of the filing the [audio skip 10:20:35] standing against it 1300 asbestos related cases both bodily injury and wrongful death cases.

Since 2005 the company has resolved approximately 2500 cases and expended in excess of $30 million in doing so. He would indicate that the company has no insurance remaining for cases in which the date of first exposure by a plaintiff would be after 1981. The company has resolved all of its - substantially all of its pre-1981 coverage with Liberty Mutual Insurance Company for approximately $40 million. That settlement is conditioned upon a confirmation of a Section 524(g) plan in this case. Mr. Lahre would indicate that at the time of the filing the cash position of the company was approximately $200,000. Since that time the company has had significant expenditures, not just for the U.S. Trustee fees, which are in excess of $30,000, but it has had to place deposits with utilities as well as freight forwarders and customs brokers. And indeed its had an increase in the cost of its raw materials because of the tariffs imposed by the U.S. government. So at the current time the company is operating with approximately $100,000 in

cash.

Mr. Lahre would indicate that, uh, because of the low level of cash, the company is unable to make the capital improvements and is deferring maintenance in order to continue the viability of the company. Mr. Lahre would indicate that there is a need for speed. It's important to have a 524(g) injunction here because the intent is to sell the company. The current equity shareholders have indicated that they're gonna have no objection to a sale. But we need to move the process quickly in order to continue the company's operations, maintain its stability and have it in a position to be sold as part of the plan or reorganization in which the buyer would get the benefit of the 524(g) injunction.

We are now six months into the case. What is occurring today [audio skip 10:23:10] is very important that we have a future claims representative so we can get to work on dealing with the issues in the case. Not just what the Court has been focused on that is the negotiations of the division of the trusts that will be built between current claimants and future claimants, but we also have to work on a plan of reorganization. The tone and quality of the 524(g) injunctions and indeed review or have our Committee and the FCR review the Liberty settlement and work on the plan of reorganization with the Debtor which, uh, as I've indicated

before the Debtor has in draft form. That would be Mr Lahre's testimony. Again, he is here. He is prepared to be examined or cross-examined if the U.S. Trustee would like to do so.

THE COURT: Okay. Thank you.

MR. OCHS: Your Honor, if I could call Mr. Lahre for a few brief questions I would appreciate that.

THE COURT: Sure, Mr. Lahre?

ROBERT LAHRE, WITNESS, SWORN

THE COURTROOM DEPUTY: Please state your name and spell your last name in the microphone please.

THE WITNESS: My name is Robert Lahre, L-A-H-R-E.

CROSS-EXAMINATION

BY MR. OCHS:

Q. Morning, Mr. Lahre. My name is Martin Ochs. You and I have met before. Do you recall that?

A. Yes, I do.

Q. And we met at the 341 meeting that I conducted in this case at the beginning of the case. Do you recall that?

A. Yes, I do.

Q. And you testified that you are the person with knowledge on behalf of the Debtor. Is that correct?

A. Yes.

Q. And so you're involved with the Debtor's daily affairs. Is that correct?

A. I am.

Q. Okay. And you heard Mr. Singer's proffer today. And is it your testimony that Mr. Singer's proffer is accurate?

A. Yes, it was accurate.

Q. So have you been -you've been with the Debtor since 1985?

A. I have.

Q. And so is it safe to say that you've been involved in the trials and tribulations, if you will, of the asbestos situation that has confronted Fairbanks?

A. Yes.

Q. Were you involved in the settlement negotiations with Liberty Mutual?

A. No.

Q. Who was on behalf of the Debtor?

A. Uh, our attorneys at that time, yes.

Q. And who were your attorneys at that time?

A. Well, Paul - Paul was. Paul, Luke and, uh, I'm trying to think, Andy Roman. Was Andy involved?

MR. SINGER: Yes.

BY THE WITNESS: (Resuming)

A. Andy Roman and David Russey (ph). They were involved.

Q. So you, you don't know whether the success -

withdrawn. The Debtor is planning to sell its business. Is that correct?

A. Yes.

Q. And what is the current status of that sale?

A. Uh, we have a letter of intent and we're awaiting a response from them.

Q. Who issued --

A. We responded to them and we're awaiting the response back.

Q. The acquiring party issued the letter of intent to the Debtor?

A. Yes, they did.

Q. And then the Debtor responded back to it?

A. Yes.

Q. What do you think the anticipated timetable is for the sale of the Debtor's business?

A. I think it will all hinge on the channeling injunction. They, they don't want the liabilities of the company so - when it sells. I would think within the next six months.

Q. So its your belief that the sale can't proceed without the channeling injunction?

A. I would think so, but I, I can't speak for them.

Q. Well, what, what makes you - what do you base your thoughts on?

A. Just realistic belief that no one wants to incur the liabilities of the asbestos claimants.

Q. At what point in time - I'm sorry, withdrawn. So I'd like to talk to you about the settlement with Liberty. You were not involved in that settlement at all?

A. No.

Q. It wasn't brought to you that these are the terms of the settlement?

A. Yes. Yes.

Q. When, when did that happen?

A. I, I don't remember. Sometime ago last year.

Q. Was last year being 2018?

A. Two thousand eighteen, yes, sir.

Q. And, uhm, was the need for a - first of all do you know what an FCR is?

A. Yes, I do.

Q. What is an FCR?

A. Maybe I'm not understanding it? You're saying SCR or F --

Q. F, F.

A. F - yes, future claims representative.

Q. All right. And so you know what a future claims representative is.

A. I do.

Q. Is that correct?

A. Yes.

Q. Did you assist in the selection of the future claims representative in this case?

A. No.

Q. Not at all?

A. Uh, probably with discussions, but I have no knowledge or expertise in selecting, uh, someone that would be a future claims representative.

Q. And do you recall that at the beginning of this case there was this fellow by the name of Jim Fitzgerald that was proposed by the Debtor as the FCR in this case?

A. Yes, I remember that.

Q. And then there came a point in time where Mr. Fitzgerald withdrew his request to be approved as FCR. Isn't that correct?

A. Yes, that is.

Q. And do you know why that happened?

A. I don't know for sure other than I thought he had some illness.

Q. Okay. And what's your understanding as to what happened after that with respect to the FCR appointment?

A. Well, uh, The U.S. Trustee wanted to appoint the FCR and we had or Paul had come up with an FCR to replace him, Mr. Patton. And that's where we are. After about four or five months we're at this point.

Q. So were you involved in the selection of the replacement FCR?

A. No, just in discussions.

Q. And do you know who Mr. Patton is?

A. I met him this morning.

Q. Had you met him before that?

A. I had not.

Q. Do you know why he was selected as the proposed FCR by your company?

A. He had a good qualifications --

Q. Is that --

A. -- expert qualifications.

Q. -- is that the sole reason?

A. As far as I know, yes.

Q. Do you know whether Mr. Patton was selected by what's referred to as the ACC today, the Asbestos Claimants Committee?

A. No. I don't know that.

Q. Did you ever have a conversation about that?

A. No.

Q. Did you ever inquire as to why Mr. Patton was selected?

A. No, other than reviewing the qualifications.

Q. Did you ever - on behalf of the Debtor, did you ever seek out another FCR candidate other than Mr. Patton?

A. No. I did not.

Q. Did you ask your attorneys to do that?

A. I'm sorry?

Q. Did you ask your - when I say your attorneys, I mean the attorneys for the Debtor, of course.

A. Yes.

Q. So when I say you and your, I mean the Debtor.

A. No. I did not.

Q. Did anybody else make that request on behalf of the Debtor?

A. Not that I'm aware of.

Q. Okay. Thank you. Now Mr. Singer proffered on your behalf that there's a need for speed in moving this along. Why is that the case?

A. Well, the company is, uh, in financial need. And we're, we're a very small company. Half the cash - over half the cash that we had when we filed has been used, uh, in non-operating that doesn't promote the operation of the company. And its cash has become a very, uh, scarce necessity for us.

Q. What was --

A. I mean we're just really working along - bumping along on the bar.

Q. -- what was the cash used for when you say non-operating expenses?

A. Well, 70,000 of it was used for deposits for, as Mr. Singer said, for, uh, uh, utilities and, uh, a bond for our imports and transportation. And 30,000 of it was for the, uh, U.S. Trustee fees.

Q. So the --

A. That's a hundred thousand out of the --

Q. -- the 70 --

A. -- 198, 188.

Q. Okay. The $70,000 that was used for deposits still remains property of the Debtor, correct?

A. It does, yes.

Q. So its not been spent. It's just been deposited with another entity?

A. The cash is gone.

Q. But it remains property of the Debtor, correct?

A. Yes. It's an asset. It's an asset.

Q. Does the Debtor have any opinion or position as to who the FCR is in this case as long as the appointment of an FCR is prompt?

A. No, you don't just so long as its prompt.

Q. So you, you're aware that The United States Trustee has proposed three other candidates for the FCR position, correct?

A. Yes.

Q. And you don't care who is selected, do you?

A. No. As long as its done expeditiously.

Q. So and, again, when I say you - so the Debtor doesn't have a care as to who the FCR may be. Is that correct?

A. No.

Q. Do you know - do you have any familiarity now with the Liberty settlement?

A. I don't understand the question.

Q. Are you familiar with the terms of the Liberty settlement?

A. Yes, I am.

Q. Do you know whether it rises or falls, where it's successful or not based upon the appointment of a particular FCR?

A. No.

Q. So do you have any reason to believe that if a different FCR other than Mr. Patton is appointed, that this - that the settlement with Liberty will fall apart?

A. I, I really don't have any knowledge in that, in that area.

Q. Do you have any belief about it?

A. I would hope that it would continue on.

Q. Do you think - do you have any reason to believe that it wouldn't continue on if an FCR other than Mr. Patton were appointed?

A. No.

MR. OCHS: I have no further questions for the witness. Thank you, Your Honor.

THE COURT: Mr. Singer?

MR. OCHS: And I reserve the right to recross.

DIRECT EXAMINATION

BY MR. SINGER:

Q. A few followup questions. Mr. Lahre, you indicated in connection with the Liberty settlement that you were continuously advised [audio skip 10:35:06] during the negotiation of the Liberty settlement. Is that correct?

A. Yes.

Q. And you understood the settlement when it was finally reached --

A. Yes.

Q. -- as to what it contained and read the documents. Is that correct?

A. Yes.

Q. And essentially approved it. Is that correct?

A. Yes.

Q. And let’s talk for a minute about the future claims representative. You do understand that the Debtor has moved to have Mr. Patton appointed as an FCR. Is that correct?

A. Yes.

Q. And you had reviewed Mr. Patton's qualifications.
A. I have.
Q. And it's your belief that there's a need for speed. Is that correct?
A. Definitely.
Q. And you've testified to that. Is it your understanding that based on Mr. Patton's qualifications and prior experience that its more likely that speed would occur because he does not need to get up to speed as the others that are being proposed by The U.S. Trustee?
A. I believe that. That's what I've been told, yes. Yes.
Q. And you do - you're not a lawyer, right?
A. I'm not a lawyer, no.
Q. And so when the concept of FCR came up it was somewhat foreign to you?
A. I had to figure out what it was.
Q. You had to figure and you had to rely on others --
A. Yes.
Q. -- such as myself with respect to --
A. Yes.
Q. -- how the process worked and who would be a pretty good FCR for this case. Is that correct?
A. That's true.
Q. And it really wasn't expected that you would go

out and look at various persons who might be an FCR.

A. Right.

Q. You relied solely on your counsel in that respect.

A. I would have no business doing that.

MR. OCHS: Objection, leading.

THE COURT: He's already answered it.

MR. OCHS: I didn't hear his answer, Your Honor.

THE COURT: Well, yes he relied on counsel. I think that was it. Was that the one you objected too.

MR. SINGER: Yes.

MR. OCHS: I didn't hear, I didn't hear his answer so I can't say, Your Honor. I apologize.

THE COURT: Okay. Well, what was the question you objected to?

MR. OCHS: He, he was, he said in the forum you relied on - he led the witnessing.

THE COURT: Right. He did lead the witness.

MR. SINGER: I did.

THE COURT: But the witness answered the question the way everybody in the courtroom expected he would. So I'm gonna overrule your objection.

BY MR. SINGER: (Resuming)

Q. Mr. Lahre, when you indicated in response to one of Mr. Ochs' questions that you really didn't care who the FCR was, was that in connection with the need for speed or

was there another reason you made that declaration?

A. No. It was the need for speed to do it expeditiously.

Q. And but you still think that Mr. Patton is the person most likely to be able to generate that speed because of prior experience. Is that correct?

A. From what I've seen yes.

Q. Thank you.

MR. SINGER: That's all the questions, Your Honor.

THE COURT: Any recross? Anyone else wish to examine. Okay. You may step down Mr. Lahre. Thank you.

MR. OCHS: Oh, Your Honor, if I could just recross with just a couple of questions. I'm sorry.

THE COURT: Oh, I'm sorry. I thought --

MR. OCHS: I was just making --

THE COURT: -- I thought silence meant you didn't have anything else to say. Go ahead.

MR. OCHS: Usually you're pleased when I'm silent, but --

THE COURT: I am. You're right.

MR. OCHS: -- I apologize. I was just making a note.

RECROSS EXAMINATION

BY MR. OCHS:

Q. So other than Mr. Patton were any other FCR

candidates presented to you?

A. Uh, I, I don't understand the question. I've read the qualifications of all of them, yes.

Q. Okay. And do you have a reason to think that any of the other candidates that were presented are not capable?

A. No.

Q. And do you have a particular reason to believe that any of the other candidates can't move with what you view as the requisite need for speed?

A. I don't believe I could answer that question because I don't know how up to speed all of the other candidates are. I know Mr. Patton is up to speed.

Q. How do you know that?

A. I've been informed by my attorney --

Q. Okay.

A. -- counsel, Paul.

Q. Did, did you ask your attorney whether any of the other candidates could move as quickly as Mr. Patton?

A. I did not.

MR. OCHS: I have nothing further, Your Honor. Thank you.

THE COURT: Redirect?

MR. SINGER: No, thank you.

THE COURT: Okay. Now you may step down. Thank you.

THE WITNESS: Thank you.

THE COURT: Okay. Mr. Singer or who - I don't - y'all said y'all had agreed on the order so I'll rely on y'all to MC this at this point.

MR. SINGER: That is correct, Your Honor. Mr. Patton will be the first witness. He is going to be examined by Mr. Ed Harron who is his partner.

MR. OCHS: Your Honor, The United State's Trustee objects to the use of Mr. Harron to examine Mr. Patton. Mr. Harron is not a party to the case. Mr. Patton is not a party to the case yet either. Mr. Patton is a proposed FCR and I can't think in my 30 plus years of practicing law in any instance where a witness gets to pick who examines them. This is a witness that is proffered by the Debtor and the ACC, the Committee and they should be the ones to examine him. Mr. Harron, you know, is not a party here. He doesn't represent - he may represent Mr. Patton. He is - let's break it down. Mr. Patton is the proposed FCR and he is the proposed counsel to the proposed FCR. So he's twice removed from the case at this point in time and he should not be allowed to cross examine - rather, I'm sorry. He should not be allowed to examine Mr. Patton.

MR. SINGER: Your Honor --

THE COURT: Mr. Singer?

MR. SINGER: -- my response to that is that, first

of all, it would be more efficient to have Mr. Harron do the examination. It has - that process has been used in other cases such as *Duro Dyne* where proposed FCRs were examined by persons who are knowledgeable about that person as Mr. Harron is, as he did in the *Duro Dyne* case. I just think it would be much more efficient. We would get better answers quicker 'cause Mr. Harron is familiar with Mr. Patton's activities. I think in the long run it makes no difference. Mr. Ochs has all the rights of cross-examination. It's just more reasonable to have Mr. Harron conduct that examination. This is not, uhm, a normal contested matter. It's essentially an interview and we ought to be able to present our witness in the best possible light using the lawyer that's most knowledgeable.

MR. OCHS: Your Honor, may I respond?

THE COURT: Sure.

MR. OCHS: You know, it, its interesting to hear Mr. Singer say this is not, uhm, the normal cross-examination or presentation and it's an interview which is something that The United States Trustee and I frankly think the Court had suggested as well throughout the course of this case. Interestingly, the ACC used special counsel and a videographer to examine each of the proposed candidates by the FCR. I can't think of any interview ever where there was a videographer present. You know, now, you know we're being

1 asked or you're being asked to allow Mr. Harron to examine
2 him. Mr. Harron is not a party in this case. The parties
3 ought to be doing the litigation here and there are ample, I
4 mean, these are, and I don't mean this to come out in the
5 wrong way, but these are capable counsel and they can
6 examine him. Mr. Harron is a stranger to the case in the
7 sense that he is not a retained party, doesn't represent the
8 party. And I can't think of a situation in which this Court
9 would allow The United States Trustee or any other party in
10 any other litigation in this courtroom to just bring the
11 lawyer that their witness is most comfortable with.
12 THE COURT: Okay.
13 MR. HARRON: May I be heard, Your Honor.
14 THE COURT: Yes, sir. Which side are you on, on
15 this issue?
16 MR. HARRON: Right now Mr. Ochs and I are on
17 separate sides. I'm Mr. Harron.
18 THE COURT: Oh, you're Mr. Harron.
19 MR. HARRON: I represent Mr. Patton.
20 THE COURT: Okay. Well, I don't need to hear from
21 you.
22 MR. HARRON: Wait, Your Honor you were --
23 THE COURT: Unless you're gonna argue that you
24 should not be able to examine yourself.
25 MR. OCHS: He said right now he's not on my side

so maybe he's gonna come over to my side.

MR. HARRON: I just wanted to bring a few facts to Your Honor's attention.

THE COURT: I - Mr. Harron, you're about to win --

MR. HARRON: All right.

THE COURT: -- unless you want this to be heard.

MR. HARRON: Thank you, Your Honor.

THE COURT: Okay. Thank you. I appreciate your argument Mr. Ochs. In general we don't allow the witness to decide who will do the examination. This is an unusual case. There's a lot of things that are unusual about this including this and so it's just part of the whole situation that we're dealing with. So I'll leave it at that for now, but I have no problem with Mr. Harron examining Mr. Patton. Well --

MR. OCHS: Thank you, Your Honor.

THE COURT: -- to state that more precisely, I'm going to permit him to do it, so go ahead.

MR. HARRON: Thank you, Your Honor. May it please the Court --

THE COURT: Mr. Patton?

MR. HARRON: -- I guess I'd like to call Mr. Patton to the stand.

THE COURT: Okay, Mr. Patton?

MR. PATTON: Good morning, Your Honor.

THE COURT: Good morning.

JAMES LELAND PATTON, JR., WITNESS, SWORN

THE COURTROOM DEPUTY: Please state your name clearly in the microphone and spell your last name please.

THE WITNESS: My name is James Leland Patton, Jr. and the last name is spelled P-A-T-T-O-N.

DIRECT EXAMINATION

BY MR. HARRON:

Q. Good morning, Your Honor. For the record Ed Harron from Young, Conaway, Stargatt & Taylor. We just have one -- first I'd ask the witness to state your name for the record. I think you've already done that.

A. Yes.

MR. HARRON: We just have one exhibit, Your Honor. It's the cd that was attached to Mr. Patton's declaration, which I believe is Schedule 1, the docket number 117 and I have extra copies if I may approach the witness.

THE COURT: Sure.

UNIDENTIFIED SPEAKER: And that's also Exhibit 29 of the Committee's Exhibit binder just for the record.

MR. HARRON: Your Honor, would you like a copy?

THE COURT: Sure.

MR. OCHS: May I have a copy? Thank you.

BY MR. HARRON: (Resuming)

Q. Mr. Patton, I ask you to direct your attention to

1 Schedule 1 of your Declaration.
2 MR. HARRON: And, Your Honor, I apologize. I'm not
3 familiar with the process for, for marking exhibits. How
4 should this be marked?
5 THE COURT: Well, this one doesn't need to be
6 marked because one, the Committee has already marked it and
7 two, it's a matter of record in the Court. So does that
8 answer your question?
9 MR. HARRON: It does. Thank you.
10 THE COURT: Okay.
11 MR. OCHS: Just so we're all on the same page if I
12 might Your Honor. This is Exhibit 29 because you refer to I
13 thought you said a letter. Did you say that Mr. Harron?
14 MR. HARRON: It, its on the docket. It's the
15 schedule to his Declaration, but the CV itself is marked as
16 Exhibit 29 in the Committee's binder.
17 MR. OCHS: Okay. Fair enough. I just wanna make
18 sure we're all looking at the same document. Thank you.
19 MR. HARRON: Hopefully this is the most difficult
20 part of the entire examination.
21 BY MR. HARRON: (Resuming)
22 Q. Mr. Patton, would you please review what I
23 provided you, it's Committee's Exhibit 29.
24 A. I've reviewed it.
25 Q. Is it a true and correct copy of your CV?

A. It is.

Q. Does it generally set forth your relevant bankruptcy and asbestos bankruptcy experience?

A. It does.

Q. Are there any matters that you would add to what's set forth in the CV?

A. I believe it does not include the recent, uhm, asbestos bankruptcy cases, uh, the *Imerys* case and the *Maremont* case in which in the *Maremont* case I am now the future claimants representative as a prepackage bankruptcy and in *Imerys* I'm the proposed future claimants representative. That was a case that was attempted to be a prepackage.

MR. HARRON: Your Honor, I'd ask to move the Committee's Exhibit 29, Mr. Patton's CV into evidence.

MR. OCHS: No objection by The United States Trustee.

THE COURT: Any - are all those - is there any objections to any of those exhibits?

MR. OCHS: To?

THE COURT: To the objections to the exhibits that the Committee has?

MR. OCHS: No. And can we ask the same question of The United States Trustee's exhibits at this time?

THE COURT: Sure.

MR. OCHS: Just for ease --

THE COURT: Is there any objection to --

MR. OCHS: -- of moving forward.

THE COURT: -- The U.S. Trustee's exhibits?

MR. SINGER: No, Your Honor.

THE COURT: Okay. All those exhibits are admitted.

MR. HARRON: Thank you, Your Honor.

THE COURT: Ms. Mason, do you have a list of those?

THE COURTROOM DEPUTY: Yes, sir, I do.

THE COURT: Okay. The parties know what it is and we know what it is so all the exhibits are admitted so we won't have to deal with that question. Go ahead.

MR. HARRON: Thank you, Your Honor.

BY MR. HARRON: (Resuming)

Q. Mr. Patton, with how many 524(g) trusts are you involved either as FCR or FCR counsel?

A. I believe its 20. We've been going back and forth about that count. It's either 19 or 20, but I think we've settled on 20.

Q. And is 20 just the number of trust? Are you also involved in active cases?

A. I'm also involved in active cases. And I would say if we include active cases, uh, we're approaching 30.

Q. Now turning to this case, how did you first learn

of the Fairbanks case?

A. Well first, my first learning of the case came from a conversation with you when we were talking about the case or we were talking about, uh, Larry Fitzpatrick, uh, as the proposed future rep and whether or not he would continue in that capacity.

Q. Do you have understanding why Mr. Fitzpatrick didn't continue and, and the company proposed you instead?

A. Well, this is a - he was and is having, uh, a number of health issues. I think specifically, with respect to this case, he realized that it was going to involve, uhm, rather more court time than it might otherwise have involved at least in his expectation. In one part because of this specific issue and flying is difficult for him. Uhm, uhm, so he changed his mind.

Q. And in connection with this case did you participate in a telephone interview by the office of the United States Trustee?

A. I did.

Q. Was Mr. Ochs on that call?

A. Mr. Ochs was on the call, yes.

Q. Was Mr. Sheahan on that call?

A. Perhaps.

Q. And you recall whether the Trustee for Region 21, Mr. McDermott, whether he was on the call?

A. Mr. McDermott was indeed on the call.

Q. Was the Trustee for Region 3, Andy Vera, was he on the call?

A. Yes, Mr. Vera, was on the call.

Q. And for Region 1, Mr. Harrington, was he on the call?

A. And Bill Harrington was also on the call.

Q. And who was it that asked you whether you'd be willing to serve as FCR in this case is the Court sees fit to appoint you?

A. Mr. Singer gave me a call and asked me.

Q. And this is the case that you are willing to so serve?

A. I am.

Q. What do you know about The Fairbanks Company?

A. Well, my understanding based on everything I've read and the conversations I've had is that it is a small company that currently is making, uh, uh, dollies and hand trucks and that sort of equipment. That it's a modest, but successful company. Uhm, and that it's been the subject of ongoing litigation from asbestos plaintiffs in connection with valves that it manufactured in the past that have contained, uhm, uh, asbestos.

Q. And do you have a sense of its history with asbestos personal injury claims in terms of the volume of

claims?

A. So this is - Your Honor, this is not only a small company and a small case, but this is also a case where the volume of cases that were filed against the company in the past and were resolved or are still pending has a relatively thin history in terms of what we see in the asbestos world. And, uhm, so but because it's a small company and because its insurance assets are limited, uh, that's enough to tip the company into bankruptcy.

Q. And you mentioned assets, do you have a sense of the size of the assets that may be available to fund the trust?

A. Well, it looks to me like this is probably going to be under $50 million.

Q. And have you had experience with other companies of this size attempting to reorganize under 524(g)?

A. I have. The *UGL* case is one that is in the size range as is *Leslie* and currently the *Maremont* case that we're in the process of seeking confirmation for is also about this size. Uh, this is, this is in fact smaller than *Maremont*.

Q. What do you see as some of the potential challenges for future claimants in a case of this size?

A. Well, the - with a small Debtor and therefore a small trust, here the Debtor's assets are relatively small

and the insurance assets are relatively small. Uh, the trust is going to be, uh, uh, uh, one of the smaller trusts we've seen and with the thin claimant history we have considerably less information than we would otherwise have and that we would like frankly when it comes to predicting what the future flow of asbestos claims against the trust will look like. So this is, this fits into the category of case that, uh, has emerged as one of the more challenging categories. That's the small case with a thin claim history. And in a case like this the claimants and in particular, the future claimants are particularly susceptible to an error in forecasting which is particularly difficult in this case. and particularly susceptible to runaway expenses or even just an error in managing the trust in managing expenses and predicting expenses. Uh, and that creates, uh, a risk for all of the creditors, but to the extent that there are fumbles at the front end those are dollars that don't get invested, that don't earn money for the future claimants and that is a particular concern for future claimants.

Q. So, so who is that would suffer in the event that the case fails or the trust fails under the weight of administrative expenses?

A. Well, that's actually two questions. Let me pick that apart a little bit. You asked if the case fails. Given the size of this insurance pool and this company, if this

1 case fails, if there is not a confirmed plan, then based on
2 everything I've seen about the asbestos population future
3 claimants are going to get nothing. The race to the
4 courthouse will exhaust these assets long before the
5 constituency that I'm being asked to represent will show up.
6 In the context of the administration of the trust, uh,
7 errors, particularly, as I said at the front end with
8 respect to setting payment percentages, managing expenses,
9 uh, uh, are much more acutely felt by the future claimants.
10 It's a (indiscernible) to understand. All claimants get
11 treated the same. So to the extent that we - or that's the
12 goal. They don't in fact because perfection is not
13 achievable in this context, but we come close. The problem
14 will be that if we make mistakes at the front end that are
15 discovered several years down the road and are corrected,
16 those mistakes are borne by the claimants that come after.
17 Q. I'd like to focus your attention on efficient
18 administration of this bankruptcy case. How is it that you
19 can be cost affective in this case given your hourly rate?
20 A. It's a very high hourly rate. Your Honor, we have
21 been involved as I have said in 30 or so asbestos cases. In
22 all of those cases we are involved in the drafting and the
23 negotiating of trust distribution procedures and trust
24 agreements and in negotiating plans of reorganization. The
25 trust distribution procedures are documents that run 50, 60

1 pages. There are countless decisions that are embedded in
2 those documents. We've wrestled with every single one of
3 those decisions. Each, each document is tailored to the
4 specifics of the case. They look very similar to each other,
5 but there are subtle differences. Sometimes not so subtle
6 differences. And the challenge in any of these cases is
7 getting to a trust distribution procedure that will work for
8 this case and for the futures in this case. And that
9 involves an evaluation of each of those many decisions that
10 are embedded in the existing document or if you're going to
11 create something from scratch, it involves creating
12 something some scratch.
13 Because we've been involved in so many of these
14 cases we understand the decisions that have been made. We
15 understand the impact of making new decisions or changing
16 the terms and uh, what those changes may mean for other
17 provisions of the document and for future claimants
18 representative. So the advantage that we bring is that there
19 is unlikely to be anything that's going to come up in the
20 discussion surrounding this company and this proposed trust
21 that we haven't already wrestled with and have a view on and
22 can come, can come to terms with. And so the argue is that
23 we're sufficiently better informed and sufficiently more
24 adept at working with these materials that even with my
25 higher rate we'll end up saving the estate considerable

money.

And from the point of view of the Young Conaway law firm, the professionals I would engage I think are charging rates that are not terribly different from the other law firms that are being proposed.

Q. And you envision you'd have a lot of time spent on the day-to-day administration of this case?

A. The future claimants representative himself is not someone who spends enormous amounts of time either administering a trust or in the context of a case like this while (indiscernible) during the bankruptcy case negotiating the case. I serve as a client. I serve as someone who makes decisions and recommendations, but the day in and day out activity of negotiating a plan is done by my lawyers. But my legal team has almost the same level experience that I have.

Q. And you understand that if you were to be appointed in this case, the fees of yourself and your counsel would be subject to Court approval and a review by Mr. Ochs and his team?

A. Yes. I'm, I'm quite confident that if I were appointed the future rep, Mr. Ochs would review our fees very carefully and I know of course that Your Honor has to approve them. So if my prediction turned out to be erroneous I would expect to hear about it. And my fees have to be approved just like everybody else's.

Q. Does your experience with 524(g) cases include experience negotiating with insurance companies?

A. Yes. In fact Mr. Millner and I - Mr. Millner is here on behalf of Liberty Mutual, we go way back.

Q. I'd like to focus your attention on trust administration. What are some of things you might consider proposing in this case to maximize the efficiency of the trust were you to be approved?

A. So Your Honor, there are a number of elements to the structure of a trust and the trust distribution procedures that have an effect on the cost of administration. One of things that we will often insist on in a case of this size is that we curtail the number and types of diseases that are eligible for compensation. The typical trust has eight disease levels ranging from a relatively mild asbestosis or asbestos related diseases to mesothelioma, which is the signature cancer and is essentially a death sentence.

So in a trust with limited funds we often limit the - or seek to limit the claims to just those most serious claims. The cancers and perhaps the severe asbestosis. That reduces the burden on the trust. Another - in terms of just simply the sheer volume. It can cost the trust as much as $2.00 just to touch every claim that's filed. A filing fee is a tool that we have been using of late in these smaller

trusts. It both provides a source of revenue to address that two, two bucks a touch problem. Uh, and it imposes some discipline of plaintiff's community. So that's another tool. The - and there are others.

Q. And can you talk to the Court - would you speak to the Court a bit about whether expedited review only may be appropriate here and what that means?

A. So, Your Honor, the - when a trust is created there only - conceptually there are only three ways to address the claims that come to it. Either every single claim that's presented is reviewed on its own merits as a fresh and isolated candidate for payment or uhm, a matrix is created and that first approach would be considered individualized. Or we create a matrix and set specific values for each disease that's going to be compensated and establish the rules for proving the disease in question and rules for proving exposure to the company's products. And if a claimant satisfies those two proof requirements, then the claimant gets the scheduled amount and, uh, subject to the applicable payment percentage.

The larger trust combine those and allow the individuals who believe they should get more than the scheduled amount to seek individualized review and argue with the trust and its agents about what they should be paid, that's a very expensive exercise. In these smaller

trust we are, of late, insisting that we have expedited review only that significantly reduces the cost of handling claims in the administration burden that the trust bears.

Q. I'd like now to spend a few moments speaking about the payment percentage. Would you generally describe what is a payment percentage in the context of 524(g) trusts?

A. So, Your Honor, the - first of all, there are only two major tools for managing the quantity of dollars that go out to any individual claimant. One can either adjust the claim values. I was talking about the scheduled values. If you set scheduled values you can adjust those, but much more frequently the other tool is the one that's used and that's an adjustment of the payment percentage. The payment percentage is a percentage of the scheduled value in a trust that just uses scheduled values. And it's calculated based on the at any given time, the then current estimation and projection of pending - then pending and future asbestos claims. The estimation of the costs associated with administering trust from that point forward to the end. And, uhm, evaluation or estimation of the value of the assets of the trust in present value terms.

Those three inputs will tell you how much money is available to pay claimants and compared to the claim values and the number of claims that you expect to see allows you to calculate a percentage that will be paid to each claimant

when he or she receives an allowed claim.

Q. Is a sustainable payment percentage important to future claimants?

A. Absolutely and the important - the sustainability aspect of the concept of payment percentage - percentages is not the same as stability in a sense of being locked in stone. A 524(g) contemplates a process of periodic review of the liabilities of the trust and the assets of the trust and a calculation of the payment percentage that I just articulated. And it contemplates and is built on the early experience of these, of these trusts. It contemplates that that percentage will be adjusted through time up or down based on the then current evaluation of asset values and future claims and future expenses. And its through that process of continuous, sometimes yearly, but continuous adjustment of the payment percentage through time that we are able to speak confidently that we're going to be able to pay the last dollar to the last claimant. And we're reasonably confident that we're creating a system that's going to be able to treat claimants in substantially the same manner through time.

Q. In other cases have your worked with experts to forecast the payment percentage?

A. Yes.

Q. Do you have a sense of how the volume of claims a

1 defendant might receive in the tort system compares to the
2 volume of claims the trust will receive once a case emerges
3 in 524(g)?
4 A. Yes. And one of the most challenging aspects of
5 forecasting claims for future claimants in an asbestos
6 trust, Your Honor, is that the occurrence of the bankruptcy
7 itself and the creation of the trust in many cases
8 significantly elevates the profile of this particular
9 defendant within the community with - across the country.
10 And as result of that the trust will often see considerably
11 more claims arrive for payment than were presented in the
12 past. I the trust and, in fact, we first wrestle with this
13 in the *Babcock* case where we had - a company had filed
14 bankruptcy around I think 2000 or 2001. It came out of
15 bankruptcy many years later.
16 The data that, that company had with respect to its
17 claim history and claims payment history was the data that
18 existed as of the petition date years and years before we
19 began paying asbestos claims. And the *Babcock* case had been
20 a case where the company had been pretty successful in
21 keeping a pretty low profile in terms of litigation. Once we
22 opened our doors there was a significant increase in the
23 number of claims that came in over (indiscernible). It what
24 was predicted based on the data that was available from
25 years in the past.

And in the intervening years the mix of cases mesothelioma versus asbestosis for example, had changed and that caused us to do two things. One, specifically in the *Babcock* case we had to make some pretty significant adjustments to the payment percentage, but we also learned that we need to come up with a way to quantify and incorporate into our thinking this phenomenon of heightened publicity. We call it - and we worked hard on that with the various experts in these cases and came up with a concept that we called trust uplift and the experts have had enough experience now to try to be able to calculate what that trust uplift might be. The increase in volume of legitimate claims that will arrive at the doors of this trust compared to the claims that arrived at the doors of the Debtor before. So, the, the out of the gate challenge when it comes to forecasting is figuring out what the appropriate trust uplift will be for a given trust.

Q. You just testified but trusts receive a high value of claims. Do trusts pay all the claims that are filed against them?

A. No. I think I've crossed all the trusts at this point. They're probably running less than 50 percent.

Q. And focusing for a moment back on Fairbanks, do you perceive any specific challenges based on the facts of this case to determining an appropriate payment percentage?

A. Yes. But the trust uplift problem becomes particularly acute in smaller cases with thin pre-bankruptcy claim histories. Uhm, we can anticipate that the publicity surrounding this bankruptcy case and the creation of the trust is going to have trust - creative uplift. It always does. The size of it is a problem. In the *Leslie* case we had to wrestle with, is another small case, not unlike this one and the trust uplift that we actually experienced was substantially in excess of that which was predicted. This is a case in which the lessons and *Leslie* are going to need to be incorporated into our analysis of the - a probable trust uplift.

Q. Does the size of the trust corpus play any role and the amount of risk to which future claimants are subject in terms of the payment percentage?

A. Well, it does, yes. The smaller the corpus of the trust, the more vigilant everyone needs to be. When it comes to spotting errors in and assumptions because it's just not anywhere near as much room for error and for catching up in some fashion. So it's, uh, this represents a case where particularly in the early years very careful attention needs to be paid two claim stream, to the trust cost and to the assumptions that go into the payment percentage forecast.

Q. Mr. Patton, in the United States Trustee's opposition to your appointment here they cite an article for

the proposition that payment percentages have decreased in 60 percent of asbestos trust. Is that 60 percent accurate with respect to the trust with which you're involved?

A. My 20? No its not. We have, uh, out of those it's roughly a third at least on paper have gone down, but that's not actually accurate. A third have gone up. And that is accurate and a third has stayed the same. That's about the, that's about the count. So 33, 33, 33 would be a fairer split.

Q. Do you have experience with cases where the payment percentage dropped, but it occurred earlier in the case before anyone was paid and was done in effort to protect the treatment of future claimants?

A. Yes. In fact in the literature that talks about cases where the payment percentage has been reduced it appears that, just based on my cases, there's been no real analysis of what was going on, on the ground in the case. And cases that have counted as a drop include, for example, *Pittsburgh Corning* and *Quigley*. Those are two cases where, uh, the trust - the case was - the plan was confirmed, the trust was created and was in its organizational phase and the future claimants representative, our client, call to question about the appropriateness of the payment percentage because of the information that was coming to light. And in both of those cases, *Quigley*, for example is a case where a

1 future claimants representative was represented by other
2 council during the case and they hired us, he hired us once
3 the trust was up and running precisely because of concerns
4 about a lack of expertise in the area of asbestos trust and
5 trust administration. The future rep in that case was Al
6 Toga, a bankruptcy lawyer in New York. And in both *Quigley*
7 and in *Pittsburgh Corning* before any payments were made we
8 dropped the payment percentage which in the (indiscernible)
9 counts as a drop and we set a new and correct payment
10 percentage. And in *Pittsburgh* after setting that lower
11 payment percentage we subsequently have been able to
12 increase it.
13 Q. So in those circumstances an initial drop in the
14 payment percentage is protecting the rights of future
15 claimants. It's not prejudicial to those rights. Would you
16 agree?
17 A. Correct. Actually, every time you drop the payment
18 percentage you're doing it because you're protecting the
19 then future claimants.
20 Q. And I believe the *Dresser Industries* case which is
21 a subsidiary of Halliburton is included among the cases
22 cited as examples --
23 A. That's right.
24 Q. -- of a payment percentage drops. Did future
25 claimants get less in that case?

A. No that's, Your Honor, you'll recall that earlier I said that there are two ways to manage the flow of funds. The payment percentage is one way, changing claim values is another. Halliburton and the *Dresser* case is uhm, we negotiated a deal that delivered to the trust too much money. In the sense that - in the context of the trust that we had created, we discovered that the funds that were available to the trust were going to cause the trust to pay claimants more than a hundred cents on the dollar which sounds like a wonderful problem and it is. Except that our tax folks were telling us that, that was going to trigger the potential for the excess being treated as income. We spent a long time wrestling with that problem and looked for a reasoned basis to address it and it’s a long and winding story, but ultimately we found something that was satisfactory to us and to the tax experts that justified a significant increase in the claim values and we correspondingly reduced the payment percentage, But the net effect was the claimants are today getting more and than they received when the trust opened its doors and began paying claimants, but it looks on paper like the payment percentage was dropped.

Q. All right. I think you've addressed this but just to be clear for the record, in addition to *DRI*, the *Dresser* case and *Pittsburgh Corning*, are there other trusts with

which you're involved where the payment percentages have gone up?

A. Oh, yes. I mean there's *Porter Hayden*, there's *AC&S*, there's the *Federal Mobile* family of cases. Uhm, there's *Fuller Austin*. I'm missing one.

Q. I think you got them.

A. I got them.

Q. Let's talk about *Leslie Controls*. The United States Trustee points to *Leslie Controls* as a reason why you shouldn't be appointed as FCR in this case. What happened in *Leslie*?

A. So *Leslie*, as I mentioned earlier, *Leslie* is another case that looks kind of like this one. It was a small case that involved valves. It was - so it's valves were being used onboard ships and in the construction trace as well. And it was a case where when we filed - when the plan was confirmed we thought we were going to enjoy a very robust 40 percent payment percentage. I believe it was 40. The trust opened its doors and took sometime to get to the point where it was receiving claims and paying them. But from the moment it began receiving claims to 18 months later we saw that the data - we saw that the claim characteristics of the filed claims that they, in terms of disease mix and source of claims, was starkly different from what had been forecast.

And at the 18 month mark before we were even halfway through all of the, the then present claims, the FCR called an audible and we got payments stopped and we reset the payment percentage back to what it really should have been in the first place. And unfortunately it was stark. It was down to five percent. So and that's been - and that is a sustainable payment percentage and it seems to be, it seems to be holding.

Q. Have you learned anything from *Leslie* that you could apply to this case?

A. *Leslie* is the case that teaches the lesson that trust uplift in these small cases with thin claims histories, it is potentially significantly higher than it is in the run of the mill asbestos case. And the lessons of *Leslie* both in terms of the way the TDP work and the way we went about forecasting tell us that we need to be careful here. We need to use the lessons we've learned in *Leslie* in this case. And we need to pay attention to that and other small cases. And do the best job we can to figure out what the future is going to look like in terms of uplift for this, for this trust.

Q. In addition to anticipating, I think you described it as trust uplift, in addition to doing a better job in anticipating trust uplift, are there other things you would envision for this trust that could help develop a

1 sustainable payment percentage and protect future claimants?
2 A. Well, we were talking earlier about a filing fee.
3 I think that this is a case that calls out for filing fees.
4 This is probably also an expedited review only trust. It's
5 probably a trust that's going to be cancer and severe
6 asbestosis only. Those are the kinds of things that make
7 this a much more likely to be workable trust and makes it
8 much more likely that we'll be able to predict the future.
9 Something else that's very important to keep in mind is
10 that the - every time we change a TDP and modify the way the
11 TDP works, we inject uncertainty into the future in terms of
12 what will be paid and how much will be paid in terms of the
13 claims that come in. And a very important factor in coming
14 up with a reliable forecast for the future claims that will
15 be paid by this trust is having a trust distribution
16 procedure that we have a lot of confidence in, in terms of
17 how it will work, what claims will be paid. And a trust
18 distribution procedure where we understand with some high
19 degree of confidence how the changes we've made over past
20 trust distribution procedures are likely to affect that flow
21 of claims into the future, that are going to be paid by this
22 trust. So those are the - this is a case that calls out for
23 a TDP that's modified in the ways I just outlined, the
24 payment percentage, expedited review only, a truncated
25 catalog of diseases, a filing fee and a trust distribution

1 procedure that allows us - that's been intelligently
2 modified, but is consistent with the 30 or so other trust
3 distribution procedures we've worked with so that we
4 understand what the future would look like.
5 Q. And please describe in a context of a 524(g) trust
6 the inner relationship between the maximum annual payment
7 provision and the payment percentage provision.
8 A. One of the tools that we use in creating a trust
9 distribution procedure, Your Honor, is the setting of a
10 maximum annual payment which is a number that represents the
11 maximum amount that's allowed to be paid in any given year.
12 We set it each year. And that maximum amount is calculated
13 based on the application of the then current payment
14 percentage to the expected claims and the expected future
15 flow of claims and the underlying asset value. It's a, it's
16 a way of saying that if our predictions about the payment
17 percentage are accurate and the underlying assumptions about
18 when claims are going to arrive and what they are going to
19 look like are accurate, then in this year we should spend no
20 more than X dollars. So we identify that number and we set
21 that as a hard limit.
22 Within the context of the TDP one of the things we have
23 been doing of late is insisting that we couple that maximum
24 annual payment with a concept - well, it's always been the
25 case that once that payment is reached - sorry that maximum

1 annual payment number is reached payments are to be stopped.
2 We're now insisting that offers stop once the outstanding
3 offers reach that number. One of the lessons we've learned
4 from the trusts in the past is that if claims are being
5 evaluated and approved fairly quickly, it's entirely
6 possible to build up an obligation to claims that have - to
7 claimants who have filed claims that have been approved and
8 allowed, but not paid after the point of the maximum annual
9 payment which creates a - which you know creates a debt if
10 you will, that in a small trust can become a problem. So the
11 current regime is one where we track the offers that are
12 outstanding against the maximum annual payment and as soon
13 as the outstanding offers hit that number the payment stops.
14 It sounds sort of intuitively obvious once you say it, but,
15 but it took us a little while to actually recognize the
16 underlying problems.
17 Q. And one more question about *Leslie* not to, not to
18 harp on it. In your view was the drop in *Leslie's* payment
19 percentage attributable to fraud?
20 A. No. In fact it was attributable entirely to what
21 we saw coming and the drop isn't because we spent a bunch of
22 money. It's because we saw that a bunch of money was going
23 to be spent if we kept going at the level that we were
24 going. And that we had called a halt as I said within 18
25 months precisely to avoid that erosion.

Q. But isn't protecting against fraud important to sustaining the payment percentage?

A. It's vitally important.

Q. How do trust generally protect against fraud?

A. Well, there are, broadly speaking, two tools. First, in all of our trusts every claim is reviewed by a human being. That's important. There has been, uhm, there's been some push to take the human [audio skip 11:28:08]. There really isn't a way to effectively control for, for the kinds of, the kinds of devices that could be used by fraudsters if you take the human out of the equation. So every claim gets reviewed by a human being.

The second principal tool is we - all of our trusts have audits and we generally set those up in a way so where at the moment between the approval of a claim and the payment of a claim, a group of claims are selected for audit. Those claims are then - they're not paid until the audit is completed and if the claimant doesn't comply, they never get paid. And we also engage in cross trust audits to evaluate how the claims filed in this trust compare to several other trusts. And those provisions impose very stiff penalties on individuals who either are caught misbehaving or simply failed to cooperate.

There are - well, in fact in the *UGL* trust, for example, there's a list of medical providers who are no

1 longer eligible to submit medical information because
2 they've been determined to be unreliable. There are law
3 firms who have been barred from filing claims because they
4 failed to pass mustard. Typically what happens is the audit
5 then trigger - well, will trigger - and this sounds like it
6 happens a lot. This is actually a very low level problem in
7 terms of its frequency, but we have had occasions where a
8 law firm will have a claim pulled for audit. They won't
9 respond or they'll respond in an unsatisfactory way. Their
10 responses will trigger a more focused audit of that firm and
11 in some cases the firm gets barred. There's actually one
12 matter that's in the public domain. There's litigation over
13 it.
14 Q. Shifting gears a little bit. In its objection, the
15 U.S. Trustee at least implies the claimant should be
16 required to submit to the 524(g) trust his or her full
17 litigation history including identification of every trust
18 and defendant against which they have pursued a claim. Do
19 you agree with that position?
20 A. Well, there is a category in which that's the
21 right answer. There are in all of these trusts or most of
22 these trusts, there is a category where a claimant can say,
23 is permitted to say, this defendant is responsible for my -
24 it's the only defendant or almost the only defendant that
25 produced asbestos to which I was exposed. So I'm making a

1 claim for an extraordinary amount and the trust distribution
2 procedures provide for that. And in that context, the
3 claimant has to prove that their exposure has been either
4 exclusively of this company's product or to this company's
5 products or almost exclusively. And that involves a
6 demonstration of what else they may have filed in the tort
7 system against - and against other trusts.
8 In every other context these trusts are designed to pay
9 only that defendant's share of the liability to the
10 claimant. In other words, a claimant who is not making a
11 claim against any particular trust on the basis that, that
12 trust's original business is predominantly responsible for
13 that claimant's disease, those claimants will be making
14 claims against many, many trusts in many cases - many, many
15 trusts. And because they're often workers that have worked
16 with asbestos containing products or around asbestos over
17 the course of their entire lifetime in, you know, 10, 20,
18 30, 40 different contexts.
19 The claim amounts that we established in the TDP
20 represent or derive from the settlement history of the
21 particular company and are designed to - because of that and
22 because the intent of the trust are designed to only pay,
23 and no more than, to pay only and no more than that
24 company's share of the claimant's total disease, uh, uh,
25 injury. And so what they pay - what some other defendant

1 paid to that particular claimant is of no particular moment.
2 It's not like what happens out in the tort system in general
3 and that's how we - matter of fact that's the data that we
4 use to create our values because that's the settlement
5 history of the, of the company in question. And so when our
6 trust is evaluating a claim that's not an extraordinary
7 claim, it's evaluating the claim based on whether or not
8 there's proof of exposure to this product and there's a
9 disease. And then the amount that's being paid is
10 particularly is we have just an expedited review process.
11 The amount that's being paid is just that entity's share of
12 the liability further reduced by the application of the
13 payment percentage so that they're getting or they're
14 actually getting that share amount in total.
15 That has led us to create a trust document that
16 instructs the trustees not to spend money evaluating what
17 has been paid or the terms of settlements with other
18 entities. First of all, it's not applicable to the amount to
19 be paid by this trust. Second of all, having the information
20 and evaluating it is a trust expense. And it requires, uh,
21 uh, human attention and for no observable benefit it just
22 (indiscernible) what otherwise would be payable to future
23 claimants.
24 Q. If the trust were to obtain that full exposure
25 history, do you have a view whether that would cause the

trust to incur litigation expenses?

A. Well, so far - the answer is yes. If any one trust became the single source repository for the entire litigation history of every single plaintiff who filed a claim, that trust would then become the target for every discovery effort by every defendant and insurance company that's still out in the tort system because that would be the one stop shop, to get all of the information necessary. The one stop shop is supposed to be the plaintiff. When you're in the tort system you issue discovery to the plaintiff and you get your answers. Turning this trust or any trust into the replacement for that plaintiff, just means that this trust has to spend dollars for no benefit to these future claimants representatives or these - to these future claimants or to the present claimants. Responding to and dealing with and defending those requests when it's the plaintiff himself or herself that's responsible for responding and should be, should be the source the defendants and insurance companies seek information from.

So the cost that these trusts bear defending and responding to the discovery that they are presented with is not an insignificant cost as it is. The change that you're describing for this trust would turn that already not insignificant cost into a very significant cost.

Q. Are you familiar with the trust distribution

1 procedures for the *Garlock* trust?
2 A. I am.
3 Q. For an expedited review claim under the terms of
4 the *Garlock* trust, must a claimant provide its full
5 litigation history?
6 A. No, not at all.
7 Q. Do the trusts with which you work preserve
8 claimant confidentiality?
9 A. Yes, they do.
10 Q. Why?
11 A. Well, first of all Your Honor, we're dealing with
12 identifying personal information and we're also dealing with
13 what Homeland Security calls sensitive identifying personal
14 information, which is a little broader. But we're talking
15 about names, addresses and social security numbers. You know
16 a full (indiscernible) of medical records, uhm, information
17 about what that claimant is - has been paid or is about to
18 be paid. Most of these claimants are going to be elderly to
19 the extent they're alive, they're sick.
20 THE COURT: Hold on just a second.
21 THE WITNESS: Yes, sir.
22 THE COURT: We think we have an issue with the
23 recording. So now would be a good time to take a break. So
24 let's take about a ten minute break.
25 MR. HARRON: We're prepared to do the whole thing

over again, Your Honor.

THE COURT: Don't do that.

THE WITNESS: Thank you, Your Honor.

THE COURT: We'll take a ten minute break.

[WHEREUPON, there was a break recess taken at 11:28:22]

[WHEREUPON, proceedings resume at 11:52:03]

MR. HARRON: Thank you, Your Honor. I think that was an opportune time for a break.

THE COURT: Good.

BY MR. HARRON: (Resuming)

Q. Mr. Patton, I'm not sure --

THE COURT: Everything was working so we're okay.

BY MR. HARRON: (Resuming)

Q. Mr. Patton, did you conclude your testimony on the benefit of a confidentiality provision?

A. Oh, I think I was just about to say that the individuals whose information we're focused on are typically if they're still alive, elderly, obviously sick, about to receive money or have just received money. And its hard for me to fathom why as a fiduciary for those individuals I would want to make their information available to the public or to any party other than the trust and those involved with its administration.

Q. Does the *Garlock* TDP also protect claimant confidentiality?

A. It does.

Q. I only have a few more questions. About how long have you been involved in 524(g) cases?

A. Uhm, first - since '95 or '96 when I was hired to represent the future claimants representative in *Celotex*, a case down in Tampa.

Q. Have you ever represented an asbestos committee?

A. No. I have not.

Q. Have you ever represented an individual asbestos plaintiff?

A. No. I have not.

Q. Have you ever represented an asbestos defendant?

A. I - well, I represented *Fuller Austin* in the, it was a prepack - first successful prepack of an asbestos case. And then back in the early '80s the firm had a defense practice and I attended a couple of asbestos depositions as a young green associate.

Q. Has Mr. Singer or Reed Smith ever brought you into an asbestos case before this one?

A. Other than as an expert in the *Oak Fabco* case, no.

Q. What about Caplin & Drysdale? Have they ever brought you into an asbestos case?

A. Other than an expert in the *Garlock* case, no.

Q. And how many --

A. And when I say expert, Your Honor, I mean as an

1 expert witness not as an FCR or any other (indiscernible)
2 special capacity.
3 Q. -- how many times has a court approved your
4 appointment as FCR?
5 A. Five.
6 Q. Has a court ever declined to appoint you as FCR or
7 approve Young Conaway as FCR counsel?
8 A. No.
9 Q. Mr. Singer asked me to ask you this last question,
10 if you were to be appointed in this case, based on your
11 experience, are you prepared to move quickly and efficiency
12 - and efficiently to get this case to confirmation?
13 A. Yes, absolutely, of course.
14 MR. HARRON: I have no further questions, Your
15 Honor.
16 THE COURT: Thank you. Mr. Ochs?
17 MR. OCHS: Thank you, Your Honor.
18 **CROSS-EXAMINATION**
19 BY MR. OCHS:
20 Q. Mr. Patton, my name is Martin Ochs. I think you
21 know that, but --
22 A. Yes.
23 Q. -- I'm from the United States Trustee's office.
24 Good morning, soon approaching the afternoon. I just wanna
25 followup on a few things that we've talked about.

MR. OCHS: And, Your Honor, just so that's its clear, we've agreed that all of us will do the examination of each witness so that I will (indiscernible) Patton and not have to examine him again later this afternoon.

THE COURT: Oh, okay.

MR. OCHS: I think its more expedient. Is the Court comfortable with that?

THE COURT: Sure.

MR. OCHS: So, you know, effectively it might [audio skip 11:56:10] may go beyond the direct, the scope of the direct. But I think everybody is (indiscernible) especially since the day is gonna grow long very quickly otherwise.

THE COURT: Okay. Go ahead.

MR. OCHS: Thank you, Your Honor. My colleagues agreeing to that as well I think makes good sense for everybody.

BY MR. OCHS: (Resuming)

Q. When this case was initially filed were you, were you consulted or was your firm consulted before the filing of this bankruptcy case?

A. Not that I - I don't know. I'm not aware of --

Q. Okay. Do you --

A. -- uh, no.

Q. -- do you recall whether Mr. Fitzpatrick was

consulted before this case was filed?

A. I, I don't know.

Q. When the case was filed, you recall that Mr. Fitzpatrick was proposed as the FCR the same role that you're now proposed for.

A. Yes.

Q. Is that correct?

A. That's correct.

Q. And your firm was going to represent Mr. Fitzpatrick. Is that correct?

A. That's correct.

Q. And is Mr. Fitzpatrick a partner at your firm?

A. No, he's not.

Q. What is his relationship to your firm?

A. He is just a client.

Q. And when Mr. Fitzpatrick made a determination not to proceed as the proposed FCR in this case, did he consult with you?

A. Not with me.

Q. Did he consult with anybody within your firm?

A. I don't know. Well, he certainly communicated his decision, but in terms of consult as in seeking advice I have no idea. I wasn't a part of that.

Q. Can you tell me what the next step was that you were then proposed as the FCR?

A. Mr. Harron mentioned to me that Mr. Fitzpatrick was not going to serve and we discussed whether or not I'd be willing to take his place in that, you know in that moment.

Q. And, uhm, you know or you're familiar with the Weitz & Luxenberg firm. Is that correct?

A. I am.

Q. How do you know that firm?

A. Well, they represent among other kinds of plaintiffs, they represent asbestos plaintiffs. They're in New York and they file claims in perhaps all of the trusts that we see, but certainly many of them.

Q. And how many cases have you been involved with where Weitz & Luxenberg represented the - a large portion of the plaintiffs in an asbestos cases?

A. I have no idea. They are, they are a significant player. They are not always a dominant player in every case. So I really don't know what the mix is.

Q. Did you, at any point in time discuss your appointment as - or your proposed appointment as FCR in this case with anybody at the Weitz firm?

A. No.

Q. Never?

A. Never.

Q. And since the application was made to appoint you

as FCR, have you discussed this case with anybody at the Weitz firm?

A. It is possible that at a trust meeting for *Yarway* where members of the TAC, the trust advisory committee include members of the Weitz firm. There was a conversation where - this would have been about two or three weeks ago - where a plaintiff's lawyer could have been from Weitz & Luxenberg said something to the effect of, you know, it's a shame that you're gonna have to put up with this fight. Something like that. That was a --

Q. You're familiar --

A. -- in attempt to be just to be as completely honest as possible. There was a conversation like, like that. And it was probably plaintiff's lawyer and it could have been somebody from Weitz.

Q. -- and you're familiar with the Caplin Drysdale firm.

A. I am.

Q. And have you worked as FCR with the Caplin Drysdale firm in the past?

A. Yes. I have.

Q. Okay. In what capacity?

A. As FCR.

Q. And how many times was that?

A. Well, I think there's one case where I am the FCR

and Caplin represents the asbestos claimants committee - represented the asbestos claimants committee in the case and I represented the trust advisory the committee afterwards. That would be *Yarway* if I remember it correctly. That was a case where I was a pre, uh, prepack, pre-negotiated type case where I was engaged as an FCR before the Committee was formed and then Caplin was engaged (indiscernible).

Q. Did Caplin & Drysdale or anybody from Caplin & Drysdale contact you when Mr. Fitzpatrick determined not to proceed as the proposed FCR in this case?

A. No.

Q. So you didn't speak to anybody at Caplin & Drysdale about coming on board as the new proposed FCR?

A. I did not.

Q. You were going to represent Mr. Fitzpatrick or your firm was going to represent Mr. Fitzpatrick. Is that correct?

A. That's correct.

Q. So your stepping in hasn't changed much effectively because you're saying it's your firm that has the machine to run the process for an FCR. Isn't that correct?

A. Well, Mr. Fitzpatrick has a different set of - his experience is different from mine and he brings his own perspective to these cases. So there's a change in that

sense, but I - if, if you're asking from the point of view of just sheer practicality, it would not be much of a change.

Q. If I understood your testimony before and I'm going to repeat it now so that you can tell me whether I'm understanding it correctly or not, it's your firm that has the mechanism for running the process as an FCR?

A. Well, I hate to describe legal work as constituting a mechanism, but it is the case that we have a team, a team of lawyers and, uhm, paralegals that focus on this area. And the value that Young Conaway brings to a case whether its as - when we're talking about Young Conaway as counsel to an FCR, it's the collective experience of that team including my experience. So the, the way to answer your question I think is that to the extent that Young Conaway and Mr. Fitzpatrick or Young Conaway and Jim Patton represent an advantage over say, Young Conaway and Mr. Grier or Ms. Ableman, is that in simple terms we all speak the same language. We've been - if it was Mr. Fitzpatrick and Young Conaway and us or Young Conaway and Jim Patton, we have, we have a shared understanding of the issues, the way to resolve them and that sort of thing. So there is an efficiency that comes with that shared familiarity. But if you're talking about the strength of Young Conaway as an experienced law firm in this area that strength doesn't

1 change based on the client. Am I, am I understanding what
2 you were looking for correctly?
3 Q. Yes. Thank you. So if another FCR candidate were
4 appointed by the Court, okay, Mr. Grier or Ms. Ableman, Mr.
5 Whitley, would you agree - would your firm agree to
6 represent such a party?
7 A. Absolutely.
8 Q. You were proposed as a candidate - as the FCR
9 candidate in *Maremont* as well. Is that correct?
10 A. Uh, yes. And, and I - yes. It was a prepack. I was
11 hired before the bankruptcy. We successfully negotiated the
12 - and solicited votes for and got approval of a plan with a
13 trust distribution procedure, filed the case --
14 Q. And so --
15 A. -- sought approval of me as FCR and then the court
16 granted that approval.
17 Q. -- and were - was there a hearing similar to
18 today's --
19 A. Yes.
20 Q. -- in the *Maremont* case?
21 A. Yes.
22 Q. And did you attend that hearing?
23 A. Yes. I was a witness at that hearing.
24 Q. And do you recall Ms. Ableman being called as a
25 witness?

A. Of course, yes, I do.

Q. And do you recall the court's remarks about Ms. Ableman at the conclusion of that hearing?

A. Not specifically.

Q. Do you recall if the court said that Ms. Ableman would be qualified to serve as the FCR in the *Maremont* case?

A. The only thing that I can say with confidence is that, uh, that the court certainly did not say that she was not qualified. She's clearly disinterested and meets the standards to serve as a FCR. And he said nothing to suggest that his views, Judge Carey's, views were to the contrary. I - you know, he was complementary of Ms. Ableman. I just don't recall the specifics that you're looking for.

Q. Have you worked out a budget of anticipated fees in connection with your - if you were appointed as the FCR and your firm were retained by you? Have you worked out a budget of fees for those services?

A. Other than talking about the staffing that would, that would be entailed and who would be on it and looking at other small cases we have not put together a specific budget for this case. The staffing would consist of me as the FCR if I were hired as FCR. And if Young Conaway were hired, my involvement would be somewhat less, but I would still have some involvement.

Q. When --

A. Counsel would be - I apologize.

Q. Go ahead. Go ahead.

A. I have to say that the legal team would consist of Mr. Harron who conducted my direct and Ms. Kohut, special counsel. That's - and there would be a paralegal. But that would be the team that we would need for this case. Uh, and it's not, it's not from out point of view given what we know, it's not a complicated case. There are a limited set of issues.

Q. What, what's your hourly rate?

A. I - 1350 I believe.

Q. And do you know what Mr. Harron's hourly rate is?

A. I think he's 905.

Q. And Ms. Kohut?

A. Six --

Q. And then just for the record its K-U-H-O-T, correct?

A. Uh, yeah. I think that's right. Yeah, she's 600.

MR. HARRON: I think you have it backwards, it's K-O.

BY THE WITNESS: (Resuming)

A. Yeah. Yeah, it's --

Q. K-O?

A. -- sorry, yeah.

Q. I just wanted - I'm not sure people butcher my

name all the time. I wanna make sure that I'm --

A. Yeah.

Q. -- at least spelling her name right if not pronouncing it right.

A. It's Kohut.

Q. And no disrespect is meant to her so. And gain, her hourly rate was?

A. Six hundred.

Q. And do you know how many years of experience she has?

A. Eight, nine, ten, somewhere in that range.

Q. Now that you've been appointed as the FCR in *Maremont* have you worked on some form of a budget in the *Maremont* case for yourself and your firm?

A. We - whatever work we did was done - I mean we - the point that didn't change our review of what it was going to cost. We've been in the case since the beginning. It's a prepackage case. So there really isn't anything left on the budget to spend except getting through confirmation. The fact that we're having a continued confirmation hearing increases expenses, but its trivial at this point other than finishing off that.

Q. So *Maremont* differs in the sense that it was a prepack in which you were selected essentially pre-petition. Is that correct?

A. That's correct.

Q. And that differs from this case. Is that correct?

A. Well, yes, of course.

Q. So tell me why - or you were here before when we heard Mr. Lahre testify that there's a need for speed. I feel like that's a quote from a movie somewhere.

A. I'm sure it is.

Q. So you heard that testimony?

A. Yeah, I certainly heard that said and I'm sure we heard it today.

Q. Do you think that in your opinion that there's any difference in the speed that you'll be able to move this case than somebody else will be able to move this case?

A. Absolutely.

Q. And why is that?

A. Well, each of the other candidates - when you say somebody else, there are candidates not in the room who would probably be, if they were willing to serve, could match the speed that we're talking about if it was a future claimants rep with deep experience in this area. Although Young Conaway is pretty far ahead of everybody else in terms of experience. But with respect to the candidates in the room, even if they engaged Young Conaway, and you know if they were appointed, as I said we'd be delighted to serve.

They are still the client and they have to make

1 decisions. So there's a degree of - and they have views that
2 need to be respected by us as their lawyer. So there's a
3 degree of education, communication and debate that will take
4 place that will not have to take place under a context where
5 I'm appointed. For example, in order for somebody to
6 actually to do his or her job correctly there's an opening
7 question, are they comfortable working off of the what I
8 call the existing basic model for trust distribution
9 procedures or do they wanna start from scratch. That's a
10 decision everybody is entitled to make and should make
11 intelligently. We have views and we'll help them make that
12 decision. If they work with this document, we will wanna
13 talk with them about all of those many decisions I described
14 that are embedded in the document and what they mean for
15 purposes of the administration of this case. And they will
16 have to make an informed decision.
17 If, if our representation of them is going to be an
18 effective representation as a lawyer helping a principal
19 make decisions, there's a lot that will have to go into
20 getting the individual to the point where he or she can make
21 a sound decision about this. Those steps are not needed in a
22 context where I already understand each of these issues that
23 I've just discussed. So you know, Young Conaway's fees would
24 be higher in that context than they would be in a context
25 where Young Conaway represented me.

Q. You testified earlier that this is one of the smaller trusts that you've seen.

A. Yes.

Q. The trust amount is already fixed in this case, correct?

A. No.

Q. What makes you say that?

A. Well, we have an agreement with Mr. Millner's client with respect to funds, but I - we have seen - and Mr. Millner is probably not going to be thrilled to hear this. But we've seen settlement agreements in the past that were presented as (indiscernible), but ultimately we were able to extract additional value for the trust and for asbestos claimants and I'm not going to say today and I don't think anybody should say today, particularly under oath, that this is a fixed pot that is immutably set at some particular number or that that settlement is something that we should not take a look at and make a reasoned decision about the merits of. That would be improvident.

Q. Would it surprise you to learn that during the course of this case there has been much talk about the amount that the trust will be --

A. Sure. I have, I have --

Q. -- and the amount --

A. -- a view about the likely outcome. And I think

it's going to be less than 50 million, but, but...

Q. What's your view?

A. There's gonna be less than 50 million.

Q. But there's somewhere between zero and 50 million. I mean what's the - what's your --

A. I'm guessing based on the kinds of conversations I've had with folks, there's probably between 40 and 50.

Q. I'm sorry?

A. Between 40 - I apologize. I'm guessing its going to be somewhere between 40 and 50 million, but until you do the work to make a sound decision, one cannot make a statement about the appropriateness of those assumptions.

Q. Is there a possibility that you and your firm are just too big for this, which is one of the smallest cases you've seen?

A. No.

Q. Why not?

A. Well, we can be too big in a couple of ways. We can be too big because our fees or our hourly rates are too high. We can be too big because we have too many people in some sense. The team that we would put together as I've already described is a streamlined very efficient team and it's the kind of way - and it's consistent with the way we staff all of our cases. The only way to take - the only way to gain the experience that we have is to go through the

1 battles we've been through over the decades that we've been
2 waging war on these - in these cases. And that builds up
3 sort of a knowledge base in a size that is really only
4 available to a firm like ours. Because many of these cases
5 require fairly extensive - there will be battles inside an
6 asbestos case, not like this one, but some of the larger
7 ones that involve very complex issues and tough litigation.
8 And a firm our size is necessary in order to assemble the
9 kinds of teams you need to successfully fight those fights.
10 Successfully fighting those fights is the only way to gain
11 the kind of experience that we have at Young Conaway. And so
12 it's not a Chinese menu. The only way to develop this level
13 of expertise is to have participate in these cases and to
14 the extent that we have and as vigorously as we have. And
15 the way we handle the question of size and expense.
16 Our view and we're convinced we're right just based on
17 looking at our expenses compared to other participants in
18 these cases in general, is that we're really efficient, we
19 know what we're doing, we've seen these problems that arise
20 - the problems that arise in these cases over and over gain.
21 And that efficiency allows us to build a small team or a
22 large team. In this case it's appropriate to have a small
23 team and to expend considerably fewer hours than someone
24 else would have to expend addressing the problems presented
25 --

Q. Have you --

A. -- which results in a benefit to the client and the estate.

Q. -- have you been the FCR in a case of similar size to the Fairbanks case?

A. Yes, *UGL* is one.

Q. And has that case come to a conclusion?

A. The trust is up and running.

Q. And do you have a sense of what your fees were, yours and your firm's fees?

A. During the case - no I'm sorry. Sitting here today I don't.

Q. I'm sorry?

A. Sitting here today I don't. I'm sorry.

Q. Do you have a range that you --

A. I did not look at that before coming in. I really don't know.

Q. Do you think that your firm is the only firm that's capable of handling a case like this?

A. No. As I said a few minutes ago there are other logical combinations of legal teams and FCR candidates out there. You just, you just don't have any here today.

Q. You had used the phrase earlier, uh, mistakes at the front end. Can you tell me what that means.

A. Well, payment percentage for example.

Q. I'm sorry?

A. A payment percentage being set too high as in *Pittsburgh* and *Quigley* when before we even paid a claim we reset the payment percentage. That's the most acute or can be the most acute mistake of all. So that's an example.

Q. Have you had any contact either directly or through your firm with Liberty Mutual in connection with this case?

A. I don't think so, but I don't know. There may have been. I, I have not personally. I don't know if - there was, there was a - I'm aware of a presentation that was made to my counsel about that settlement, but I believe it was with debtor's counsel. Oh, wait not Liberty Mutual, but I frankly don't know.

Q. Do you know when that occurred?

A. Uh, last year, but I - no, no I take it back. It was earlier this year, but I don't really know specifically.

Q. You had talked about disciplines of the plaintiff's community. What is that? What did you mean by that?

A. Can you give me a broader context in which I said that?

Q. You had used - I had made a note you had used the phrase disciplines of the plaintiffs community.

A. I just don't recall the context in which I said

that. Do you recall what I was talking about when I brought that up.

Q. I think that you were talking about, you know, the context of the claims review and certain parties --

A. Oh, all right. So I, I suspect it was in the context of the imposition and employment of a filing fee. So if a, if a plaintiff's firm - if a plaintiff's firm represents a plaintiff that has exposure to tens of asbestos defendants, uhm, a reality for that firm is the running of a statute of limitations once a diagnosis has been handed down to the plaintiff. And every firm engages in some level of triage identifying which defendants to research and establish evidence of, of proof of exposure to and which defendants to put at the back of the line. If you've got a filing fee that you have to pay in order to file the claim, the existence of the filing fee tends to encourage the firm to move that defendant higher in the list of that triage list and get the work done so that you only pay the filing fee for claims that are highly likely to get paid or to be approved.

So those kinds of provisions in a trust distribution agreement have an impact on the behavior of the claimants. In fact, in a broad sense the entire trust distribution procedure is designed to influence and affect the behavior of claimants and the law firms in a way that results in

1 getting legitimate claims paid in an efficient manner.
2 Q. You testified that you expect this to be an
3 expedited review only case or trust.
4 A. Yes.
5 Q. So what does that mean?
6 A. Well, you recall I talked about the choice of
7 reviewing each claim individually on its own merits,
8 creating a matrix and assigning a value based on the
9 determination on an individual by individual basis of the
10 value of the claim as individual review essentially. Uh,
11 expedited review eliminates that analysis of the value of
12 the claim. You prove that you have a disease, you prove that
13 you're exposed to the product, the TDP sets a value for the
14 claim and you apply the current payment percentage to that
15 value and that's what you get.
16 The work that would go - that does go into
17 distinguishing whether, you know, a 65-year-old male with
18 mesothelioma and uh, uh, a wife and a 18-year-old child at
19 home is entitled to more or less than an 85-year-old male
20 who's single and has mesothelioma is expensive and doesn't
21 come into the picture when you use expedited review. That -
22 those individuals get what they get based on the schedule.
23 Q. And you believe that this is going to be an
24 expedited review trust in this case?
25 A. It passes prologue this will be an expedited

review trust.

Q. What makes you say that?

A. These smaller cases are moving in that direction precisely because of the significant costs savings associated with creating an expedited review trust.

Q. So would an expedited review trust be easily - withdrawn. Would a expedited review trust be more easily managed?

A. From the point of view of the trustees and from the point of view of the costs of the administration, uh, that's the whole point is to reduce the costs of administration. From the point of view of the future claimants representative whether - we design these trusts in such a way that the effect of individual versus expedited review when it comes to forecasting futures affects the cost projections, but not the liability projections because if we're getting into inside (indiscernible) with respect to how these trust distribution procedures work. But what we assign when we come to individualized reviews, we will set something called the average value. And the trust is instructed to negotiate in the individualized review context with individuals in such a way that over time they hit that average value. So that and the spread above and below that average value from trust to trust an vary significantly. But the significance of the average value is that - and we

1 police that to make sure the trust hits that value. Because
2 with the existence of that average value and the enforcement
3 of the average value from the point of view of the
4 forecaster, we don't care how wide and this is in pure
5 forecasting site. You don't care how widely the values vary
6 on either side of that average. The averages will tell you
7 what the ultimate amount of money will be that leaves the
8 trust and it's that number that is used for the forecasting.
9 So the effect of eliminating expedited review doesn't
10 have an impact on the importance of the difficulty of
11 forecasting it, but it does eliminate significant cost
12 component. Did that get to your question?
13 Q. So essentially an expedited review case would
14 require a smaller legal team?
15 A. Well, unless you put a bullseye on it and make it
16 collect all of the information from all of the defendants
17 from all over the trusts and set this trust up as the
18 replacement for the plaintiffs and force it to defend
19 discovery requests, yes. Well, and let me pause there. You
20 said legal team. (Indiscernible). The most of the
21 negotiation that takes place with respect to an
22 individualized review, discussion is a conversation handled
23 by claims administration experts. These trusts hire third
24 parties who specialize in claims administration. Uhm, and,
25 uh, in the first instincts the savings would be that they -

that we would require less - fewer man hours from the administration team when it comes to that team engaging with the law firms and negotiating these values.

Second - step two in this process and this is really true for any trust. There is a mechanism to allow the claimants who are unhappy with the outcome to go to arbitration. And frankly, ultimately exit to the tort system. Title 28 requires that the claimants can ultimately exit to the tort system. So it's the case that in individualized review cases, you're much more likely to face arbitrations and mediations with unhappy claimants who sought individualized review. That implicates the size and the amount of effort the legal team has to expend on the case. So in a roundabout way, if you, if you have only an expedited review case, it's going to require fewer hours from the individuals handling, who are interfacing with the claimants and their counsel and the debate about the size of the payout to the claimant. And you're very likely to have far fewer arbitrations and mediations which reduces the legal costs.

Q. You've been appointed as FCR in four cases did you say?

A. I think it's five at this point.

Q. So --

A. I think its *Celotex, Yarway, Leslie, UGL* and

Maremont.

Q. And how many FCRs has your firm been counsel to?

A. You mean separate individuals?

Q. Yes.

A. Larry Fitzpatrick, Eric Green (ph), Al Toga, uhm Jim McMichael (ph), Dean Trafley (ph). Uh, ten perhaps. That may be just shy of ten.

Q. How many cases currently is your firm working on as counsel to an FCR?

A. Uh, currently that's in the high 20s.

Q. Is it fair to say that you or your firm have a role in virtually every pending asbestos bankruptcy case?

A. I don't know. Every pending asbestos bankruptcy case - I've never actually thought to answer - to ask that question. But, uhm, one of the reasons I'm hesitating frankly is there's a universe of asbestos litigation that is west coast centric that we really don't have a whole lot of involvement with and I don't know how much is going on out there that's currently active and how much has been resolved.

Q. Do you think it's healthy for a system for one firm or one person to be the preeminent or the guiding force in lets say the FCR practice?

A. Well, I'm obviously the beneficiary of a system that has evolved that way. And having been able to enjoy the

1 privilege of serving in that context both as a firm and as
2 an FCR. And as you've heard me testify I obviously think
3 that we do a good job and are pretty successful at what we
4 do for the benefit of future claimants representatives. The
5 - but I think objectively it's a significant benefit. And
6 the reason for that is the plaintiff's committees are
7 themselves represented by a very small universe of firms,
8 two or three. And Caplin has been the dominant firm
9 representing those committees. And the insurance lawyers who
10 participate in these cases represent a very small universe
11 of lawyers in these cases.
12 I have noticed that when it comes to the lawyers
13 representing the companies in bankruptcy the companies tend
14 to not go back to the same law firms that represent other
15 debtors in asbestos bankruptcies. I think largely because
16 they have relationships with an existing set of lawyers
17 (indiscernible) bankruptcy skills. I can tell you there's a
18 stark difference between the experience of negotiating with
19 say, Caplin & Drysdale with all of their experience in this
20 space and lawyers for a debtor who are for the first time
21 bringing a company through an asbestos bankruptcy.
22 Experience actually matters. And the inexperience of a
23 player playing in a field with deeply experienced opponents
24 carries a price for the client of that firm. That the, the -
25 this is, this is a complicated area not just legally, but

1 also a complicated area in that it brings together issues
2 and the need for expertise across a number of fields. You
3 would not ask - if you were Enron, you're gonna hire Harvey
4 Miller. You're not going to, you're not going to hire
5 somebody who's never had a case.
6 And so the real question I think you're asking - it's
7 almost a philosophical question, is there value to expertise
8 from the point of view of a client looking like a lawyer. I
9 had - we would all agree that yes, you wanna hire a lawyer
10 who knows what he or she is doing. Is there value to
11 expertise in appointing an individual to serve as a future
12 claimants representative. If you're the beneficiaries of a
13 fiduciary who's representing you, then I think intuitively
14 yes, you want someone who's going to represent you from a
15 point of experience and skill. Those individuals,
16 individuals with experience and skill only exist in a
17 context where they are able to do the kind of - to
18 participate in a number of different cases and gain that
19 experience. There are only about 60 or 70 asbestos cases in
20 the history of asbestos. It - people who gain experience are
21 going to have a pretty large chunk of that universe of cases
22 if they're going to, if they're going to gain experience.
23 So since every client I ever encountered seems to want
24 to hire the best lawyer they can afford with the most
25 experience and the most talent, it seems to me that you

ought to view the interest of the unrepresented future victims of these trusts through the same lens. The same way you would seek to protect your own interest if you were engaging someone to represent you.

Q. But in that regard who's picking you then?

A. So statute says the judge appoints me and that's what the statute says. In terms of the mechanical process, there are - there's a short list of individuals who meet the requirements that I've just described. And the participants in the case select candidates from that list.

Q. And you've testified essentially that you've developed a cottage industry in being an FCR in the asbestos community.

A. No. Actually our expertise is counsel to FCR. I have - I mean I've only done five of these and two of them are quite - three of them are now quite recent. So two of them are quite recent. The - our, our - what we bring to the table is the Young Conaway asbestos experience. In the context of prepacks, for example, which isn't here, but it represents several of my FCR cases, the defense - the world of defendants out there in the tort system have begun using prepackage bankruptcies with greater and greater frequency. It represents an opportunity for these legacy companies with asbestos liabilities that represented a black mark on the financial statements of these companies to get off of those

company's books to improve the health of the company, get turned over to a trust where the trust can assemble the - can marshal the value that the company represents and whatever insurance assets it has and whatever money it can obtain from parties who are seeking to enjoy protective party status, set up a trust and pay claims into the future.

That, that dynamic is one that the defense community is increasingly interested in. You need to engage a future claimants representative before the case is filed. And the - I've yet to see a team of professionals representing a company, suggest that they should engage someone who has no idea what they're doing in the context of asbestos bankruptcy to serve as the future claimants representative where the goal is to at least attempt to put together a sensible business solution for the benefit of future claimants, present claimants and the company and its insurers.

Q. But you said before, I thought I understood you say that there are others that could serve as the FCR in this case?

A. Sure.

Q. Okay.

A. I mean Mr. Fitzpatrick, for example, is a prime candidate.

Q. And there are other firms that could represent the

FCR in this case, correct?

A. Of course.

Q. And this case was not filed as a prepack, correct?

A. That's correct.

Q. So really how much difference is there going to be in this particular case if you're selected or another FCR is selected at this point in time?

A. Well, we've covered that ground. And I was responding your suggesting I had a cottage industry and was focusing on prepacks because that's an area if you're going to say I had a cottage industry, there might be one emerging in that specific niche, but to the question you just asked the advantage that we bring to any case is that we have such deep experience with the way trusts operate, with the way the documents are grafted and how specifically one would want to change the documents to make this case a success. Uhm, there are, uh, but there other firms that have a lot of experience. None that have as much experience as we have, but there are firms that have a lot of experience. They're just not here. You haven't proposed any of them.

Q. Have you ever in your 30-year legal career, have you ever had a situation other than in the instance of the appointment of an FCR or somebody gets to pick who their adversary is going to be?

A. That's interesting. So you pick mediators all the

time. I've had bankruptcy courts tell me to go out and pick a fee examiner. That's about as adverse as it can get, uh, and bring them back to the court. Uhm, I've had bankruptcy - yeah, I mean that's - those two come to mind.

Q. You'd say this is something of a unique situation where the Debtor and the ACC are, you know, essentially they have an adverse interest to the futures, correct?

A. Well, the Debtor I think its all in here. I don't think the Debtor has any more to give. So the, the - technically you're correct. And certainly the presents have an adverse interest. The presents are giving up - remember what I said earlier, if this case in unsuccessful and the company returns to the tort system or there is no trust, the present claimants will consume all of the assets and the futures will get none. And the reality of a deal like this is the presents - the filing of the bankruptcy creates a context where the presents are forced, if we successfully get to a plan, to give up their entitlement to win the race to the bank and deplete the assets of this estate in favor of sharing values with the future claimants for the next 30 or 40 years. So we are certainly adverse.

If you're asking me is the asbestos bankruptcy context unique in this respect, the answer is yes. The asbestos bankruptcy context is unique in many respects. And the model of the identification, selection and appointment of an FCR

has no, no close parallel anywhere else.

Q. But does it strike you as - withdrawn. The presents are represented through the ACC.

A. Yes.

Q. Correct? And the ACC if championing your candidacy as the FCR, correct?

A. That's correct.

Q. And so they're picking the presents or picking the guy, you, who'll they'll be arguing against down the road, the future, correct?

A. I don't think they pick me. I don't think they pick me.

Q. Well --

A. I understand.

Q. -- they're, they're championing you, correct?

A. Well, so let's bring this down to - I don't mean - I think I understand the point you're trying to make. But the Debtor had selected Mr. Fitzpatrick. Mr. Fitzpatrick declined to do it. The Debtor asked me if I would step in. And you are correct. The ACC was not opposed to that and once this process started where you objected and proposed this alternative procedure, they became pretty vociferous supporters of the Debtor's decision. I don't know, I don't know the degree to which - they wrote a very nice, uh, uh, pleading that was filed recently. But nice in the sense that

it was complimentary of me. I would not have seen that, but for the objection you filed and the process you started. So I don't know the degree to which they would enthusiastic or ordinarily, just you know, passively okay with my choice before this contest started.

Q. The process as the Debtor and the ACC propose, which is that they essentially get to pick and propose you, as the FCR, benefits you, correct?

A. Well, I would like to believe that if another party thought that an FCR should be appointed and went to the effort of appointing an FCR they would propose me as well. We've seen situations where competing FCRs have been appointed. In the *TCATA* case there were two FCRs and the court picked one. It's not, it's not terribly common, but its far from unheard of to have multiple parties proposing FCRs. There's nothing in the code that suggests that. What you're pointing out is that for the most part the only folks who become focused on selecting the FCR are the Debtors. And the Debtors, of course, are the ones who decide from the very beginning whether or not they're proposing a 524(g) plan or not (indiscernible) exclusivity. And they're the ones who understand what the end game is at least in their view. And if the end game in their view is that this is going to be a 524(g) trust and they're going to seek the protections of 524(g) for themselves and for they're

1 affiliates. They know they have to have an FCR.
2 The U.S. Trustee and no one else has a crystal ball
3 into what they're thinking is at least until the filing of
4 the case. So it has been just the, they simple facts on the
5 ground that the Debtor starts thinking about this question
6 before anybody else does. There is a relatively short list
7 of logical candidates and typically the Debtor picks one and
8 suggests to the other participants in the case and it could
9 include the insurance companies for example if they aligned
10 themselves with the Debtor suggesting who the new candidate
11 is.
12 We see the same thing, for example, in context where
13 the Debtor - we've done - one of things that I do in a
14 number of contexts is I represent individuals who are
15 appointed or committees that are appointed to be a special
16 committee for a board in the face of an objection by the
17 U.S. Trustee or any effort by the U.S. Trustee to appoint a
18 trustee. It's a similar process. The Debtor says to the
19 participants look, we will create a committee. A committee
20 of three or a committee of one. That person will have
21 complete power to run the case from here on out. Let's avoid
22 having a trustee appointed. And the company identifies an
23 individual either an existing board member or someone who's
24 a candidate, vets that person with the players in the case.
25 The creditors often in this context we're talking about bond

1 holders. Uhm, vets that candidate with the U.S. Trustee. And
2 in two very sizeable cases in New York, *Dynegy and Boston*
3 *Generating*, that individual hired me to be his lawyer. Two
4 different individuals. Two different cases.
5 That's - the process that you're focusing on is a
6 process that arises out of the practical reality of how the
7 decision making unfolds in the context of a case like this
8 where you need to find someone to be a fiduciary and
9 independent to solve a case problem. It's not - apart from
10 the overlay of 524(g) it looks an awful lot like that
11 process of identifying a universally acceptable independent
12 director to run the balance of a bankruptcy case. The debtor
13 tends to be the one to understand that the problem is coming
14 and to drive to a solution. That's generally what debtors do
15 in chapter 11 cases. They drive the case; they see the
16 problems; they propose solutions. The parties either agree
17 or disagree.
18 In my view we are here today because that is the
19 context in which these decisions get made and 524(g) is
20 unique in a sense that it identifies the process as simply
21 one of the court appoints and it's silent about who picks or
22 how that candidate is brought to the court. So I - its I
23 don't see anything in it wrong with the process and is
24 certainly consistent with lots of other parallel processes
25 that unfold in bankruptcy cases.

1 Q. But you talked about simple facts before. So the
2 simple fact is the debtor selected you.
3 A. That's true.
4 Q. And the simple fact is you stand to gain
5 significantly financially from this appointment, correct?
6 A. Well, because I would hire Young Conaway, yes.
7 What I would learn is going to be trivial compared to - in
8 this case as a future rep. But, I, I won't quibble with you.
9 Q. Your, your firm, your business stands to gain --
10 THE COURT: Mr. Ochs, let's move on to something
11 else. I think we've covered this. Whoever gets to be the
12 future claims representative and the law firm will benefit
13 financially. So and I think, I'll take judicial notice of
14 that.
15 MR. OCHS: Thank you your honor.
16 BY MR. OCHS: (Resuming)
17 Q. You were an expert witness in the *Garlock* case,
18 correct?
19 A. That's correct.
20 Q. And who hired you?
21 A. Uh, the Caplin firm.
22 Q. Can you take - you have the exhibit binders in
23 front of you?
24 A. I do not.
25 Q. You don't have it in front of you?

THE COURTROOM DEPUTY: Which one do you need?

MR. OCHS: Your Honor, may I approach for a moment or --

THE COURT: Sure.

MR. OCHS: -- have Ms. Mason to do it. She can (indiscernible) I don't have them.

BY MR. OCHS: (Resuming)

Q. You have those binders in front of you now?

A. I do.

Q. Okay. I'm going to direct you first to what's been marked as and it's part of what's been marked as the United States trustees Exhibit 1. Let me know when you're there.

A. I have Exhibit 1, yes.

Q. Would you go to about 11 pages in? There's a document marked as Exhibit A, which is Declaration of James L. Patton and starts then, you know, the docketing marks it as 117-1 at the top and then page 1 of 17.

A. It's 117-1? Oh, page one. I’m sorry. Yes, I understand.

Q. Do you see? If you need a hand I'd be happy to approach if the Court allows.

A. Yep, Declaration of James Patton, Exhibit A.

Q. Okay. So you have that document?

A. I have it, yes.

Q. And then take a look at that document.

A. All right.

Q. Do you recognize that document?

A. I do.

Q. Were you involved in the preparation of that document?

A. I reviewed it and signed it.

Q. And can you tell me where your representation in the *Garlock* case was listed?

MR. HARRON: I object to form. There's no testimony that he represented anyone in the *Garlock* case.

THE COURT: What's the question?

MR. OCHS: I'm sorry. I'll rephrase --

THE COURT: He's testified as the expert witness in the *Garlock* case --

MR. OCHS: I'll rephrase it.

THE COURT: And your question is, is this not mentioned in the *Garlock case*?

MR. OCHS: Correct. I apologize, Your Honor.

THE COURT: Is this mentioned in the *Garlock* case?

THE WITNESS. I actually - It may not.

THE COURT: Well, either it does or it doesn't. Does it, Mr. Ochs?

MR. OCHS: In my opinion, it does not.

THE COURT: He can't find it in there.

THE WITNESS: I will - I think I see it on page 5,

a heading called expert testimony. And number two is *Garlock*.

THE COURT: Where are we?

THE WITNESS: Page - sorry. It's page five of my Declaration which is page 14 of 17 at the top. I'm sorry, Your Honor --

THE COURT: Oh, it's in curriculum vitae.

THE WITNESS: Yeah, I apologize, Your Honor.

MR. OCHS: I'm sorry I couldn't hear the --

THE WITNESS: It's page 5 of the curriculum vitae. And I believe --

THE COURT: Fourteen of 17 of docket, document number 117-1. It's attached oh, it's in the curriculum vitae.

MR. OCHS: Okay. Thank you.

BY MR. OCHS: (Resuming)

Q. Who paid your fees in the *Garlock* case?

A. Well, ultimately I suppose it was the Debtor. I believe my fees were submitted to the Caplin firm and were included as an item on a fee application. And the application was ultimately approved. The fee application, but a Caplin fee application as an expense. And then I got paid.

Q. And was the Caplin firm representing the ACC in

the *Garlock* case?

A. Oh, they were. They were - the ACC and the FCR were teamed up, allies in that case.

Q. Are you familiar with the *Garlock* case?

A. Well, I'm obviously familiar with the work that I did in the context of serving as an expert witness. And I'm familiar and I've read the opinion probably more than once, but maybe not cover to cover more than once. And this, you know, I have some general (indiscernible) familiarity with the case. And I've spent some time. It's been a while, but I spent some time studying the trust and trust distribution procedures.

Q. What was the - what was the nature of your expert report in *Garlock?*

A. I was testifying to the procedures that are used in asbestos bankruptcies for voting purposes and eliciting votes. And there were two parts to my opinion. In any event the primary focus was on explaining how we go about voting in an asbestos case and how parties appear in court who are lawyers for asbestos victims. And, uhm, typically in a conventional chapter 11, you set a bar date, claims get filed, holders of claims are entitled to vote on the plan. A filed claim is deemed allowed until objected to and then if its disallowed, its disallowed.

Most asbestos cases forego that for a bunch of reasons.

1 Obviously the practical implication in a trust is going to
2 be created that going to resolve claims. Second is if a
3 trust is going to be created, one needs to go to a process
4 of objecting to at least for procedural purposes or the
5 filed proofs of claim by claimants otherwise they're deemed
6 allowed (indiscernible) force of a judgment. So the practice
7 has evolved over the years where we simply - we avoid the
8 cost, expense of having, you know, 50,000 claimants file
9 proofs of claim and for the purposes of getting to the vote.
10 And we create an alternative ballot procedure. Might my
11 opinion, I'd have to back and read it, but my opinion was
12 talking about some of the practical realities surrounding
13 that sort of activity. For purposes of what's the
14 significance of a vote cast by an asbestos plaintiff in an
15 asbestos case in terms of what they are asserting with
16 respect to their liability and how, you know, is that - does
17 it have the force of a proof of claim or is it something
18 else.
19 Q. And after you prepared and submitted the expert
20 report in *Garlock*, did you come to a conclusion about the
21 format or form of the TDPs?
22 A. I did not. I read them after they were created.
23 And they have a number of features - the TDP has a number of
24 features that I say somewhat experimental. And we have, we
25 host a - four times a year we host a meeting of all of the

1 future claimants representative who's in their counsel up in
2 New York. And we've discussed with Mr. Grier the TDP in the
3 *Garlock* case. I mean as a group we've had discussions about
4 them and some of the innovations in that TDP and the
5 community is watching the *Garlock* case with some interest to
6 see how those TDPs faired in terms of paying claims,
7 efficiency and that sort of thing. So far, no claims have
8 been paid.
9 Q. And have you changed your TDPs. The TDPs that you
10 used since *Garlock*?
11 A. Before and after. We tinker with them. Each case
12 gets a fresh look. I think what you're asking is a little
13 different, have I changed by TDPs in response to *Garlock*. I
14 would say no.
15 Q. You said no? Excuse me?
16 A. Yeah. I don't - I can't think of a provision that
17 we changed because the *Garlock* TDPs exist. It's a little too
18 soon. The more interesting material changes in the *Garlock*
19 TDP are, are we need to wait and see how they actually
20 operate. The *Garlock* Trust has I don't - a ballpark, a half
21 a million - I'm sorry, a half a billion - with a B - half a
22 billion dollars. And, you know, it's a pretty sizeable trust
23 so it's the - it's one thing to experiment with a trust with
24 that kind of corpus. It's another to experience with a
25 $50,000 trust.

Q. So --

A. Fifty million dollar trust (indiscernible).

Q. -- can I call your attention please to U.S. Trustee Exhibit 12. It's in the second volume. It'll be the first --

THE COURT: Are we still on the *Garlock* case or are we moving away from the *Garlock* case?

MR. OCHS: I'm moving on to another matter or --

THE COURT: Okay.

MR. OCHS: -- a related matter, but it --

THE COURT: How long do you think you're gonna take to finish with Mr. Patton?

MR. OCHS: I mean I probably have - if I might just for a moment, Your Honor. Before I can pass this witness I probably have about an hour to an hour and 15 minutes. That's my best guestimate.

THE COURT: Okay. All right. You can have a seat for a minute. You may step down Mr. Patton. We're gonna take a lunch break.

THE WITNESS: Thank you, Your Honor.

THE COURT: You can go ahead and step down. So we'll take a lunch break for about an hour. This will get us back at 2:05. Let's just make it 2:15. I'm anticipating that we're not going to finish today. So we'll probably go - you can go ahead.

THE WITNESS: Okay. Thank you.

THE COURT: Thank you for your politeness. We'll probably go to about 5:30 because if you wanna get your phones or other gear by 6:00, I don't know what happens to it. I guess you gotta come back and get them tomorrow, but the Marshals federal detective office people have to go home. So we can't stay here all night. So we'll probably stop today about 5:30 and then tomorrow we'll probably - is everybody available tomorrow? Somebody mentioned plane tickets. Don't look like those - if they're only for today or if they're on WOW Airlines. I didn't know you could shut down an airline without filing bankruptcy.

MR. MACLAY: If we could address this after the break. I have a brief that I'm supposed to be helping draft that's getting filed tomorrow. It's an Appellate brief.

THE COURT: Okay.

MR. MACLAY: I just need to figure out if how that would all work.

THE COURT: Okay. Well, and that's what I was gonna suggest, but so that y'all can be thinking about it between now and then - between when we get back and we'll give some further thought to it, but that's the schedule. Tomorrow I have a teaching engagement at Westlake High School for some high school students. I should be able to be back here by about 10:00 or 10:15 so --

MR. OCHS: Is that part of the CARE Program, Your Honor?

THE COURT: Yes.

MR. OCHS: We could send David up there to do it. I did it - I, I stepped in for David and some of your colleagues a couple weeks ago so. Or I'll volunteer to go and I can let David stay here.

THE COURT: Well, I need to go to this one because this one's my --

MR. OCHS: I'm sorry?

THE COURT: -- this one's the successor to my alma mater.

MR. OCHS: Ah.

THE COURT: And so when I go there I get to remember that I'm a - I went to the same school as Cam Newton and that's supposed to be impressive. Anyway, so that's probably what our schedule looks like. If anybody has difficulties with that or has a better idea, we'll take that up when we get back about 2:15.

MR. OCHS: Very well. Thank you, Your Honor.

MR. MACLAY: Thank you, Your Honor.

THE COURT: Okay.

THE COURTROOM DEPUTY: All rise. We'll be in recess.

[WHEREUPON, there was a break recess taken at 1:07:19]

1 [WHEREUPON, proceedings resume at 2:23:30]
2 THE COURT: Go ahead.
3 MR. OCHS: Thank you, Your Honor. Your Honor,
4 thanks for the break as well. We appreciate it. Sorry, Your
5 Honor, just bear with me one second.
6 BY MR. OCHS: (Resuming)
7 Q. Mr. Patton, you said you worked in the *Garlock*
8 case. Is that correct?
9 A. I - excuse me (sneezing). I was an expert witness
10 in the *Garlock* case.
11 Q. And did you make any particular findings as an
12 expert witness?
13 A. Well, I had an expert opinion, yes.
14 Q. Okay. And what was that?
15 A. We were talking about this earlier. What I recall
16 is it was in connection with the impact of voting and the
17 like in an asbestos case (indiscernible) from a connection
18 to a chapter 11, but I don't actually recall.
19 Q. And did you think that anything that you reported
20 on in your expert report, did you think that changes needed
21 to be made to the TDPs or the trust agreements in any way?
22 A. My report didn't go to that at all.
23 Q. What was the nature of your report then?
24 A. It was focused on an explanation of the voting
25 process that's employed in an asbestos bankruptcy as

compared to a conventional chapter 11 case and some related issues.

Q. Okay. Thank you.

MR. OCHS: Your Honor, I have nothing further for the witness.

THE COURT: Okay. Thank you. Any redirect?

MR. HARRON: No, Your Honor.

THE COURT: Okay. You may step down.

THE WITNESS: Thank you.

THE COURT: May this witness be excused?

MR. OCHS: From the United States Trustee standpoint, yes, Your Honor.

THE COURT: Okay. All right. You may be excused Mr. Patton.

THE WITNESS: Thank you, Your Honor.

THE COURT: Okay. So what's next? (Indiscernible).

THE WITNESS: Thank you, Your Honor.

THE COURT: Is any other evidence from the Debtor's side?

MR. SINGER: No, Your Honor.

THE COURT: Okay. Mr. Ochs?

MR. OCHS: Thank you, Your Honor. Your Honor, the United States Trustee would like to call Joseph Grier.

JOSEPH GRIER, WITNESS, SWORN

THE COURTROOM DEPUTY: Please state your name for

the record and spell your last name please.

THE WITNESS: My name is Joseph Greer, G-R-I-E-R.

DIRECT EXAMINATION

BY MR. OCHS:

Q. Good afternoon, Mr. Grier. My name is Martin Ochs and you've met me before, correct?

A. We have met, yes, sir.

Q. And that was at your deposition and videography taken in connection with this case. Isn't that...

A. Yes, correct.

Q. And before that - this case you've not dealt with me. Is that correct?

A. Not before this case. We had several phone calls on this case, but otherwise no connection.

Q. Okay. Thank you. Can you tell me what your educational background is please?

A. Undergraduate degree from the University of North Carolina at Chapel Hill with a major in English. I graduated from law school at University of North Carolina 1977.

Q. And since you graduated law school can you give me a bit of your employment history?

A. I've worked in private practice in Charlotte, North Carolina. I've worked primarily in the bankruptcy field and worked primarily with business cases usually on the debtor side. I've done a little bit of trustee work. I

have also acted in some fiduciary positions as both a receiver and a trustee. And, of course, most recently as the FCR in the *Garlock* case.

Q. Can you describe your work as a fiduciary?

A. I've acted as a receiver in some receiverships both in State Court and Federal Court. The ones in Federal Court have usually been cases filed by a federal agency, such as the Commodities Futures Trading Commission or an agency like that where there's a Ponzi scheme or that sort of thing. And I've been appointed as a receiver. I think I've described those in the materials that I've given to you and you've provided to the Court. I've also acted as a receiver in State - similar State Court actions. One at the request at the North Carolina Attorney General. Also, many years ago was a panel of trustee - chapter 7 trustee and have occasionally acted as trustee in cases. And most recently acted as a chapter 7 trustee in a $50 million Ponzi scheme in Charlotte.

Q. And is that Ponzi scheme still pending?

A. We've just made a fairly substantial distribution to the claimants about two weeks ago. There will be some smaller distributions coming in over the next couple of years, but the main work has been done.

Q. And when you say fairly substantial, can you give that in a percentage of dollars returned or --

A. Right. In a Ponzi scheme the court calculates what's called base claims. It's based on money in, money out. It's not the claim that a investor thinks he has because of all the appreciation he's been told he has. It's simply what money did you put in, less what money did you take out. And we are in a position now with what we have given out and what's about to be given out in the next couple of weeks to make a 90 percent distribution. Actually 91 percent to folks on their base claims. We hope to get to 100 percent over the next year or so.

Q. How large would you say that case is?

A. We hope to give out a total of 40 million plus.

Q. So similar in dollar size to the case here?

A. Yes.

Q. And you --

A. Assuming it's a 40 to $50 million trust, yes.

Q. -- and you said that you work as the or are the FCR in the *Garlock* case. Is that correct?

A. That's correct.

Q. Is that your only experience in the asbestos arena?

A. That's my only substantial experience. Since the *Garlock* case my law firm has been retained in another asbestos case in Charlotte called *Kaiser* my law firm represents Truck Insurance in that case. I made an initial

appearance in that case several years ago for Truck insurance. We are local counsel. Since that time I've handed off the work to another lawyer in the firm. So the firm has some experience in that case. I'm not very involved with that case.

Q. Is Truck a party to this bankruptcy case to your knowledge?

A. Not to my knowledge and I've looked.

Q. And do you believe that your firm's representation of Truck creates at conflict of any sort in this case?

A. I do not believe so.

Q. Okay. And you've done a diligent search of your firm's records to insure that?

A. I've looked at Truck and its family of insurance companies to see if any of them match up with insurance companies in this case and don't find that any match up.

Q. And how did you come to be the FCR in *Garlock*?

A. The principal attorney for *Garlock* is a lawyer in Charlotte named Garland Cassada with the Robinson Bradshaw firm. When the *Garlock* case was filed he was looking for somebody to be the FCR. He approached me knowing that I had absolutely no asbestos experience. I told him that I would be willing, but cautioned that I had no asbestos experience. And he said you would be fine if you hire and he gave me a couple of law firms. One of them was Young Conaway. The

other was the Orrick firm in Washington, D.C. and said if you hire one of these law firms you should be okay. I then interviewed with Joe Rice who was the co-chair of the ACC in *Garlock* and he said the same thing to me, you'll be fine, but you need to hire one of these two law firms. And so with the consent of both sides I was named as the FCR in *Garlock* and was impressed with both Young Conaway and Orrick, but ended up hiring the Orrick law firm.

Q. And what was the basis for your decision to hire Orrick?

A. You know I talked to both firms and just decided to hire Orrick.

Q. And you said that your practice is based in North Carolina?

A. Yes.

Q. And do you feel that not being here in Georgia would be an impediment to your being able to serve as FCR in this case?

A. Obviously it would be better if I were right here, but no, I don't.

Q. Okay.

A. I think most of the discussions and negotiations don't have to take place in this courtroom or necessarily here.

Q. Tell me what is the current status of the *Garlock*

case?

A. A plan was confirmed in I think, June of '17. The trust went active in July of '17. The trust is now accepting claims. In that trust, the trustee has the full discretion to set the payment amounts. It's structured a little bit differently than some of the trusts we've been hearing about this morning. It doesn't have a payment percentage. It's got a maximum settlement value. The trustee, I understand, is working to set that value, but has not set that value and has not started making distributions yet.

Q. And were there any significant events or activities in the *Garlock* case that you can share with us?

A. Well, it was filed in 2010 and confirmed in 2017. So there were quite a few events. There was early on in the case both parties felt the need to educate Judge Hodges who had never heard an asbestos case before. And so the filed detailed information briefs going into great detail about the asbestos system, the tort system and so forth. Judge Hodges also let them put on three or four days of expert testimony about the asbestos system early on in the case primarily to educate him and I sat through those. We had a 17-day estimation trial in which I participated. I had an expert. I think most people are familiar with the results of that. There was a written decision after that. Lots of negotiations after that and ultimately we reached a

consensual plan. The parties all came together and agreed on a dollar amount. And instead of trust distribution procedures, we call it CRP, Claims Resolution Procedures, but it's basically the same thing.

Q. So is there any significant difference between a CRP and a TDP?

A. At a high level, no. They both set out the procedures for dealing with claims. The *Garlock* CRP is different in some material ways from the sort of standard TDPs.

Q. Let's go back one step. You talked about a decision that came out in *Garlock* after some litigation. Is that correct?

A. The estimation trial decision?

Q. Yes.

A. Yes.

Q. Tell me about that. What went on there?

A. Like I said there was 17 days of testimony. Both sides put on experts. There were experts on science, on medicine, on the tort system, on asbestos, on valuation. It was very lengthy, very detailed.

Q. And were you involved in that litigation?

A. I, I was involved with that. At that trial I was with the ACC. I had an expert who valued *Garlock's* claims at about a billion dollars. The ACC's expert valued claims a

little bit north of a billion dollars. We sat together at the trial. The debtor's expert valued claims at 125 million. So there was a large difference in the opinions of the experts.

Q. Why do you think there was such a disparity?

A. Two basically - two different legal theories. My expert and the ACC's expert looked at past settlement history and valued the claims based on settlement history in the tort system. [Audio skip 2:37:46] had something they called a legal liability theory where it said the settlements are tainted, there's been too much going on, they're not reliable and judge there's another way that's very complicated and you really need to read the expert report, but it's what's a real legal liability. Not based on settlements, but what's out legal liability. And they had a theory. They had the expert and that was the theory that the court ultimately accepted.

Q. And you took a position in that litigation, correct?

A. My position was a billion dollars, yes.

Q. And yours, was it a prevailing provision?

A. No, it was not. The --

Q. Okay.

A. -- court ended up saying 125 million, sided with the debtor.

Q. And why do you think that was

A. The judge in his, Judge Hodges in his decision said that he had looked at a number of - looked at some discovery that he had allowed *Garlock* to undertake in some selected cases. Some were cases filed against - claims filed against trusts some where - are jury trials. The cases he looked at were not randomly selected. They were chosen by *Garlock*, but in each of the cases he looked at he found there were material misrepresentations. That the parties represented one thing at trial and made an inconsistent representation somewhere else either before or after. The trust were filing claims - the claimants were filing claims and making inconsistent claims about exposure. In one place they would say we were exposed to *Garlock* and nobody else and someplace else they would say we were not exposed to *Garlock*, we were exposed to somebody else. And in every case that he looked at he found some inconsistency and based on that he said I don't think that the settlement history is reliable. I'm not gonna consider it.

Q. And that's what led to the differentiation in valuation of the claims?

A. Yes. Yes.

Q. Okay.

A. Yes.

Q. And since that decision what steps have you taken

in the *Garlock* case?

A. Negotiated with both sides. As to the dollar amount that *Garlock* was gonna write the check, I was perfectly aligned with the ACC. But as to the trust distribution procedures the allocation of dollars between the presents and the futures, I was adverse to the ACC. So we had sort of three-party negotiations. I was negotiating with both sides. At one point I took a public position against the ACC and have been criticizes for that. We - later on everybody sat down together and worked out terms that were acceptable to me, both in terms of a number and in terms of allocation of the dollars between the presents and the futures.

Q. And who represented the ACC in the *Garlock* case?

A. The Caplin firm.

Q. So the same firm --

A. Same firm.

Q. -- that's representing the ACC here. And so what is the current status of *Garlock* now?

A. Trust has been established $480 million and as I said the trustee is accepting claims and hopefully soon we'll start making payments.

Q. When do you expect to start making payments?

A. It's not up to me. It's up to the trustee. The trustee has - unlike some trusts where you need the consent

of the ACC and the FCR, we set this trust up so the trustee could make that decision himself. He's required to consult with the FCR and the ACC, but not - does not need their consent. So it's up to the trustee.

Q. Have you reviewed the Fairbanks case, the case that we're here on today?

A. I've read some of the documents on the docket. I've read the first day declaration and some of those documents.

Q. Do you think that your skill set that you have from the *Garlock* case will transplant to being useful here in the Fairbanks case?

A. Yes. I think it's a different case. I don't know much about the asbestos. I know that its was in packing around valves, but don't know much about it other than that. So I'd need to learn about the asbestos. And it has been emphasized today it's a much smaller case. And it doesn't have the luxury of having the money to litigate some of things we litigated in *Garlock*. But yes, I think I know what I would ask for in a TDP and what I would like to see to make - to have claims disbursed equally between presents and futures.

Q. When you say, when you say you have to learn about the asbestos, what do you mean by that?

A. Well, in - a lot of the cases were described by -

a lot of the earlier cases were described by the ACC as the big dusties. Asbestos was in insulation around pipes. And a ship would be refitted and workers would just come and pull the asbestos down and there would just be all this asbestos dust floating around. *Garlock* was not like that. The *Garlock* asbestos was encapsulated in gaskets. And as long as the gasket was not upset there was no exposure of asbestos, but if you cut or braided or scraped the gasket in some way, then you could release the asbestos. So it was a, it was a - the asbestos was just different, encapsulated versus not encapsulated.

Q. Do you know where the liability or the concern for liability comes up in the Fairbanks case with respect to the asbestos claims?

A. All I know is it's in packing around valves. I don't know the extent to which its encapsulated or not encapsulated.

Q. So is that similar to the *Garlock* situation?

A. I don't know enough about it to say. I would need to learn that.

Q. You testified a moment ago that the futures and the present claimants are in conflict with --

A. Yes.

Q. -- one another. Isn't that correct?

A. Yes.

Q. And what do you view your role in that conflict to be?

A. It's to protect the futures. It's to ensure that people who are sick from - in the *Garlock* case, sick from - who have been exposed to *Garlock* asbestos and gotten sick as a result of that exposure, get fair compensation.

Q. Was there a conflict over your appointment in the *Garlock* case?

A. No, there was not. No.

Q. Can you tell me, have you ever made a comparison of the CRP that you utilized in *Garlock* to the TDPs that have been used by FCRs, such as, Mr. Patton?

A. Well, we - my team and I did a comparison of the *Garlock* CRP with sort of the typical TDP used in other cases. As I think Mr. Patton said TDPs can be different. Every one is not the same, but as to general terms, yes.

Q. And in your experience do you propose a different treatment or a different handling of claims than might have been done in the past?

A. Well, I have several concerns as an FCR in *Garlock* we learned about the lift in claims that Mr. Patton described. The problem was a trust would be established. The experts would project how many claims they think were coming in. Typically they would project based on the claims in the tort system and they would set payment percentage based on

1 those projections and then it would turn out that more
2 claims would come in. And the new claims that came in would
3 swam the trust meaning present claimants got more, future
4 claimants got less.
5 In addition, there was some language in the TDPs which
6 hindered the trustee making a quick change. If the trustee
7 is able to see, oh, okay, I see claims are coming in greater
8 than we thought, the trustee can make a quick change. But
9 some of the TDPs had provisions in them that prohibited the
10 trustee from changing the payment percentage unless he had
11 the consent of the FCR and the ACC or imposed a time limit.
12 Maybe said the trustee can't change the payment percentage
13 for the first three years of the trust. Or if the trustee
14 wants to change the payment percentage he's gotta give 90
15 days notice and anybody that files a claim within those 90
16 days gets the old percentage, not the new percentage. But
17 there were things like that in the trust that worked to the
18 benefit of present claimants and to the harm of future
19 claimants. So I was concerned about those types of things.
20 Q. Have you received any compensation in the *Garlock*
21 case yet?
22 A. Oh, yes.
23 Q. And can you tell me what your compensation was in
24 that case or has it been --
25 A. I have been paid for my work by the hour. I don't

1 know what the total is.
2 Q. Okay. And so what is your hourly compensation?
3 A. Five hundred and fifty dollars.
4 Q. And you were in the courtroom for when Mr. Patton
5 was testifying.
6 A. Yes.
7 Q. You heard his hourly rate is much higher.
8 A. Yes.
9 Q. What do you attribute the difference in, in hourly
10 rates to be? What causes that?
11 A. You know I can't speculate about why his hourly is
12 just what it is.
13 Q. Okay.
14 A. I'm mean its - I'm sure its tied to the market and
15 what he's able to get.
16 Q. So it's a matter of what he believes the market
17 will bear. Is that your opinion?
18 A. I really can't say how he calculates his rate.
19 Q. Well, let me try it this way, how come you don't
20 charge more?
21 A. Uhm 550 is what I think, uh, think the market rate
22 ought to be for me.
23 Q. And if you're appointed as the FCR in this
24 Fairbanks case, how would you gear up and staff this case?
25 A. Uhm, first of all, I would hire the Orrick firm

again. Jonathan Guy, who you met was my lawyer in *Garlock* and I would hire him. As far as, uhm, and he and would work principally. Although I've got associates in my firm, he's got associates in his firm that could help us with things as necessary. As to hiring experts, I think that would depend on which way the case went. I would hope in many instances we could rely on the experts used by the ACC, uhm, but we'd have to see.

Q. Have you discussed, I'm sorry - withdrawn. Would you be retaining the Orrick firm if you were appointed as the FCR in this case?

A. Yes, sir.

Q. And have you discussed how their fee arrangements would be worked in this case?

A. I've not - no, I've not talked with them. They had a fee arrangement that was acceptable to the bankruptcy court in the *Garlock* case. Their fees were never an issue there. So I don't imagine they'd be a problem.

Q. Do you have any sense of whether you think that you could administer this FCR role in a cheaper fashion, less costly fashion than Mr. Patton could?

A. You know, I haven't compared his law firm rates with mine. I know my rate is cheaper than his. I mean I would hope we would be efficient. I would hope we would be cheap. I think if you look at the rates in the *Garlock* case,

you would see that my rates and my professionals' rates were reasonable compared to other rates in the case.

Q. So it's your opinion that you generally work cheaper than other FCRs?

A. I don't know that I can make that determination. I think I work and my team would work efficiently.

Q. Okay. Thank you. Do you think that the CRP that you used in *Garlock* would be transferable in some sense to the Fairbanks case?

A. I think each case is different and I would not wanna say I insist on the *Garlock* CRP as the TDP in this case. But I think it acts for me as a roadmap of the things I would be asking for. The issues I would be raising.

Q. So if you were selected as the FCR, you would have a knowledge base on which to build. Is that correct?

A. Correct.

Q. How long did it take you to work out the CRP in *Garlock*?

A. So there were lots of, there were lots of drafts that went around beforehand and I don't know that I can put exact dates on it. I can tell you that the parties got serious about settling in I think January of 2016 and within a couple of months we had come to an agreement. But there was a lot of time between the estimation and the decision which was January 14 and January 16 when I think the parties

1 got serious. And there was some back and forth of here's
2 what we want and the other side saying no, here's what we'll
3 do and we really weren't making much progress. So the real
4 progress occurred over a fairly brief period of about two
5 months. That's not to say there were not discussions outside
6 of that period.
7 Q. Are you familiar with the *Western MacArthur Trust*?
8 A. Generally.
9 Q. And tell me what's your understanding of that
10 trust?
11 A. Well, we - to a large extent we modeled our
12 request for the CRP after the *Western MacArthur Trust*. We
13 tried to - we used objective criteria for determining claim
14 amounts as the *Western MacArthur Trust* did. We charged
15 filing fees or we asked for filing fees as the *Western*
16 *MacArthur Trust* did. And I understand that the *Western*
17 *MacArthur Trust* has actually raised or increased its payment
18 percentage.
19 Q. So it had a better benefit than was originally
20 projected?
21 A. Correct.
22 Q. And did you use that as your model in *Garlock*?
23 A. We did.
24 Q. In the *Garlock* case did the ACC agree to the CRPs?
25 A. Yes.

Q. Are you familiar with how *Western MacArthur* has done in terms of the funding of the trust and claim?

A. What I know generally is it has increased its payment percentage. I can't give you dollars or percentages.

Q. Do you have a sense of how much the claim percentage has gone up --

A. I do not.

Q. -- on claim distribution percentage?

A. I do not.

Q. Are you familiar with the FCR round tables and the best practice quarterly meetings?

A. Yes. The Young Conaway firm hosts regular meetings of FCRs in its New York office.

Q. And do you go to those?

A. I go to as many of them as I can, yes.

Q. What is the purpose of those meetings?

A. Its so FCRs can talk about issues in common among all the FCRs.

Q. Do you know whether Mr. Patton attends those meetings?

A. I think he's been at probably every one I've been to.

Q. What do you see as your job as the FCR in the Fairbanks case?

A. To protect the futures. To see that - to preserve

the trust so that, so that number one, the folks who get compensated by the trust are people who were exposed to Fairbanks asbestos and gotten sick as a result of the Fairbanks asbestos and to see that presents and futures are treated equally.

Q. So in some - in your mind are the presents and futures in conflict?

A. Yes.

Q. And so your role is to make sure that the futures get a fair shake here?

A. Yes. An equal shake and that only people who have been exposed to Fairbanks asbestos and gotten sick as a result of that exposure get compensated by the trust.

Q. And what do you do to ensure that the due process rights of the futures are met?

A. Well, I think it's to try to do exactly what you've just asked me about and that's to put things in place in the trust that ensure that the only people who can collect are people who have been exposed and are sick because of the Fairbanks asbestos and that the claims are treated equally. There are number of provisions we put in place in the *Garlock* trust to try and ensure that, but I think that gets you due process for the futures.

Q. You'd like the Court to appoint you as the FCR in this case. Is that correct?

A. (Indiscernible) asked me if I was willing to be the FCR and I said yes and I would, I would look forward to that engagement or undertaking, yes.

Q. Can you tell me why you're suited to being the FCR in this particular case?

A. Because of my - I would say primarily because of my experience in the *Garlock* case, which started in 2010 through the present. My overall experience as an attorney, practicing law for over 40 years and the fiduciary work that I've done. I think those are the reasons the Court might consider me as the FCR.

Q. Can you elaborate on the fiduciary work that you've done during your career?

A. Well, you asked me about that earlier and it was as a receiver in both federal and state court. As a bankruptcy trustee, uhm, those types of things.

Q. Have any complaints been lodged against you for your work as a fiduciary?

A. You always have investors or creditors are saying why aren't I getting paid, why aren't I getting paid more, why didn't you pay me last week, but no real complaints, no.

Q. Thank you. If you're appointed as the FCR in Fairbanks, what will you do to ensure that the claims that are filed are legitimate?

A. I don't know that I'm in a position to fully

answer that question right now. I think I need to understand how someone would have gotten exposed to Fairbanks asbestos. And I think it's all context driven. It's how are people exposed and you put protections in so that the people who have been exposed are the ones who can make, who can make claims.

Q. Did you formulate a process or processes in the *Garlock* case?

A. Well, we put a lot of protections in the CRP. We, uhm, number one, we required filing fees and as been testified to already that helps motivate, at least I believe, helps motivate folks to not file claims unless they think it's a valid claim. And by the way, the filing fee is refunded in the *Garlock* case, if the claim is allowed. We set up ratios in *Garlock*. Eighty-five percent of the money has to go to mesothelioma cases, ten percent has to go to lung cancer cases. That keeps it from being a run on the money from some other kind of case that comes in. The mesothelioma obviously are the sickest and so we wanted more of the money to go there than any place else.

We gave the trustee a lot of discretion. Some of the standard TDPs require that before the trustee can take certain actions, he needs the consent of the FCR and the ACC and we tried to give the trustee a lot of discretion. We limited the time period in which a claimant can defer a

1 claim. In some of the TDPs a claimant can file a claim and
2 defer it for up to three years or maybe an unlimited period
3 of time and we limited the deferment period to one year. We
4 require audits. A lot of the TDPs say the trustee can, in
5 his discretion, conduct audits. We are requiring audits.
6 You've got, I think, the Powerpoint that describes the main
7 differences in the two, but the protections that we thought
8 were significant.
9 Q. Would you take a look at, the binders are in front
10 of you, Exhibit 9 which would be in Volume 1.
11 A. Right.
12 Q. And in that volume, it's marked at the top, it's
13 franked by the Court as Exhibit 2.
14 A. Okay. Got it.
15 Q. Do you see that there?
16 THE COURT: Wait a minute. I'm sorry. Which
17 exhibit are we looking at?
18 MR. OCHS: Exhibit, it's tab 9 Your Honor.
19 THE COURT: Okay.
20 MR. OCHS: And then that is a court filed
21 pleadings and then we're looking at Exhibit 2 within Exhibit
22 9.
23 THE COURT: Okay.
24 MR. OCHS: Does that help?
25 THE COURT: Yes.

BY MR. OCHS: (Resuming)

Q. So do you have Exhibit 2 in front of you, sir?

A. I do.

Q. And can you tell me what Exhibit 2 is?

A. Well, it's - Exhibit 2 is my Declaration, Declaration of Proposed Legal Representative Joseph W. Grier, III. And immediately before that is the Powerpoint that describes the differences in the - well, actually - I'm trying to get to the beginning of Exhibit 2. Exhibit 2 just says Joseph W. Grier, III. It starts off with my graphical materials and then goes to the *Garlock* CRP Powerpoint.

Q. And did you provide those materials to the United States Trustee?

A. Yes, I did.

Q. And those materials are truthful and accurate?

A. Yes, they are to the best of my knowledge.

Q. And then when we look to the third page there's a, uh, the Powerpoint that you were referring to.

A. Yes. It has the title Garlock CRP and says in the lower right-hand corner Orrick.

Q. And what is that document?

A. That's a document that we prepared for one of the FCR meetings to show the difference in the Garlock CRP and the standard TDPs.

Q. And why were you trying to demonstrate that?

A. We were asked to give a presentation at the FCR meeting.

Q. And you did give that presentation?

A. Yes. Mr. Guy or my lawyer actually made the presentation, but yes, we gave it.

Q. Were you involved in that presentation?

A. Yes.

Q. And what was the significance of that presentation?

A. Well, *Garlock* was a different case and the CRP was different in many respects form a standard TDP. And folks were interested in what are the differences and, you know, why did you do these things, why is it different, how is it different.

Q. Had you - when you say *Garlock* was a different case had you been confronted with a case like *Garlock* in the past?

A. Well, when I say it was a different case, it was a different case because of the estimation decision in which the judge went completely with the Debtor's legal liability theory and valued *Garlock's* liability at 125 million when I had - my expert said a billion and the ACC's expert has something north of a billion. And, of course, the written opinion got a lot of notoriety because of Judge Hodges conclusions that there were misstatements and inconsistent

statements and so forth by selected members of the plaintiff's bar.

Q. Can you tell me about the judges conclusions there?

A. You know it's a long decision. The best thing to do is to read it, but and you know he went through in a lot of detail. The evidence, it was presented before him. The evidence by both sides. The experts that testified. The inconsistencies he found. There were a couple of jury trials where some information was presented to a jury and inconsistent information was then presented to a trustee before or after and inconsistent claims filed by various plaintiffs against several different trusts. And then why he rejected my expert's value and the ACC's value and accepted the debtor's value. And why he, in effect, threw out the tort - the claims history which is the traditional way in which courts have valued liability of an asbestos bankrupt.

Q. Do you think that *Garlock* helped the asbestos claimants going forward?

A. I think that the claimants who get money from the *Garlock* trust will be folks who were genuinely exposed to *Garlock* asbestos and got sick because of that exposure.

Q. Have you observed any changes to the TDPs based upon the results and findings in *Garlock*?

A. You know I don't regularly review other TDPs so I

1 don't know. I can't say.
2 Q. If you are appointed as the FCR by the Court in
3 this case, do you believe that you have the skill set and
4 resources to serve as the FCR?
5 A. I do.
6 Q. And you're willing to serve as the FCR?
7 A. I am.
8 Q. Thank you.
9 MR. OCHS: I have no further questions for this
10 witness. Thank you, Your Honor.
11 THE COURT: Cross examination? I'm sorry?
12 **CROSS-EXAMINATION**
13 BY MR. MACLAY:
14 Q. Good afternoon, Mr. Grier.
15 A. Good afternoon.
16 Q. This is Kevin Maclay on behalf of the Committee.
17 You testified, Mr. Grier, didn't you that you currently
18 represent Truck Insurance Exchange and Insurance Company in
19 the *Kaiser Gypsum* bankruptcy.
20 A. My firm represents Truck bankruptcy, yes.
21 Q. And you yourself have made appearances on behalf
22 of Truck in that bankruptcy, correct?
23 A. Several years ago earlier in the case I made an
24 appearance. Since then I have turned the matter over to
25 another lawyer in my firm and I'm really not at all involved

in it, but my firm is.

Q. And you haven't withdrawn as counsel of record, correct?

A. I have not withdrawn.

Q. And you haven't been screened off from that case have you?

A. I have not been screened off.

Q. And if selected as the FCR in this case, you would intend to continue to represent Truck in that case wouldn't you?

A. Uhm, my intention would be for the firm to continue it. If asked I could very easily screen myself off from that case.

Q. And would you have a client that could consent to such a screening?

A. We are the local counsel. They're not gonna care whether - I mean I really have no contact with the client.

Q. I'm talking about the futures. Could the future claimants consent to a screen as a waivable conflict if you were to view it in that regard.

A. Since we don't know who they futures are, I don't think they could.

Q. And *Kaiser Gypsum* is an asbestos bankruptcy case, correct?

A. It is an asbestos bankruptcy case.

Q. And in that case Truck insured the debtor's asbestos liabilities, correct?

A. That's my understanding, yes.

Q. And in that case, Truck is actually litigating against asbestos claimants, correct?

A. Truck has filed a - my understanding and I'm really not current, but my general understanding is Truck has filed one plan an the ACC and the debtor have filed a competing plan. So they're competing plans.

Q. And that ACC and debtor plan is also joined by the future claimants in that case, isn't it?

A. I'm sure so, yes.

Q. And you would agree that the interest of asbestos insurance companies are adverse to asbestos claimants, wouldn't you?

A. In the same case, yes.

Q. And do you know if there will be any future claimants in this case who will also be current or future claimants in the *Kaiser* case?

A. I don't know.

Q. And in fact you [audio skip 3:10:31] that the adversity of interest between asbestos insurance companies and claimants is about as adverse as you can get, don't you.

A. Sure if it's the same parties.

Q. And that's because the insurance company wants to

pay out as little as possible, correct?

A. Yes.

Q. And the claimants what to receive as much as possible, correct?

A. Yes.

Q. Now you had mentioned earlier in your testimony here today that if you were selected, you would intend to hire Jonathan Guy to represent you, correct?

A. Correct.

Q. And you made a couple of historical comments about your prior engagement of the Orrick firm in the *Garlock* case, didn't you?

A. Yes.

Q. And one of those was that the Orrick fees in that case weren't a problem, wasn't it?

A. Correct.

Q. So are you aware that at the beginning of that case an objection was filed to Orrick's rates?

A. Right. And the court said here's what the rates are gonna be and that was set and that was fine.

Q. In other words the court said Orrick's rates were not fine, but it capped them at the Caplin rates. Isn't that correct?

A. That's correct at the very beginning of the case.

Q. Right. And Mr. Guy currently represents you in

this matter here, correct?

A. Yes.

Q. And he represented you during your deposition.

A. Yes.

Q. And you had mentioned that you were told before you retained the Orrick firm that two firms you should look to would be either Young Conaway or Orrick Harrington. Is that correct?

A. Correct.

Q. Are you familiar with a gentleman by the name of Roger Frankel?

A. Yes.

Q. He was an attorney at Orrick back when you made your hiring decision, wasn't he?

A. Yes.

Q. And he had a lot of experience in the FCR role, didn't he or as representing FCRs to be more precise?

A. Yes, he did have FCR experience.

Q. And are you familiar with a gentleman by the name of Rick Wiering?

A. I do know Mr. Wiering.

Q. And he was also an attorney at Orrick Harrington when you were told what you were told about Orrick, correct?

A. Correct.

Q. And he also had a lot of experience representing

FCRs, correct?

A. Correct.

Q. And are you aware that Roger Frankel and Rick Wiering left the Orrick firm?

A. Yes.

Q. And do you know why?

A. I don't know why.

Q. But as of right now they're not there.

A. They are not at the Orrick firm. They have their own practice.

Q. Are you aware that Orrick represents asbestos defendants?

A. Yes.

Q. And one of those is Johnson & Johnson, correct?

A. That's my understanding. And by the way they just made that disclosure in the *Garlock* case when they first filed their declaration. They disclosed in writing that their firm represents defendants in the - asbestos defendants.

Q. And are you aware that Orrick represents Union Carbide?

A. If that's one of the pieces of paper - exhibits you showed me in my deposition, yes.

Q. It is.

A. Okay.

Q. Now you talked a little bit about the *Garlock* bankruptcy case. Do you recall that?

A. Yes.

Q. And one of things you mentioned was this legal liability theory that was advanced by the debtor in that case, correct?

A. Yes.

Q. And the debtor's expert testified, I believe you testified here today, (indiscernible) amount in the neighborhood of $125 million as *Garlock's* liability, right?

A. Correct.

Q. And you also testified here today that, that was what the court found. Is that right?

A. Correct.

Q. What amount ultimately was *Garlock's* liability settled at?

A. Uh, $480 million.

Q. And, in fact, it was 480 plus 20 million more, wasn't it?

A. Not into the trust, but there was an extra $20 million paid through Joe Rice to some Canadian claimants.

Q. Right. So the 125 liability figure became 500 in terms of what was paid, correct?

A. Correct.

Q. And isn't it true that in the decision that you

1 testified about here today the court stated that he was
2 drawing no conclusions about the propriety of the practice
3 that he was discussing with respect to non - conveyance of
4 information about alternative exposures? Do you recall that?
5 A. I recall the phrase that he was drawing no
6 conclusions being somewhere in the decision. I can't tell
7 you right now what it was referring to, but he was very
8 careful in his wording and very careful not to go any
9 further than he needed to go I thought.
10 Q. Now you've testified here today that you've served
11 as an FCR only once before. Is that correct?
12 A. Yes.
13 Q. And that was in the *Garlock* case?
14 A. Yes.
15 Q. And you've never represented clients in the
16 asbestos personal injury litigation in the tort system,
17 right?
18 A. I have not.
19 Q. And you would agree that other than *Garlock* you're
20 not very familiar with the operation of asbestos trust,
21 correct?
22 A. Generally familiar because of what I've learned in
23 *Garlock* what I've learned at the FCR meetings, but direct
24 experience, no.
25 Q. Could I direct you to Exhibit 1 in the volume 1 of

the exhibit binder in front of you?

A. Exhibit 1.

Q. It's your deposition.

A. All right.

Q. And if I could direct you to page 38.

MR. OCHS: Could I just ask which volume? Are you in your volume?

MR. MACLAY: It's our binder, Volume 1.

MR. OCHS: Okay because there's multiple --

MR. MACLAY: Oh, I understand. There are quite a few binders.

BY THE WITNESS: (Resuming)

A. All right. I've got one binder in which Exhibit 1 is a notice of pleading in The Fairbanks case.

Q. Yeah, that's, that's not our binders.

A. Okay.

Q. Ours are the little white ones up here.

A. All right. I'm at Exhibit 1, my transcript.

Q. Sure and if I could take you please to page 38.

A. Okay. I'm at page 38.

Q. And if you could read for me lines six through 14.

A. How familiar would you say you are with the operation of asbestos trust and their operation in general? Answer - not very familiar. Which ones are you familiar with? Answer - Garlock to the extent I'm familiar with the

trust. Question - any others? Answer - no.

Q. So were those the questions that I asked and answers that you gave?

A. Those were the questions you asked at my deposition and the answers I gave, yes.

Q. And you helped formulate the *Garlock* claims resolution procedures, correct?

A. Correct.

Q. You testified about that here today, right?

A. Correct.

Q. And those are the procedures that govern how claimants submit their claims to that trust, correct?

A. Correct.

Q. And how the trust pays those claims, right?

A. Correct.

Q. And its true, as you've testified I believe here today, again, that the *Garlock* procedures differ from those used by most other trusts, correct?

A. Differ in a number of ways, yes.

Q. And, in fact, you would agree that those procedures are an unproven model, wouldn't you?

A. I don't know that I - that they're unproven. We spent a lot of time thinking about the things we asked for, the issues we raised. We talked to a lot of people. We talked to our experts. We talked to the ACC's experts. We

1 talked to the debtor's experts. We looked at the *Western*
2 *MacArthur* TDP, which I was asked about before and which had
3 been successful and tried to model the issues we raised
4 after that. So yes it's different, but its not just
5 something we pulled out of the air. It's something that
6 resulted from a lot of thought and a lot of work.
7 Q. And you believe that those procedures are an
8 experiment, correct?
9 A. They're an experiment, yes. But I think they're an
10 experiment based on some sound research and sound work.
11 Q. Uhm, the trust hasn't paid a single claim, has it?
12 A. To my knowledge no.
13 Q. And its been in existence for almost two years,
14 right?
15 A. Since July of 2017.
16 Q. And if selected as the FCR in this case, you would
17 likely ask for the same things here as are in the *Garlock*
18 CRP, correct?
19 A. Those would be the issues I would focus on.
20 Whether we ended up with those issues or the same decisions
21 I don't know. As I said, this is a different case.
22 MR. MACLAY: No further questions.
23 THE COURT: Redirect?
24 **REDIRECT EXAMINATION**
25 BY MR. OCHS:

Q. You said that in the *Garlock* case claims have not been paid yet. Is that correct?

A. Correct.

Q. And why is that?

A. Because the trustee has not yet set the payment - the maximum settlement value is the term used.

Q. Is that something that you control?

A. I have the right to consult with the trustee about it, but I don't control it. The trustee sets it, does not need my consent or the ACC's consent to set it.

Q. So you don't have control over the fact that you've not yet --

A. Correct.

Q. -- been able to make - or that that the trustee hasn't been able to make distributions.

A. Correct.

Q. Is that correct? That doesn't fall on your doorstep.

A. Correct.

Q. At the beginning of this case when you and I spoke and we discussed your potentially serving as an FCR in this case, did you run a conflicts check on insurance parties in this case?

A. Yes.

Q. And was Truck one of those parties?

A. To my knowledge Truck is not an insurance party in this case.

Q. Do you know what asbestos products *Kaiser Gypsum* made?

A. I don't know the type of asbestos. I know it was asbestos in packing around valves, but I couldn't tell you whether its amphibole or chrysotile or what kind of asbestos it is.

Q. Those terms you use, what are those terms?

A. Different - refer to different types of asbestos.

Q. Okay. And so do you know whether they're the same types of asbestos as in the Fairbanks case?

A. You mean the *Garlock* case?

Q. No, in Fairbanks in this case.

A. I don't know what type of asbestos is in the Fairbanks case.

Q. And do you know whether they were the same type of asbestos in the *Garlock* case?

A. I don't know.

Q. Okay. Thank you.

MR. OCHS: I have nothing further.

THE COURT: Recross?

MR. MACLAY: No, Your Honor.

THE COURT: Okay. Thank you. You may - may this witness be excused?

MR. OCHS: Yes, Your Honor.

MR. MACLAY: Yes, Your Honor.

THE COURT: Okay. Thank you. You may be excused.

MR. OCHS: Just in fairness to the witnesses, should we let Mr. Grier go so that he can get whatever flight. I don't know if he drove --

THE COURT: That's what we just did. We just excused him.

MR. OCHS: I meant from the room. I didn't know if Your Honor was gonna need him any further. I just wanna let him --

THE COURT: No. I don't think so.

MR. OCHS: Fair enough. Thank you. If I could have just a moment, Your Honor.

THE COURT: Sure.

MR. OCHS: Thank you, Your Honor. The United States Trustee would like to next call Mr. Whitley to the stand please.

JOE WHITLEY, WITNESS, SWORN

THE COURTROOM DEPUTY: Please state your name for the record and spell your last name please.

THE WITNESS: Good afternoon. My name is Joe Whitley. My last name is spelled W-H-I-T-L-E-Y.

DIRECT EXAMINATION

BY MR. OCHS:

Q. Good afternoon, Mr. Whitley.

A. Good afternoon.

Q. You and I have met before. My name is Martin Ochs. I'm a trial attorney with the United States Trustee. We've spoken in the past. Is that correct?

A. That's correct.

Q. Can you tell me how you became aware of the Fairbanks case?

A. The U.S. Office of the Trustee communicated with me that this bankruptcy was going on and asked would I be interested in being the FCR in this matter.

Q. And you are interested in serving as the FCR in this case?

A. Yes, I am.

Q. Can you tell me what your educational background is?

A. Post high school I attended the Columbus State University in Columbus, Georgia and I graduated from the University of Georgia. Then I graduated from the University of Georgia School of Law and that's the extent of my post high school education.

Q. And after high school and law school where did you - where did your career take you?

A. I returned to my home town of Columbus, Georgia and I practiced with the law firm of Kelly, Denney, Pease &

Ellison. Then I was an assistant district attorney in Columbus, Georgia. And I became United States Attorney in the Middle District of Georgia from 1981 to '86. And then for three years approximately I was in a variety of positions at the Department of Justice. I was a deputy assistant attorney general in the criminal division. Then I was associate attorney general as an acting associate. Before that I was principal deputy associate attorney general, which is a number three position in the department of justice. And then I returned to Atlanta and for a short period of time I was with Smith, Gambrell & Russell and then I became United States Attorney for a second time in Atlanta in the Northern District of Georgia. After that I was with a couple of law firms here in Atlanta. And then I received a contact from the White House about serving as the first general counsel with the Department of Homeland Security. I accepted that invitation and I served in that position for approximately two years in the early 2000s. I was the first general counsel of the department. And after that I turned again to Atlanta and actually, I didn't, my wife and family did not leave Atlanta, but I moved to Washington myself. And then I was with a variety of law firms. Today I'm actually at the law firm of Baker Donelson where I practice law and I head up one of the legal departments at that law firm.

Q. I imagine when you were with the - working - well,

were the U.S. Attorney you handled some sensitive matter so I don't wanna delve into that. But can you tell me the sorts of things you might have worked on? Did you work on fraud cases for instance?

A. We - in the different offices I was in, for the most part, the focus was on fraud cases, corruption cases, public corruption cases, bank corruption cases. In the early 2000s a big focus here in Atlanta was on bank failures and cases involving failures of those banks and those investigations were nationwide at the time. And before that, uhm, in the Middle District of Georgia, substantial investigations into fraudulent activity with farm loans and farm insurance and things of that nature.

When I was at the Department of Justice we investigated fraud at the Pentagon, fraud and government contracting issues. Very, very high profile cases. And my role three was to supervise and coordinate those cases in the various United States Attorneys offices. In the criminal division when I was there we supervised - I supervised the fraud section and also the money laundering section and the narcotic and dangerous drug section. And so a variety of different supervision responsibilities there over the years.

When I was at the Department of Homeland Security we were concerned about fraud being committed against the department, but I had no prosecution responsibilities there.

Q. And so when you had those roles did you have to develop teams to work with you to handle the various tasks that you were confronted with?

A. Yes. Uhm --

Q. And - I'm sorry. Go ahead.

A. I'm sorry. I didn't mean to interrupt.

Q. No, no.

A. So from a very early time in my career I was put in supervisory roles. The United States Attorney in the Middle District of Georgia for the approximately 15 to 16 United States attorneys. My job was to put together teams to prosecute and investigate cases with the FBI and a variety of other agencies. The same thing when I became the United States Attorney here in Atlanta (indiscernible) the Department of Justice. But the key thing was trying to make sure all these different components work well together. So that objective was obtained. I was relied upon to achieve these objectives. And in the cases and matters we handled over the years I was in public service, I had a good record, a good reputation of being a leader.

Ultimately, the contact I had to be general counsel of the Department of Homeland Security really came out of the blue, but it was an opportunity for me to build a brand new general counsel's office. Uhm, at the time we had no one in the office, but we built it. Today there are about 100

lawyers who are in a supervisory part of the department supervising 2,000 lawyers at the Department of Homeland Security.

Q. So you had - you were head of 2,000 people. Is that accurate?

A. Correct. So that was my responsibility.

Q. And do you have any experience in the bankruptcy arena?

A. I have worked with Neal Batson who was the examiner in the *Enron* bankruptcy. I supported him in that bankruptcy effort. I left that position to go to Homeland Security. I am representing the unsecured creditors in *Centennial Healthcare* case here in the Northern District. I've worked with other lawyers in the bankruptcy area. I've worked with your predecessors here looking at bankruptcy fraud in the Northern District of Georgia. So I've had some experience, but not the kind of experience that some of the other applicants have had.

Q. Tell me about your experience in the *Enron* case. What were your duties and what were you doing in the *Enron* case?

A. My job was to be the point of contact for the FBI. And other law enforcement components they were at work at that time on that case. And also with the Manhattan District Attorneys Office. It was to make sure that we were

coordinated and didn't overstep our bounds in terms of those criminal investigations.

Q. Are you familiar with the Fairbanks bankruptcy case?

A. Yes, I am.

Q. And tell me about your familiarity with the case.

A. I became more familiar with it obviously after your contact and I've done a good bit of reading about it. I have some familiarity with the company itself. How many people have been employed there. What the annual income is from that company and things of that nature. I know that the company has about $40 million in proceeds that would be put into the trust itself. And I would like to ask the Court, if I could to have some water or something to that if you don't mind. Is there water back here? So the familiarity continues.

I was deposed last week in the Fairbanks case and via colleagues from Caplin & Drysdale and Reed Smith. And so the familiarity with this case continues to grow. But I have studied extensively, conceptually how the FCR operates in other cases and sort of tried to get my mind wrapped around some of things that I know that Mr. Grier must have been looking at when he became the first FCR - the first FCR opportunity he had in the *Garlock* bankruptcy.

Q. Do you have an understanding of what the FCR role

entails?

A. I do. And Mr. Grier has fairly stated it and so have others in this court proceeding. But basically, as I understand it is to make sure that the future claimants get their fair share of the monies that are allocated for distribution and it's a balancing act obviously. There are current claimants who have needs. Mesothelioma as I understand it is a horrible disease, fortunately no one in my family has suffered from it. So the balancing act between the needs of the current claimants and the future claimants is something that I would be charged with doing were I to be chosen for this position. It's a very serious disease and the opportunity frankly to learn more about it has been something that's been - something that I've been very pleased to be part of.

Q. Do you have an understanding of how asbestos trusts work?

A. Yes, I do. And I have learned how these trusts operate from having read about them and reviewed things, obviously the Q and A and depositions I've experienced in recent times have kept me more literate. But I would wanna work closely, were I to be selected, obviously with the creditors committee and also the Debtor. Looking at this particular case because, as Mr. Grier said earlier one of the challenges is that each of these cases are somewhat

1 unique. And the asbestos exposure is different in each case.
2 The medical circumstances of each individual vary. So its
3 important not to come into the case like this with a closed
4 mind about how this would operate. I think it's very
5 important for me were I to be chosen as the FCR to have an
6 open mind and being interactive as much as I possibly could
7 with the other parties.
8 Q. Do you think that your skills and - I'm sorry -
9 withdrawn. Do you think that your skills that you developed
10 at the U.S. Attorney will aid you in being the FCR if you
11 were selected in this case?
12 A. I believe my experience having done all the things
13 I've done in my career is an added value to this particular
14 situation. It's different than the other candidates, but the
15 same time I'm supported at my law firm by some highly
16 credible, very fine bankruptcy attorneys who would be
17 working with me.
18 Q. And so if you were retained as the FCR, do you
19 think you would retain your law firm to represent you?
20 A. Yes. Yes, I would and some of the people who've
21 been here are with me today would be part of that equation.
22 Jan Hayden who is in our New Orleans office would be someone
23 I'd call on to work with me. Kevin Stein is another person
24 who would be part of the equation. And then Katy Furr who's
25 not here today would be a third lawyer. But we have a great

bankruptcy practice. A little bit of advocacy on behalf of my team. They're right here in Atlanta usually accessible so the proximity to this Court and to, if court proceedings were to take place in Rome, we'd be very available. Really or nearly a moments notice to be in any proceedings.

Q. Do you think that between you and your chosen law firm you would have the requisite skills to handle the work as an FCR if you were selected in the Fairbanks case?

A. I do. My career has been replete with my making decisions to take on tough responsibilities. One of the choices I made here was to do this and I did it intentionally so after I received the invitation to do it. I'm a quick learner. One of my skill sets is efficiency in building great teams. I don't see that my day-to-day and actual involvement of every aspect of this case is critical, but the involvement of my team helping me develop our positions is very important. So I would meter that in a way that was effective for the estate. That the corpus of this matter is only $40 million which is a tremendous amount of money obviously, but not as big as the amounts of money that the other FCRs have experienced.

Q. Could you compare the amount of money involved in this case to say, your engagement in *Enron*?

A. You're talking, in *Enron* about tens of billions of dollars. The amount of fees that Alston & Bird received in

that case representing Neal Batson as the examiner were substantial. They themselves were, as reported, nearly a hundred million dollars. So there were a lot of things we needed to do in that bankruptcy that were exceptional. This case, no differently. No matter how many people are looking at it or how few people are looking at it, I would consider us to be under a microscope every moment of the way to make sure that we performed effectively. And one of the skill sets I think I bring to this is my ability to work with the debtor's counsel and my ability to work with the creditor's counsel I think. And keeping in mind that we have a company, as I understand it, that is going to be sold. And helping that - facilitating that sale. Making sure that sale moves forward and not having the FCR being an obstacle to that is something that's really important to me. Making sure that we make the right choices. And I think having the team that I put together would help me do that in a very effective way.

Q. What is your hourly rate?

A. My hourly rate varies for different matters, but for this particular matter it would be $805 an hour. My [audio skip 3:39:05] would be for both of the team members here today Jan Hayden and Kevin Stein, it would be $535 per hour. And for Katy Furr, who is the most junior member of our team it would be $445 per hour.

Q. And do you think that you could handle - do you

1 think that you could handle your role if appointed as FCR in
2 an efficient and economical manner?
3 A. It would be my every moment's thought about the
4 economics of this particular matter because really the
5 balancing act between current claimants, future claimants,
6 but also making sure the fees in this case don't cripple the
7 ability to get the most money to those individuals who need
8 it the most. And the struggle obviously is going to be
9 getting that money out to the current claimants as quickly
10 as possible because as we all know, mesothelioma is a
11 horrible disease and getting money to the individuals who
12 need it is critically important. But also, on the other side
13 of this as I think about efficiency is the 40 year sort of
14 manifestation period that mesothelioma has and exposure to
15 asbestos has. And so keeping those individuals in mind so we
16 create a system that is fairly apportioned so they receive
17 some component or some part of this approximately $40
18 million.
19 Q. When you worked as the Unites States Attorney you
20 were in a position of public trust. Isn't that correct?
21 A. Yes. I swore to uphold the constitution of the
22 United States.
23 Q. Do you have any personal connection to the
24 asbestos arena?
25 A. I do not. My law firm has had some representation

of asbestos defendants in the past. The only connection that I could establish or say is that I have worked on myself. This is not something that really prepared me for law school necessarily, but I've worked myself at hard labor, physical labor jobs removing walls, putting in air conditioning systems, being around the circumstances that I can only envision some of the people who have been exposed to asbestos have dealt with. The clouds of dust that we heard about earlier is something that I can relate to having been in those positions, but that's my - if I had personal exposure it might have been to asbestos itself, but luckily I'm not impacted by it. But I do think it's something that's ubiquitous as I understand it. Asbestos is in so many places that we least might expect it to be.

Q. When you were contacted by the United States Trustee as a possible FCR candidate in this case, did you work with your firm to prepare a declaration or affidavit of disinterestedness?

A. We did, yes.

Q. And did you provide that to the United States Trustee?

A. We did provide that.

Q. And that was filed with the Court. Is that correct?

A. Yes.

Q. And are you aware of any disabling contact? I'm sorry, any disabling conflicts that you have that would prohibit you from serving as FCR in this case?

A. I'm not aware of any disabling conflicts.

Q. Can you tell me why you think the Court should appoint you as FCR in this case?

A. Well, each of us are different and I'm not gonna talk about the other candidates, but as to my capabilities they are set forth and some of the materials have been provided to you and the Court. My service in the different positions that I've served in at high levels of the United States government admirably without getting into patting myself on the back. But because I want to do it. It was public service. It wasn't something that I took lightly. I see this akin to that. This is almost akin to public service in a sense that I would be serving the interest of the future claimants in the this situation. So I - I'm here under oath today and my sincerity about this would be no less if I were not under oath about the opportunity to do this role. I'm excited. I'm appreciative that I've been able to be a part of this process.

I believe that in may ways the proximity that I provide to the Court, the capable people that work - would be working with me on my team, the amount of study and effort that I've put into learning about asbestosis itself,

asbestos. The other cases that have been conducted in other jurisdiction that I've read about including *Garlock* trust procedures. And all those, all those different aspects of how a trust would work, setting up an opportunity for us to protect those future claimants interest. It's something that I feel comfortable with and something I'd really want to be part of. So I'm interested in this. I hope that my interest is something that will be - obviously I appreciate the opportunity to be here and the Court has a very difficult choice to make between some very qualified applicants.

Q. Thank you.

MR. OCHS: I have nothing further for this witness, Your Honor.

THE COURT: Cross examination?

CROSS-EXAMINATION

BY MR. MACLAY:

Q. Good afternoon, Mr. Whitley.

A. Hello, Mr. Maclay.

Q. This is Kevin Maclay on behalf of the Committee. Now Mr. - well, I'd like to go over a couple of followup questions with respect to some of the things that you've testified about here today. Now you've never served as a future claimant representative before. Is that correct?

A. Yes, sir, Mr. Maclay.

Q. Yes, sir meaning you haven't served, correct?

A. I have never served as a future claims representative. Thank you.

Q. And you've never served in a role where you represented future unknown tort victims, correct?

A. No, sir.

Q. And you don't have any experience with asbestos litigation in a State Court system. Is that right?

A. I do not.

Q. And you've never represented a plaintiff in a personal injury case. Is that correct?

A. I've worked with other attorneys defending personal injury cases, but not as a plaintiff.

Q. And you've never represented a plaintiff in a wrongful death case, correct?

A. No, sir.

Q. And you don't practice bankruptcy law. Is that fair?

A. I don't in a sense of having practiced with the group that's here today, but I do have the contacts that I had when I was working closely in the *Enron* matter. That's the one situation and the *Centennial Healthcare* matter I mentioned also.

Q. Right. But you haven't practiced bankruptcy law. Is that correct?

A. I have not practiced bankruptcy law. No, I've not.

Q. And you don't have any experience with mass tort bankruptcies?

A. I do not.

Q. And you've never actively participated in mass tort bankruptcies, correct?

A. I have not.

Q. In fact before the U.S. Trustee's office reached out to you, you hadn't heard of Section 524(g) of the Bankruptcy Code. Is that right?

A. Yes, that's correct.

Q. And you don't have any experience critiquing or analyzing asbestos trust structures, correct?

A. I do not.

Q. And you've never critiqued or analyzed other trust structures before, correct.

A. I have not.

Q. And when we spoke last week you couldn't recall what the phrase payment percentage meant. Isn't that correct?

A. I can't remember right now the Q and A, but there were parts of the questions that I may not have been able to give you accurate answers to at that time.

Q. And one of those was what the term payment percentage meant. Isn't that correct?

A. Yes.

Q. And when we spoke last week you also didn't know did you whether or not asbestos claimants should be entitled to seek recovery from defendants in the tort system as well as through the bankruptcy trust process. Isn't that correct?

A. That's correct.

Q. And you don't have any experience resolving insurance coverage issues in bankruptcy, right?

A. I do not.

Q. Now you are a member at Baker Donelson. Is that correct?

A. I'm a shareholder, yes, sir.

Q. And you chair the firm's government and enforcement investigations group, right?

A. That's correct.

Q. And you also sit on the Legal Policy Advisory Board of the Washington Legal Foundation, right?

A. I am a member mostly in name only.

Q. And that's an entity that's advocated positions on behalf of asbestos defendants, correct?

A. Yes, sir. You had pointed that out to me last week.

Q. [Audio skip 3:48:10] asbestos defendants, doesn't it?

A. Yes, in a very limited fashion.

Q. Your answer is your firm represents asbestos

defendants in a very limited fashion. Is that correct?

A. Yes. Yes, but to further elaborate on the response, we do represent defendants in asbestos matters, but and my understanding is, is that we don't have an expansive practice in that area.

Q. If I could turn your attention to Exhibit 21.

MR. OCHS: Which binder is that?

THE COURT: Three.

BY MR. MACLAY: (Resuming)

Q. Yeah, it's in Volume 3.

A. One moment.

Q. Its in our Volume 3. The Committee volume.

A. I'm holding - Mr. Maclay, I'm holding this up. Is this the correct notebook?

Q. I wish my eyes were good enough to tell you.

MR. MACLAY: May I approach --

BY THE WITNESS: (Resuming)

A. It says Committee of Asbestos Claimants Exhibit List Volume 3.

THE COURT: That's it.

BY MR. MACLAY: (Resuming)

Q. Yes, that is correct.

A. Thank you. Let me - and you said Exhibit 21?

Q. Uh-huh (affirmative).

A. Okay. I'm now looking at Exhibit 21. I believe is

1 what you said.
2 MR. OCHS: Excuse me. Can I interrupt one second.
3 I don't think I got Volume 3. I got Volume 1 and 2.
4 MR. MACLAY: Can I have a Volume 3
5 (indiscernible).
6 MR. OCHS: Sorry about that, Your Honor.
7 THE COURT: No problem.
8 MR. MACLAY: I'm sorry if --
9 MR. OCHS: I need more paper. Thank you.
10 BY MR. MACLAY: (Resuming)
11 Q. This is exhibit - well, I guess they've all been
12 pre-marked. So this one is marked Exhibit 21.
13 A. Thank you.
14 Q. And do you see at the top of that page Mr.
15 Whitley, right underneath the title (indiscernible) Mass
16 Torts?
17 A. I do.
18 Q. Could you read the sentence that starts with our
19 large team please?
20 A. Yes. Our large team of product liability lawyers
21 provide a wealth of experience in defending manufacturers
22 and mass torts, complex litigation and significant
23 individual cases involving virtually every type of product.
24 Q. And do you see where it says toxic tort as a
25 bullet? It's the second from the bottom of the paragraphs.

A. Yes, I do.

Q. Would you mind reading the first sentence after the words toxic tort please?

A. Yes. Attorneys on our team have been at the forefront of asbestos and toxic tort litigation since its inception. Do you want me to continue?

Q. Yes. If you could do the next sentence too please.

A. Not only defending but also addressing the policy of tort reform issues through industry coordinated, appellate advocacy.

Q. And do you have any reason to believe that those two statements from this document are incorrect?

A. I do not have any reason to believe they're not true. I would like to expand on my response by saying that our firm is 700 attorneys and I don't keep up with what those other 699 attorneys are doing for the most part except the lawyers in my practice group. So I'm not very familiar with our other practice areas.

Q. Right. So when you said earlier a few questions ago that you didn't believe your product liability practice at your firm was particularly expansive I think was your word. I apologize if I got the word wrong. What was that based on?

A. Okay. Well, the benefit of having seen you last week during the deposition that you took was that I, I

inquired and so I don't have anything to present to you here today. But its my belief that we have - and again, I - subject to further review, that we have three lawyers that have been somewhat acting in defending asbestos matters. Two of those lawyers are more senior and are pulling back in their practices, but there is one attorney still in our New Orleans office who does - continues to do a pretty good bit of practice in this areas. And so I - I wanted to - your questions last week really prompted me to find out more about issues the were of concern to me. And so I wanted to make sure that I checked into that.

Q. If I could turn your attention to Exhibit 22 in the same binder. The next exhibit after 21.

A. Yes, sir.

Q. If you could read what it says right after the fax number, Carter Thomas, a shareholder in.

A. Yes. I'm looking at the fax number 901-577-2303. And below that it says Carter Thomas, a shareholder in the Jackson and Memphis office leads the firm's product liability and mass tort group. And as a former chair of Drug Device and Life Sciences Industry Group.

Q. And if you can read the next sentence under featured experience Please.

A. It says natural product liability counsel for major healthcare manufacturer and asbestos defendants.

Q. And do you have any reason to believe that, that isn't correct?

A. I don't know the truthfulness of it, but I don't - I mean assuming these materials - so this is clearly materials that you found that are published by my firm.

Q. And under representative matters on the next page, if you could turn to that.

A. Yes, sir.

Q. Do you see where it says served at lead counsel for a defendant in talcum powder litigation?

A. I do see that. Yes, I do.

Q. And underneath that, do you see where it says served as national counsel for defendants in asbestos litigation?

A. Yes, sir. I do see that.

Q. And do you have any reason to question the accuracy of those statements?

A. The truthfulness of it, I've not studied or looked at these materials. You brought them to my attention last week. Uh, they are materials that appear to be published by my law firm.

Q. And when we spoke last week, we also discussed a shareholder at your firm by the name of Kevin Dunn. Do you recall?

A. Yes, you did.

Q. And he also represents asbestos defendants, correct?

A. Yes, that's correct.

Q. And, in fact, he's tried more than 20 asbestos personal injury trials according to his material. Isn't that correct?

A. And I'm looking now for that exhibit.

Q. Sure, it's 24.

A. Okay. I'm turning to Exhibit 24. And Mr. Dunn is an attorney with our firm in Baltimore, that's correct. Mr. Dunn was with the law firm Ober Kaler and we merged with that law firm two years ago. So I don't know - I really do not know what his practice is and what he may have done prior to, prior to merging with us.

Q. But under his representative matters on the second page of his bio it says tried more than 20 asbestos personal injury trials, correct?

A. That's correct.

Q. And Robert Emmett is another person at your firm who does asbestos defense work, correct?

A. Yes. And I was referring to him earlier as the individual in New Orleans who continues to practice in this area.

Q. Right. And, in fact, you've spoken with him about this case, haven't you?

A. Yes.

Q. And, in fact, he gave you some references to go read to help you get up to speed on some of the issues that he thought would be useful from his perspective, correct?

A. Yes. They were materials that were, uhm, there's a textbook on asbestosis that, uhm, textbook is about a book that goes into a great deal of information about the science behind the asbestosis disease.

Q. And if selected as the FCR, you've already testified here today, that you intend to hire Baker Donelson as your counsel. Is that correct?

A. That's correct.

Q. And they're currently representing you here today. Is that right?

A. Yes. They're here with me today.

Q. And they represented you at your deposition?

A. Yes, they did.

Q. And you intend to, if retained as the FCR also hire your partner Rob Emmett, correct?

A. I do not.

Q. If I could turn you to --

A. Excuse me, I'm sorry. When you say hire, I may consult with him because I did - I have consulted with him and I may consult with him in the future possibly.

Q. And he's an asbestos defense lawyer, correct?

MR. MACLAY: No further questions.

THE COURT: Redirect?

MR. OCHS: No thank you, Your Honor.

THE COURT: Okay. May this witness be excused?

MR. OCHS: Yes, Your Honor.

MR. MACLAY: Yes, Your Honor.

THE COURT: Okay. Mr. Whitley, you may be excused.

THE WITNESS: Thank you.

THE COURT: Let's take about a ten minute break.

THE WITNESS: Thank you.

THE COURTROOM DEPUTY: All rise.

[WHEREUPON, there was a break recess taken at 3:57:07]

[WHEREUPON, proceedings resume at 4:11:12]

MR. OCHS: I thank you, Your Honor. Your Honor the United States Trustee would like to call Peggy Ableman.

PEGGY ABLEMAN, WITNESS, SWORN

THE COURTROOM DEPUTY: Please state your name clearly in the microphone and spell you last name for me please.

THE WITNESS: My name is Peggy Ableman. My last name is spelled A-B-L-E-M-A-N

BY MR. OCHS:

Q. Good afternoon, Ms. Ableman.

A. Good afternoon.

Q. My name is Martin Ochs. We've met before, correct?

A. We have.

Q. And when was that?

A. Was it last week at the deposition in Washington.

Q. And you understand there's a rule. I know you were a former judge, but I'm gonna call you Ms. Ableman. I mean no disrespect.

A. There's only one judge in this courtroom right now.

Q. Yes. And that was my point and I appreciate your understanding that. Thank you. So how did you become aware of the Fairbanks bankruptcy case?

A. An employee or I don't know whether she was in your office or in Washington, but someone from the U.S. Trustee's office called me and asked me if I would be interested in the position and I said yes.

Q. And then were you interviewed by the United States Trustee?

A. I was.

Q. And after that interview, did you agree that you would like to be considered as the FCR candidate in this case?

A. I did.

Q. Can you - and you were deposed by the Debtor and the Creditors Committee. Is that correct?

A. I was.

Q. That was the deposition you were referring to last week.

A. I was. Yes.

Q. And there was a videographer there and do you have any reason that your testimony last week wasn't truthful or --

A. No.

Q. Can you tell me, do you have any experience in the asbestos industry or in the legal field or anything like that?

A. Yes. When I was on the bench in Delaware the last couple years that I was on the Superior Court, I was assigned the asbestos docket. And I was responsible for between five and 600 asbestos cases, so I learned a lot from that experience. There was no other judge that was doing asbestos on my court at the time. After I left they assigned it to two judges.

Q. When, when they started or when asbestos cases began to be assigned to you, did you have prior experience in the asbestos field of law?

A. I did not.

Q. So you had to educate yourself as you moved along through the process?

A. Absolutely.

Q. And before you became a judge, what was your

educational background?

A. I went to college at Simmons College in Boston, which is now Simmons University. I went to law school at Emory University School of Law right here in Atlanta and its changed a lot since I was here 40 some years ago. And I practiced for a little while and then went to the United States Attorneys Office as an assistant United States attorney for five years until 1983 when I was appointed to the bench. And I served as a judge until six years ago. And since then I've been working for McCarter & English.

Q. And what is your role at McCarter & English?

A. I am listed as part of their products liability practice, but essentially I am mentoring the associates in my office and editing briefs.

Q. And you said you've been with McCarter now for six years?

A. Six years.

Q. And when you were asked whether you were interested in serving as FCR in this Fairbanks case, did you run a conflicts check on yourself and the McCarter firm?

A. I did.

Q. And did you provide that to the United States Trustee?

A. I did.

Q. And to the best of your knowledge, that's what was

filed with the Court. Is that correct?

A. Yes.

Q. And did you come across any conflicts that you would consider disabling?

A. No, I did not.

Q. Did you come across any other conflicts?

A. No, I did not.

Q. Tell me what your experience was as a judge in the asbestos claims world if you will?

A. Well I presided over cases, trials and I also decided probably 60 summary judgment motions a week filed by various defendants in these cases and it was probably an all encompassing workload. But one of the last cases that I tried involved a plaintiff who had failed to disclose the fact that he - actually it was his mother I think had died of mesothelioma, but he was representing the estate. And he had failed to disclose that he had received payment from approximately 20 trusts. Even though we had a case order - a standing order requiring that, that be disclosed and I didn’t find out about it until the morning that the trial was to begin.

So as a result I got a taste of what playing fast and loose with the truth can be in this type of litigation. And I soon learned that there is a big disconnect between the transparent - between the asbestos tort system, which is the

lawsuits in the courtroom, and the asbestos trust claiming system because the two don't seem to know what each other is doing. And as a consequence there's been an awful lot of fraud and misrepresentations because the lawyers can do it and they can get away with it.

Q. What makes you think the lawyers can do it and get away with it.

A. Well, I've read enough about it. I've heard enough about it. I've read enough transcripts. I've seen it personally. I've been to enough conferences. I've written about it in many articles. I've researched a lot about it. There is, there is - it's unfortunate. It's probably the worst eye opening experience of my life as a lawyer.

Q. Tell me about your writings on the topic.

A. I started - right after this happened to me I left the practice of law. Not because of - I didn't leave because I was tired of asbestos or I couldn't stand anymore or anything like that, but I had been 30 years on the bench. And I decided that it was time for me to give the spot to somebody younger and not get old while I was too old to do things. And I didn't want them walking around - lawyer saying, she's lost it. So I decided I would leave before that happened. And so I left to go into private practice.

THE COURT: Maybe somebody else in this courtroom should do that.

THE WITNESS: Oh, sir, I wasn't - I wasn't suggesting that. Uhm, no, you --

THE COURT: No. I didn't mean to interrupt you.

THE WITNESS: -- you should stay.

THE COURT: I just couldn't resist.

BY THE WITNESS: (Resuming)

A. No, I actually decided that I was eligible for my full pension so I decided it was good time to do something different with my life. So when I left the bench I was - because of that particular case that I had had and where I discovered on the day of trial that there had been all this lack of disclosure of all these trust claims, I had, had a conference with the attorneys that morning. And I guess the transcript of that conference had made its way to everybody who was involved in asbestos law. In particularly, those who were involved in attempting to get more transparency in the asbestos practice. And so I was asked to testify before the United States House of Representatives and ultimately before the United States Senate. And then I wrote an article about my experience and then that lead to me writing another article about my experience and then eventually doing more and more research about it. So I kind of found a little niche for myself in that area.

Q. Do you consider yourself to have an expertise in asbestos and asbestos claims?

A. I believe that I have an expertise in the asbestos tort system. And I have some expertise in the lack of transparency between the asbestos tort system and the asbestos trust claiming system. To the extent that I don't have a lot of bankruptcy experience. I wouldn't consider myself to be an expert in that area.

Q. Are you familiar with the duties of an FCR?

A. I am.

Q. And do you think you have the requisite skill to perform as an FCR in a bankruptcy case?

A. I think I wouldn't be sitting here if I didn't think that I could do it.

Q. And you never served as an FCR before.

A. I have not.

Q. And do you think that, that impedes your ability to serve as an FCR if appointed in this case?

A. No, because I have made a executive decision while I was sitting through this trial and I thought it would - this would probably be a great win, win situation. I was extremely impressed with Mr. Patton's testimony and with his credentials and I've been impressed ever since I've met him and learned about everything he's done. If I were to be appointed the FCR in this case, Young, Conaway, Stargatt & Taylor is in Wilmington, Delaware where I am. Their law firm is a few blocks away from my law firm. I would be more

inclined to hire Young, Conaway, Stargatt & Taylor and Mr. Patton as my attorneys than I would be to hire my own firm because I do think that Young Conaway and Mr. Patton are highly qualified and would serve me better in that role.

Q. Do you have --

A. And that would be a win, win for the Court because the Court could rule in favor of both sides that way.

Q. -- do you have, do you have any reason to believe that your employment arrangement with your law firm would prohibit you in doing that?

A. No, they would not.

Q. Do you know whether - have you discussed this with Young Conaway yet?

A. I've discussed it with Mr. Patton. He's probably the most important person to discuss it with.

Q. And can you tell me how that was received?

A. He smiled. He was happy. And he said he would be happy to serve in that role.

Q. Tell me, if you will, can you elaborate on your experiences in the asbestos litigation world as a judge? Can you tell me what you learned there?

A. Well, considering the fact that I didn't know anything about asbestos law when I was appointed to - when I was told I had to take that docket and also considering the fact that I didn't know the difference between a clutch and

a gasket, uhm, I learned everything there was that I needed to learn. And probably more than I ever wanted to know about automotive products and asbestos, asbestos law, asbestos claiming - everything about it I learned. Because I'm a type A personality and I'm not happy knowing a little bit about something in order to do it. I had to be completely familiar with everything. And so I really dug into those cases. I read every summary judgment motion, every deposition transcript before I decided any of those motions. So I really think that by the time I had left the bench I was about as skilled in that area as I could have possibly have been.

Q. And we've used a lot of initials today, you know, FCR --

A. Right.

Q. -- and TDP. Do you know what a TDP is?

A. Trust Distribution Procedures. The one I had never heard of was the one that Mr. Whitley or no, Mr. Grier used was he had a different term for the procedure.

Q. Would that be CRP?

A. CRP. I'd never heard of that before.

Q. But you are familiar with a TDP.

A. I am familiar with that.

Q. And are you familiar with the workings of a TDP?

A. I am.

Q. And do you think that you have the requisite skills to serve as the FCR in this case and work on a proposed TDP?

A. Yes, I think I do or I wouldn't be here, again.

Q. Tell me what you think or what, what does an FCR - being the FCR mean to you?

A. Well, the problem with asbestos - people who are sickened from asbestos exposure is that there is a very, very long latency period. So that if you were exposed in the '50s you may not exhibit any symptoms of the disease until 30 or 40 years later. So although asbestos has been banned in most places and doesn't exist as prevalently as it once did, there are still a number of people out there who have been exposed way back, but have not yet shown any symptoms of asbestos related disease. And those individuals are what we call the future claimants because at some point when they are exposed they are going to want to be compensated for their injuries. And its an amorphous group. It's - your protecting basically an unknown number of people, an unknown group of people, but its just as important that their rights are protected so that there is enough money left in the trust when the time comes that they are sick and are ready to make claims.

Q. So do you know what the purpose of the FCR is in a bankruptcy case?

A. Yes.

Q. And can you tell me what that is?

A. To protect the interest of those who in the future will manifest symptoms from asbestos exposure.

Q. Have you ever served as an FCR before?

A. No.

Q. Do you think that, that disables you from serving as an FCR?

A. Well, I think it's impossible to say that if you've never done something, you can never do it. I mean Mr. Patton had his first time as an FCR and he's been hugely successful in doing it. I don't think - certainly I'm not - I'm gonna have a learning curve, but I'm not going not going to be - I shouldn't be excluded just because I've never done it.

Q. And were you proposed as FCR in any other cases?

A. I was indeed.

Q. And what case was that?

A. *Maremont*.

Q. And what was the outcome of that proposal?

A. Well, that was a prepackaged bankruptcy and so everything was already done. There was nothing left to negotiate pretty much. Although I understand it hasn't been approved yet, but, uhm, Mr. Patton had been involved in that case throughout the course of the time that the plan was

being developed and he was proposed as the FCR by the debtors - by the debtor and the claimants. And it just made sense that he would be the one. I said I would do it because I wanted the experience of seeing what it would be like to testify in a case like this. But I knew that he was far more qualified. The judge did say at the end that even though he was not selecting me he did say on the record that he thought I was qualified.

Q. And do you feel - do you believe you're qualified?

A. I am - I will be as qualified as anybody if I get the job.

Q. Have you ever served as a guardian ad litem?

A. I have.

Q. How many times?

A. A couple little cases, but the primary one that I was appointed by the federal court a couple of years ago to represent three children whose mother had been murdered in the courthouse - in the lobby of the courthouse in Delaware. And the United States Attorneys Office took the case and prosecuted the father and the grandmother and the aunt under a statute that is - was called, uhm, stalking with the intent to commit murder. And it was the first time that statute had ever been prosecuted. And it was because the person who had shot the mother in the courthouse was the father - the grandfather and he put the gun on himself and

he was no longer there. But they discovered a huge conspiracy among all of the family members to do this horrible deed. So the judge in the federal court in Delaware asked me if I would represent the children and I did and everything worked out. Everyone was convicted and they're in jail for the rest of their lives. The children are safe and sound.

Q. And do you think that there is an overlap between the skill set and your duties as a guardian ad litem and the FCR?

A. I think they're very different. I think one is, you know, it's more familial, dealing with family issues and this, of course, is dealing more with monetary issues. But I think at bottom they're both - you're representing the interest of others.

Q. So you're serving in a position of trust?

A. Yes.

Q. And have you served in a position of trust in the past?

A. I am now for my father's estate, but not in the court - not with respect to my profession.

Q. Do you consider the time that you served as a judge that, that was a position of trust?

A. Well, that's a good question. I wish I had thought to say that, but you're absolutely right. I mean if my 30

1 years as a judge didn't give me the experience I would need
2 to do this job, then it would be very unfortunate. I think
3 that, that experience definitely makes me poised to do this.
4 Q. Are you familiar with the *Montgomery* case?
5 A. I am.
6 Q. Tell me your familiarity with that case, please.
7 A. That is the case that was assigned to me to try in
8 November of 2011 and I found out the day the trial was to
9 begin that Mr. Montgomery had not or Mrs. Montgomery's son
10 had not disclosed 20 trust claims that he had made to
11 various asbestos trusts. And we had to - I had to cancel the
12 proceedings and go from there - briefing all sorts of
13 things. It eventually got dismissed.
14 Q. And did you - subsequent to the *Montgomery* case
15 did you write about the *Montgomery* case?
16 A. I did - I am - what happened was because I had not
17 been happy with the lawyers that morning for obvious
18 reasons, I had, had a conference with the attorneys, trying
19 to find out how that had slipped through the cracks. And I
20 wasn't very happy so all of my - of course everything I ever
21 did in the court was memorialized in a transcript so there
22 was a court reporter there. And my transcript apparently
23 made its way to Washington and to lots of individuals who
24 were interested in getting the Fact Act passed in Congress,
25 which is the Act to make the trust claiming a little more

transparent than it is. And so they called me and asked me to testify because of that and that really got me on that bandwagon. I was asked to write articles after that because of it.

Q. And what were the topics or subjects of the articles that you wrote?

A. Predominantly the lack of transparency between the tort system and the trust claiming system. But also other - it's interesting asbestos litigation is like no other litigation in the world. I mean it is just - there are no ethical rules that govern it. Like every other type of litigation in the court there are certain ethics that lawyers have to follow, but for some reason asbestos, those lawyers somehow get a bye and don't necessarily have to abide by the rules and don't seem to ever get in trouble for not doing so. And so I think after that I was asked to also write articles about other, uhm, areas of asbestos litigation that were illegitimate or fraudulent or that called into question the ethics of the attorneys involved.

Q. When you said that the attorneys in the asbestos arena get a bye, does that me get a pass?

A. Well, for example in *Garlock* it was discovered that there were lots and lots of illegitimate claims and there was a RICO case against those attorneys. And it ended up that it was settled and they're still practicing and

they're still thriving and still doing the same things. So I, I think that, that has been the hallmark of this litigation for years is that no - I don't know why, but I don't think the disciplinary institutions in their states are interested in pursuing those types of things for some reasons.

Q. Do you think that your involvement in the *Montgomery* case in any way has a negative impact upon your ability to serve as the FCR if appointed in Fairbanks?

A. No, I mean I have done - I've written a lot of articles. They have not been defense articles in favor of the defendants. They have been articles in favor of getting rid of some of the fraudulent practices that exist in the system. Uhm, I have been characterized that way. But that is not the case. I saw what I thought was an injustice that I felt it was incumbent upon me to write about it and let others know that this exists and maybe somebody would do something about it. And so far I mean I - there are people on that bandwagon, but not to the extent that we need it.

Q. Did you write about the *Garlock* case as well?

A. I did.

Q. And what did you write about that case?

A. I wrote an article called <u>The Garlock Case Should be Required Reading for All Asbestos Attorneys in the State Court System</u>

Q. And what was the subject matter of it - of the article?

A. Basically it exposed - the *Garlock* case exposed the exact thing we've been talking about. That there was a disconnect between what the attorneys were claiming when they went to trial in court as opposed to what they were asking for when they filed tort, uh, trust claims. The problem is - well, the thing that they've gotten away with for so long is the trusts are private and confidential. And so when they claim - when they ask for money from the trust, there's no record of it. And so, so long as that exists they can continue to ask for money from a trust, for example *Babcock and Wilcox* or *Leslie Controls* or whatever the ones you've heard today. And they can then turnaround in the court - in the courtroom - in the trial and claim that they were never exposed to those products, but only exposed to the products of the solvent defendants who are the defendants in the court, it is, it's dishonest. But it gets them a lot more money that way. And until those two systems talk to one another and until the people that are trying cases in court can also know what claims the plaintiffs have made in the trust context, we're not gonna know that. That's one of the reasons why I've advocated for more openness in the trust.

Q. In the bankruptcy trusts?

A. Yes.

Q. So what, what do you think that the impact of the *Garlock* case is on the chapter 11 asbestos cases that are being filed?

A. So far I don't think that it has had much impact, but I think perhaps this might be a first step in trying to make sure that the concerns that I've raised here today and that I've raised in my writings will be addressed by future, by future claims representatives in the future.

Q. Are you familiar with the confidentiality provisions that are contained in TDPs?

A. Sole provider?

Q. I'm sorry?

A. The sole provider provisions?

Q. No, the confidentiality provisions.

A. Yeah, well that --

Q. Okay. Yes, yes. Can you tell me what your familiarity is with those provisions?

A. Well, the trusts - most of the TDPs contain provisions and I don't know if its most or all. I've not looked at all of them, but most of them contain provisions that do not allow anyone in the tort system involved in a case in court to have access to the information in the trust. In other words, they don't won't lawyers and defense attorneys, particularly, that are in the courtroom being

able to get discovery through the trust or learn more about the individuals who are the plaintiffs in their cases.

Q. Do you think that, that has a negative impact on the chapter 11 asbestos case process?

A. I don't know whether it has a negative impact in the chapter 11 process. I think it has a negative impact on the system as a whole because I think that it facilitates improper claiming and illegitimate claiming --

Q. And would that have --

A. -- or maybe not improper claiming as much as telling a different story when the case is tried in a courtroom versus what is claimed when a plaintiff asks for money from a trust.

Q. And do you think that, that may have a bearing on the treatment of future claimants?

A. Well, I think it will, absolutely. Because one of the most important things is to eliminate illegitimate claims because the more the trust pays to claims that aren't legitimate the less money is going to be available for future claimants. And the whole purpose of a future claims representative is to keep that fund afloat to make sure that it is healthy enough and robust enough that it will be able to pay those claims in the future.

Q. And do you think that you have the skill set to be able to ensure that, that happens if you are appointed as

the FCR in the Fairbanks case?

A. I do.

Q. If you were appointed as the FCR in this Fairbanks case, what steps do you think that you would take?

A. Well, first of all I am - I would learn as much as I could possibly learn about everything. As I said I am really definitely convinced that the best step I could take would be to hire Young Conaway as my attorney and particularly, Mr. Patton. Who then would be able to show me the ropes hopefully. But more importantly I think my knowledge of the tort system and what is going on in the tort system would enable me to make adjustments to the TDPs that might eliminate some of the illegitimate claiming that exists. Such as eliminating the confidentiality provisions. And I don't mean that the records of plaintiffs - their medical records should be exposed to everybody and they - but I think if you're going to make a claim with a trust, you should be willing to use your name and to use the disease that you are claiming for. I mean that's a minimum. And to me that is not a violation of privacy because those same individuals are willing to file cases in the tort system and there is nothing private about a tort case. It is as public as can be. Anyone can walk in and look at the records or listen to the testimony.

Q. Do you think that if you were appointed as the FCR

in this Fairbanks case and you were to retain Young Conaway, do you think that you could properly steer them to represent you with these ideas in mind of yours?

A. Oh, I think so, yeah. I can be pretty convincing.

Q. Do you think that you would be able to serve without bias or favoritism against anybody involved in the Fairbanks bankruptcy case?

A. Yes. And I wanna elaborate on that a little bit. I've characterized as being a defense - proponent of defendants in this litigation. I am not a proponent of defendants. I am a proponent of less fraud and more honesty and integrity in these proceedings. And all of my writings have been with that in mind and with that as my ultimate goal. I have not been. Now I have done some things for defense - for some defendants who have paid me to do it, but I didn't start this - get on this band wagon until I felt that there was an injustice going on and I felt that I needed to do something to fix it.

Q. You heard us - you've been in the courtroom for today's proceedings so you heard us talk about the fact that today is akin to a job interview. Did you hear that?

A. Yeah, I heard it. I didn't think the deposition was anything like a job interview, but...

Q. I'm sorry about that. So in this case it's the role of the Judge to appoint the FCR. Is there anything else

that you would add that you think supports your candidacy as the FCR in this case that the Judge should be aware of?

A. No I think, I think I've said it all. You've asked all the right questions.

Q. Thank you.

MR. OCHS: Judge, thank you.

THE COURT: Cross examination?

CROSS-EXAMINATION

BY MR. MACLAY:

Q. Good afternoon, Ms. Ableman.

A. Good afternoon.

Q. Now you - and this is Kevin Maclay speaking or asking questions for the Committee. You've testified several times so far today that you've never served as a future claimants representative, correct?

A. That's right.

Q. And aside from some work for your family, you never served as a fiduciary representing a group of people, correct?

A. No.

Q. You never represented a plaintiff in a personal injury case.

A. I didn't say that today and I don't think that's true.

Q. Have you ever represented a plaintiff in a

1 personal injury case?
2 A. Way back, yes. I probably have.
3 Q. If I could direct you to Volume 2 of the binders
4 in front of you. The small white ones. It'll be - it'll say
5 Committee's Exhibits Volume 2.
6 A. The Claimants Exhibit?
7 Q. Correct, thank you.
8 A. And if you could turn to Exhibit 11 in that
9 binder. And it's just your deposition.
10 THE COURT: I'm sorry, what was the exhibit number
11 again?
12 MR. MACLAY: It's Exhibit 11 in Volume 2 of the
13 claimant's binder.
14 BY THE WITNESS: (Resuming)
15 A. I have it.
16 Q. And if you could turn please to page 39 of that
17 deposition. And if you could please read lines 17-22 on that
18 page.
19 A. Have you ever represented a plaintiff in a
20 personal injury case? No. Have you ever represented a
21 plaintiff in a wrongful death case? No, I was pretty much a
22 career judge.
23 Q. Right. And were those the questions you were asked
24 at your deposition?
25 A. I was. And I thought about that afterwards and I

do recall that early on in my career when I was an attorney in private practice for a couple years that I actually did represent someone in a personal injury case.

Q. And you don't have bankruptcy experience, correct?

A. I do not.

Q. And you've never represented a party in connection with a mass tort bankruptcy, correct?

A. I have not.

Q. Now you're familiar with Mr. Patton, correct?

A. I am.

Q. And, in fact, you've said that he's a bankruptcy guru, correct?

A. I think he's, he's very qualified.

Q. And you agree that he knows a whole lot more about the asbestos trust process than you do, correct?

A. I don't presume to know as much as he knows because he's been front and center. He's been the big game in town for all of these things. And, of course, with as much as he's done he has a lot more experience and he ought to be a lot more effective in that way and that's exactly why I just suggested that I would like to use them as my lawyer if I were appointed.

Q. And you made that same suggestion about using them as your lawyer in the *Maremont* hearing, didn't you?

A. I did.

Q. And yet, in that hearing the court ended up selecting Mr. Patton and not you. Isn't that correct?

A. Well, I don't know why the court didn't --

THE COURT: Hold on. That's an easy answer, either he did or he didn't

BY THE WITNESS: (Resuming)

A. Yeah. I mean how, how can --

THE COURT: And she's not gonna know why so --

MR. MACLAY: I didn't ask her why --

THE COURT: I understand. I'm really talking to just everybody so --

MR. MACLAY: Okay.

THE COURT: -- he didn't appoint you, I take it.

THE WITNESS: He didn't.

THE COURT: Okay. Next.

BY MR. MACLAY: (Resuming)

Q. And you currently work at McCarter & English, correct?

A. I do.

Q. In their product liability group?

A. I'm assigned to that group. That's not really what I'm doing. It's --

Q. Well, currently you're involved - excuse me, go ahead.

A. -- it's not the predominantly what I'm doing.

Q. But currently you're involved in asbestos litigation in Delaware, correct?

A. One case.

Q. On behalf of several asbestos defendants, correct?

A. That's right.

Q. And that representation is ongoing, correct?

A. It is, but I am local counsel only. So I'm not really doing the work.

Q. Well, you've signed pleadings in that case, correct?

A. Well, that's what local counsel has to do.

Q. And you've entered a notice of appearance, correct.

A. I - that's what local counsel has to do.

Q. And have you ever stood up in that court proceeding and say, Your Honor, I'm not adopting any positions of my client in this case and I'm just local counsel?

A. No. I've never been in court on that case.

Q. And have you ever had any disclaimer or anything you filed on behalf of those client in that case?

A. I have not.

Q. And you've also done work for Crane Co, correct?

A. I was asked to write an article with Marc Scarcella and Peter Kelso. And it turned out that it was

1 studying Cran Co's history in the tort - in the trust and
2 tort system as a solvent defendant similar to what occurred
3 in *Garlock's*. We used the *Garlock* data to show that there
4 was equally as much illegitimate claiming and fraud as
5 between Crane and the bankruptcy trust claims. Just as there
6 was in *Garlock*. And they ended up paying me, but at the time
7 I didn't even know that they were my client. I was asked if
8 I would write this article with them and I love to write and
9 that was what I had been doing for sometime so it was - I've
10 done many of those articles without getting paid.
11 Q. So Crane is an asbestos defendant, correct?
12 A. Yes, they are.
13 Q. And they paid you to write an article, correct?
14 A. They didn't pay me to - they paid me after I wrote
15 it.
16 Q. For having written the article.
17 A. Yes, but I was not hired by them. I was asked by
18 Marc Scarcella and Peter Kelso, who are economist if I would
19 contribute to their research by writing the due process
20 aspect of the article.
21 Q. And those economists were hired by Cran Company as
22 well, correct?
23 A. I don't know.
24 Q. And Crane Company manufactures valves. Is that
25 right?

A. Yes.

Q. The same type of product that Fairbanks manufactures, correct.

A. I don't know if they're the same or not. I assume, but...

Q. And you've also represented the Coalition for Litigation Justice, correct?

A. Again, I have written articles that have been, been - ultimately I've been paid for doing it. But when I've been asked to write those articles I've done them without having any kind of an arrangement or a contract or anything. I work with a guy in Washington by the name of Mark Barrons, who is very active in this litigation as a policy guy. And he frequently - he likes my writing and he asks me to write articles for him. If I get paid, I love it. If I don't, still I feel like I've done a good dead.

Q. If I could direct you please to page 34 of your deposition. Could you please read lines 18 to 20?

A. It's 34, did you say?

Q. Yes, please.

A. You have represented a client who advocates that position The Coalition for Litigation Justice, correct? Yes.

Q. Was that the question you were asked at your deposition?

A. Yeah. Well, but I didn't, I didn't expand upon it.

But I think I was really anxious to get out of there actually.

Q. And The Coalition for Litigation Justice is a coalition of insurance companies, right?

A. You know what I didn't know that until very recently.

Q. But you know it know, correct?

A. I do.

Q. And Resolute is a member of that coalition, correct?

A. I don't know.

Q. If I could turn you to page 53 of your deposition please. And if you could please read for me lines 7 through 20.

A. Okay. And the Coalition for Litigation Justice is a group of insurance companies, correct? Answer - predominantly yes. Including Resolute Management? Yes.

Q. And if you could please continue through line 20.

A. And Liberty Mutual is one of the insureds in this case, correct? That's right.

Q. And I believe you skipped a question and answer in between those two.

A. Oh, and Resolute Management manages Liberty Mutual, correct? That's right.

Q. Were those the questions you were asked and were

1 those the answers you gave at your deposition?
2 A. I did.
3 Q. And you represented this coalition in the *Ramsey*
4 case, correct?
5 A. I didn't write any of those briefs. I was just
6 local counsel.
7 Q. Well, you filed an amicus brief on their behalf,
8 correct?
9 A. Yes, I did. But I just said I didn't write them.
10 Q. And in that brief it was advocated a position that
11 would limit so called take-home exposure.
12 A. Uh-huh (affirmative)
13 Q. Isn't that correct?
14 A. What the brief was advocating was that law in
15 Delaware would remain as it had been in the past.
16 Q. I'm sorry?
17 A. Was that the law in Delaware would remain as it
18 had been in the past.
19 Q. You argued in that brief of that brief that you
20 signed argued that an asbestos manufacturer has no duty to a
21 meso victim for take-home exposure. Is that correct?
22 A. I can't imagine that, that was the argument that
23 was made.
24 Q. If I could turn your attention to, uh - hold on
25 one second. Once second. I apologize. And that coalition of

insurers also paid you to write an article regarding a national asbestos case management order. Isn't that correct?

A. Again, I wasn't sure who paid me for that, but I did write about that because I developed one in my jurisdiction and I was kind of - I had some expertise in that.

Q. If I could direct you to page 53 of your deposition please.

A. I said right to your question. You were hired by the Coalition for Litigation Justice to write an article --

Q. If you could hold on for one second. There isn't a question pending.

A. Okay.

Q. Could you please read lines 3 through 10 on that page?

A. You were hired by the Coalition for Litigation Justice to write an article advocating for national asbestos case management work, right?

Q. And if you --

A. Okay. And the Coalition for Litigation Justice is a group of insurance companies, correct? Answer - predominantly yes.

Q. And that case management order would make it easier for asbestos defendants to allocate 12 other defendants, wouldn't it?

A. I haven't looked at it in a long time so I can't answer that question.

Q. [Sigh] If I could direct your attention to page 62 of your deposition please. And if you could please read lines 18 to 22.

A. Your case management order would make it easier in that scenarios, no fraud, no fallacies, no illegitimacy for the trial defendant to have to prove to allocate shares, correct? Answer - that's right.

Q. And if I could direct you to page 51 of your deposition. And if you could please read starting with lines 24 through line 7 on the next page, page 52.

A. Okay. You have advocated a case management order that should be adopted nationally that would make it easier for asbestos defendants on trial to prove the shares of liabilities of others? Answer - that's correct.

Q. Were those the questions you were asked at your deposition? Are those the answers you gave?

A. They are.

Q. Now a minute ago I had asked you about, uhm, the Ramsey brief that you had filed for no (indiscernible). If I could direct you to page 90 of your deposition please.

A. I'd like you would read the question back because I think it was different from what this question is.

Q. Well, let's strike the question I asked and let me

ask a different question in case I made a misstatement. In the amicus brief you filed, that brief argued that there was no duty or should be no duty of an asbestos part manufacturer to meso victim (indiscernible) exposure. Is that correct?

A. I don't think that, that was the precise argument. I think it was not to expand it.

Q. Well, if you could please read on page 90 between lines 25 through line --

A. Yeah. And I think it was - we were talking about premises (indiscernible).

Q. I'm sorry. Could you please read lines 25 through, through 9 of the next page from pages 90 to 91?

A. Beginning with what, 25?

Q. With and the amicus brief were included.

A. An the amicus briefs would include the Ramsey brief that you filed arguing no duty of an asbestos product manufactured to a mesothelioma victim with take home exposure, correct? The answer - that's right. And you were urging the court in that case to adopt the position in a different case which held no duty for take-home exposure to premises owners in an asbestos case, right - (indiscernible) case. Answer - Judge Cites' opinion - well, she says cites, but I was talking about Judge Slites (ph), who is a colleague of mine.

Q. Thank you. And those were the questions you were asked and the answers you gave?

A. Uh-huh (affirmative). And I said we're talking about premises (indiscernible).

Q. And you agreed that you could not have that sort of representation if you were appointed as the FCR in this case. Isn't that correct?

A. That's probably true, but I'm not representing them anymore and I don't intend to if I were appointed as the future claims representative.

Q. Now you mentioned before I believe that you're a member of McCarter & English's product liability group, correct?

A. Uh-huh (affirmative). I was hired on that - for that practice group.

Q. And that practice group, the products liability group is McCarter & English largest practice area, correct?

A. Yes, but I'm not gonna use McCarter & English. I said at, at the beginning of my testimony. I plan to use Young, Conaway, Stargatt & Taylor instead.

Q. But you're an attorney at McCarter & English, correct?

A. That's right.

Q. And the most important - well, I should - strike that.

A. I can always wall myself off from those others because the practice group is mostly located in Newark, New Jersey and Hartford, Connecticut. I don't think there's anybody in Wilmington that's doing products liability at this point.

Q. And the question I was asking is that products liability group is your firm's largest practice area, correct?

A. That's right.

Q. And McCarter & English had defendant companies in mass tort area for more than 40 years including asbestos defense work, correct?

A. That's what it says on their website.

Q. And do you have any reason to disagree with what it says on their website?

A. No.

Q. And those asbestos defendants include, for example Owens Illinois. Isn't that right?

A. That's right.

Q. And General Electric?

A. That's right.

Q. In fact, McCarter & English serves as the national asbestos defense counsel for a fortune 50 global manufacturer of commercial and consumer products in asbestos litigation, correct?

A. I don't know that. I don't know who it is that you're talking about and I don't know it for a fact.

Q. Do you know that your firm's website says those things?

A. Well, yeah. I didn't write the website and I have no idea what's in it actually.

Q. But you have any reason to dispute the accuracy of what's on your firm's website?

A. Well, I hope they wouldn't be making stuff up, yeah. And it may have been something long ago. It may not still be the case.

Q. Well, if it's phrased in the present tense on your firm's website. Isn't it?

A. Okay. I don't know. I haven't read it.

Q. Would you like to take a look at it now?

THE COURT: Is it on the website?

MR. MACLAY: It is.

THE COURT: Do you dispute that it's on the website?

THE WITNESS: I just said if it's on the website --

THE COURT: Okay.

THE WITNESS: -- it's there.

THE COURT: Is that in evidence somewhere?

MR. MACLAY: It is Your Honor.

THE COURT: Okay. Go ahead.

BY MR. MACLAY: (Resuming)

Q. And you believe Ms. Ableman, don't you, that all claims that are filed with the trust should be available to the public?

A. I believe that the trust claims - claimants should be identified by name and disease.

Q. If I could direct you to page 23 of your deposition. And if you could please, please read lines 1 through 11.

A. Which page?

Q. Page 23 please.

A. What lines?

Q. Oh, 1 through 11 please.

A. Are you saying, are you saying that there are legitimate claims being filed in the bankruptcy trust that you believe should be available to the defendants in the tort system or are you saying that there are illegitimate claims being filed in the bankruptcy courts. I said all claims that are being filed should be available to the public. Question - I understand that to the public. To anybody that wants to access that information.

Q. And were those the questions that were asked and the answers you gave?

A. Yeah, but that wasn't my answer. You asked me what

should be made available and I said the name and the disease. I wasn't talking about to whom.

Q. And you said all claims that are being filed should be made available to the public, correct?

A. Yes.

Q. And in your view asbestos claimants should be concerned about that, right?

A. Well, in my view I think the privacy argument made by asbestos plaintiffs attorneys is the best argument they could come up with for the secrecy in the process.

Q. And if I could turn your attention to page 16 of your deposition please. If you could please read lines 17 through 24.

A. Wait I think I have to preface it by the questions before that.

Q. Sure, you can read those too.

A. Okay. And have you ever spoken to any individual who has an asbestos case, someone who has been diagnosed as to what their interests would be and whether they would want to maintain confidentiality of those things or not? Answer - I think that was the lawyer's argument, not the claimants. I don't think it makes sense. Question - Okay. My question was have you spoken to any claimants about that? No. But reason and common sense tell me that when you have a disease that's not sexually transmitted or isn't the result of some adverse

lifestyle choice like mesothelioma, which is deadly and can only garner sympathy, that there wouldn't be much concern on the part of these people, those injured to have their privacy respected.

Q. And were those the questions you were asked --

A. Uh-huh (affirmative).

Q. -- and the answers you gave?

A. And that's what I answered.

Q. Now you've mentioned some articles you've written before here today, correct?

A. Yes.

Q. And you've written some articles about the *Garlock* decision, right?

A. I don't know how many I've written about *Garlock*, I know I wrote one specifically about *Garlock*. But a lot of my articles have *Garlock* in them because it was a watershed case.

Q. You say it's a watershed case. Are you aware that in *Garlock* the judge made no finding as to the propriety of the actions he was talking about?

A. I was asked that at my deposition and it was very obvious if you read the opinion and the way he said it that it was judge speak for I'm not gonna go there, but I have some questions about this. I'm not making a judgement on the behavior that I'm seeing at this time, but - so it was, it

was a very common way that a judge will phrase a statement in an opinion that basically suggests to the public or to the parties that, that judge does have some question about the behavior that he's talking about.

Q. So while the judge didn't make any finding as to the propriety of what he was talking about, you think you can see through what he said to find a lack of propriety?

A. Well, I think, I think if you read that, definitely. Yes, definitely. It's not an uncommon thing for a judge to do. He wasn't gonna go out of his way without evidence to say it was improper, but he had some questions about it. So instead of saying I have questions about it, he said I'm not in a position to make any judgements on the propriety, but there's a lot here that doesn't really sit right.

Q. Right. And even though he was the judge in that case, do you feel that you're in a position to make judgements about the propriety that he chose not to make?

A. No. I, I think I was a judge for long enough to be able to know that those are things that judges do. And I'm pretty sure that, that's exactly what he was doing when he said that. You can't take that phrase out of context the way you did.

Q. Have you spoken to him about it?

A. Why would I speak to him about it? I mean that's -

of course I haven't spoken to Judge Hodges about it.

Q. But you think because you were a judge, you can read a judge's opinion and know what they meant even if its not what they said. Is that --

A. Well, you asked me --

Q. -- essentially what your testimony is?

A. -- the question and I told you yes, I think I know how judges operate.

Q. Are you aware - and you testified about the (indiscernible) specific instances of which the judge discussed, correct?

A. Uh-huh (affirmative).

Q. Do you - are you aware of how many claims had been filed against *Garlock* historically in that case or how many claims are out there?

A. No.

Q. For example, if it was more than 500,000, you wouldn't have any knowledge of that. Is that correct?

A. I don't - I don't understand your question.

Q. You talked about in several articles and your testimony earlier today about the *Garlock* decision, correct?

A. Uh-huh (affirmative).

Q. And part of that *Garlock* decision that you were discussing was the discussion of 15 particular instances, correct?

A. Well, there were 15 cases that he did allow very thorough discovery.

Q. Right. And those 15 cases were cherry picked by the debtor in that case. Isn't that correct?

A. I don't, I don't know how they were picked.

Q. But you know they weren't randomly selected, correct?

A. Well, they weren't, but there were enough cases where there was so much, uhm, difference between what was said to the trust and what was said in the court system that it was enough to convince the judge that there was something amiss.

Q. So you think then, Ms. Ableman, if a debtor looking for examples of misbehavior finds 15 out of more than 500,000 cases, that that's substantial evidence of wrong doing. Is that your testimony?

A. I think it certainly did impress Judge Hodges.

Q. And Judge Hodges stated he made not finding as to propriety what happened there, correct?

A. Yeah and I already talked about that.

Q. You did. And are you aware that the law firms were not party to that proceeding?

A. What law firms?

Q. The law firms involved in the actions of which you're discussing. Are you aware that they weren't parties

1 to the estimation decision or proceeding?
2 A. No. But they were - some of them were ultimately
3 charged with RICO offenses.
4 Q. And those RICO cases were dismissed or withdrawn.
5 A. They were settled.
6 Q. That's correct. They were settled.
7 A. They were settled.
8 Q. And are you aware that there was no asbestos
9 claimant that was a party to that proceeding in front of
10 Judge Hodges?
11 A. I don't know that.
12 Q. Now you've argued with respect to the *Garlock*
13 decision that it provides --
14 MR. OCHS: Objection as to form. She's not
15 arguing. She's a witness, Your Honor.
16 THE COURT: Well, there seems to be a lot of
17 argument going on, but go ahead.
18 MR. MACLAY: Thank you, Your Honor.
19 THE COURT: Lawyers have been arguing too, but go
20 ahead.
21 BY MR. MACLAY: (Resuming)
22 Q. You have stated that the *Garlock* decision,
23 "provides new and powerful support for the Defense Bar
24 crusades for (indiscernible)" in a writing of yours, haven't
25 you?

A. If it says that - whatever I've written I stand by it.

Q. And you also called that your crusade, haven't you?

A. My crusade? No (indiscernible) the questions at my deposition. I said I did this because I felt strongly about it. Whether I'm a crusader or not, I don't know.

Q. Did you call yourself - did you say it's my crusade at your deposition? Do you recall?

A. Maybe I did, but it's not. I don't consider myself a crusader.

Q. Just to refresh your recollection, if you could please turn to page 137 of your deposition.

A. So I'm gonna assume that you're gonna show me that I did say that.

Q. That's correct.

A. Okay fine. I did say it then.

Q. And it's a crusade that the Defense Bar obviously supports, correct, as you've stated?

A. I don't know.

Q. Now in some of your prior articles about the *Garlock* case, you asserted that the 15 claims in the *Garlock* case were randomly selected. Do you recall that?

A. And I was corrected at my deposition. And I am - I will admit that I was - they were not randomly selected, but

whatever the evidence was before Judge Hodges was enough to convince him that there was sufficient fraud going on that he was uncomfortable with using the prior settlement history as a basis to estimate the value of the trust.

Q. And in the articles about which you were asked at your deposition, those articles stated that those 15 claims were randomly selected.

A. Yeah. I already told you I was corrected.

THE COURT: What's the point of this line of inquiry at this great length?

MR. MACLAY: Well, Your Honor, there was an ellipses in the discussion. And that ellipses was the statement that they were not randomly selected and that's what I was getting to.

THE COURT: All right. Well, she said that she was wrong about that. Now what?

BY THE WITNESS: (Resuming)

A. I'm still wrong about it.

THE COURT: She thinks there's something wrong with the tort system. Defendant presumably or people who have to pay the tort system would agree with her. What else do I need to know?

MR. MACLAY: That's --

THE COURT: But I've got - I think you had, as we in Georgia call it, a thorough and sifting cross-

1 examination, but I'm not sure we're getting into anything
2 new here.
3 MR. MACLAY: Thank you, Your Honor. Let me, let me
4 wrap it up.
5 THE COURT: Okay.
6 MR. MACLAY: I think I'm about at a conclusion
7 which I sense is the right though, answer to your inquiry.
8 BY MR. MACLAY: (Resuming)
9 Q. And Ms. Ableman, you've spoken at the Defense
10 Research Institute also known as DRI a couple of times,
11 correct?
12 A. Yes.
13 Q. Including at their asbestos seminars, correct?
14 A. Yes. No, only at their asbestos seminars.
15 Q. Thank you. And the DRI bills itself as the voice
16 of the Defense Bar, correct?
17 A. It was a free trip to New Orleans and a free trip
18 to San Francisco.
19 Q. And if you say correct now, I'll sit down. So,
20 correct?
21 A. Yeah, correct.
22 Q. Thank you.
23 THE COURT: Redirect?
24 MR. MACLAY: I think there might be a few more
25 questions. You have no questions, okay.

MR. OCHS: Your Honor, the United States Trustee has no redirect. Thank you for the opportunity.

THE COURT: May this witness be excused?

MR. OCHS: Yes. Yes, sir.

MR. MACLAY: Yes, Your Honor.

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you, Ms. Ableman. You may be excused. Okay. Do we have any other evidence?

MR. OCHS: That's it for the United States Trustee. Thank you.

THE COURT: Okay. Any other evidence over here?

MR. SIZEMORE: No, sir.

THE COURT: All right. Well, then we'll have argument tomorrow.

MR. OCHS: I'm sorry, Your Honor. I couldn't hear you.

THE COURT: I'm sorry. I should sit up. We'll have argument tomorrow.

MR. OCHS: Okay.

THE COURT: 'Cause we won't finish it in 15 minutes I don't think - 14 and a half, 14 and 20 seconds. So and since we got all the evidence in and to make sure that I don't have to keep y'all waiting, let's just start at 11:00.

VARIOUS SPEAKER: Thank you, Your Honor.

THE COURT: And, uhm, we'll take it from there, okay?

MR. OCHS: Your Honor, can I just inquire and don't --

THE COURT: You can leave everything here.

MR. OCHS: -- draw negative inference from it. How long will we have tomorrow?

THE COURT: Until we get through.

MR. OCHS: All I needed to know. Thank you, Your Honor.

THE COURT: We'll get through quicker if when I say anything else after the fifth time, whoever is up then says no. 'Cause if you don't have anything else to say then the other side won't have anything else to say. But if you're insistent upon getting the last word, the other side is gonna be insistent on getting the last word until finally I just get tired of it and encourage somebody to say you really ought not say anything this time. So as far as we have however long you think it will take or how long you guys wanna take or until I cut you off. Does that answer your question?

MR. OCHS: It does, but it feels --

THE COURT: Does that surprise you?

MR. OCHS: No. But it feels like you've been talking to my wife about the last word thing.

THE COURT: Yeah.

MR. OCHS: And I know you haven't because she stopped practicing law. She's smarter than all of us so...

MR. SINGER: There's the last word right there.

THE COURT: There you go.

MR. SINGER: I agree with that. Whatever he said.

THE COURT: Anyway for your folks who aren't from around here, you have lawyers who are so they can, they can explain how I operate or fail to operate. Okay. So we'll see everybody at 11:00. You can leave your stuff in here if you want to. We don't make any guarantees, but I don't know that we've ever had anything ever stolen. And while I think of it, we've got a lot of these exhibits, which had been admitted into evidence. But unless somebody has an objection which you can tell me now, I'm going to instead of the court reporter taking custody of the exhibits, I'm gonna ask each party to take custody of the exhibits and to produce them, if necessary if the Court needs them or if there's an appeal. Does that work?

MR. OCHS: That works for the United States Trustee, Your Honor. Thank you.

THE COURT: That just makes it easier for us to not have to figure out where to warehouse these things. I'll keep the copies, of course, so I'll have them but... Okay. All right. We'll see y'all tomorrow at 11:00.

VARIOUS SPEAKERS: Thank you, Your Honor.

THE COURTROOM DEPUTY: All rise. We'll be in recess.

[END OF AUDIO]

EXHIBIT H

James Stengel

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James Stengel represents clients in large, complex and multi-party class action litigation, including significant actions involving the chemical, building products and medical device industries. He also has significant experience representing Chinese companies in litigation in U.S. courts.

Practice Areas

- Mass Torts & Product Liability
- Bankruptcy Litigation
- Complex Litigation & Dispute Resolution
- Class Action Defense
- Automotive Technology & Mobility

Honors

- Recognized in *Chambers USA* 2010-2020, Products Liability & Mass Torts (Nationwide)
- Recognized in *Benchmark Litigation* 2008-2020, Products Liability (National); Bankruptcy, Commercial Litigation, Products Liability, Securities (New York)
- The Boris Kostelanetz President's Medal from the New York County Lawyers Association, on 12/17/13
- Recognized in *Euromoney's Guide to the World's Leading Litigation and Product Liability Lawyers* 2010-2012

Jim is consistently recognized as a leading lawyer in legal publications such as *Chambers USA* and *Benchmark Litigation. Chambers* notes Jim is “well versed in acting on mass torts and class actions relating to environment and climate change litigation.”

Jim has served in a variety of management roles at Orrick, including Managing Director of Litigation, Member of the Executive Committee and Board, Lead Director, and, currently, a member of the firm’s Management Committee.

Jim has written and lectured on complex litigation and mass tort subjects at a variety of law schools and seminars.

Before joining Orrick, Jim was a partner at Donovan Leisure Newton & Irvine LLP.

Representative Engagements

Jim has substantial experience in litigating, trying and resolving cases involving procedural and scientific complexity, cross border or multi-jurisdictional elements in Courts across the United States, among these are the following:

- **Climate Change Litigation**. Jim is part of the Orrick team representing Marathon Oil Company in claims by both government and private entities relating to climate change as a result of the production and sale of fossil fuel products. These cases, which assert a variety of claims under private and public nuisance theories as well as products liability doctrines, are pending in a variety of courts across the country.
- **Supply Chain Human Rights Litigation**. Jim is a senior member of the team representing a major technology company against claims that its purchase of lithium ion batteries subjected it to allegations of violating forced labor statutes in sub-Saharan African mining activities.
- **Johnson & Johnson Talc Litigation.** Jim is a member of the Orrick team representing Johnson & Johnson in ongoing tort litigation related to use of its talc containing products.

Education

- J.D., University of Michigan Law School, 1980, cum laude
- B.A., University of Illinois, 1977

- **Chinese Drywall Litigation.** Jim is a senior member of the team representing a number of defendants in the Federal MDL litigation regarding allegations of defective drywall manufactured in China. Most recently he successfully argued for the sovereign immunity of a top level, State Owned Enterprise under the Foreign Sovereign Immunity Act.
- **Sun v. Sinopec.** Jim led a team which was successful in obtaining a denial of all counts against units of Sinopec on grounds that RICO and the other legal regimes forming the base of the claims did not have extraterritorial application and that, therefore, actions in Hong Kong and the PRC would not support domestic claims in Federal Court.
- **Environmental Contamination Litigation.** Jim has been involved in a number of cases involving allegations of contamination of air or water. Those cases have been successfully resolved following challenges to class certification.
- **Union Carbide Corporation.** Jim is the leader of the Orrick team serving as National Counsel for Union Carbide in asbestos litigation.
- **The Dow Chemical Company.** Representing The Dow Chemical Company with respect to claims relating to silicone breast implants manufactured by Dow Corning Corporation, Jim has served as the company's lead litigation counsel in the Dow Corning Corporation reorganization and as its lead negotiator in the successful efforts to achieve a consensual resolution of that case. He also represents Dow Chemical in ongoing litigation related to the use of the herbicide Agent Orange during the Vietnam War.
- **Manville Personal Injury Settlement Trust.** Jim represented the Manville Personal Injury Settlement Trust in litigation against the tobacco industry to recover tobacco's share of liability to those injured by occupational and other exposure to asbestos.
- **Drexel Burnham Lambert.** Jim was actively involved in litigation concerning individuals and entities in Drexel's High-Yield Bond Department following Drexel's collapse and the criminal proceedings involving Michael Milken. This representation included services as Defense Liaison Counsel in the consolidated MDL proceedings, which sought to coordinate the active litigation and, subsequently, the settlement of more than 180 separate class and derivative cases, including *In re Michael Milken and Associates Securities Litigation, In the Matter of Trading by Certain Accounts, In the Matter of Certain Transactions by, through or in Conjunction with Drexel Burnham Lambert, and Presidential Life Ins. Co. v. Michael Milken*.
- **Washington Public Power Supply System (WPPSS).** Jim was counsel to WPPSS in civil and SEC proceedings arising out of its $2.25 billion municipal bond default including *In re Washington Public Power Supply System Securities Litigation and In the Matter of Transactions in WPPSS Securities*. Jim was also involved for 12 years in proceedings relating to the proper allocation of construction and financing costs among the five WPPSS nuclear projects in *Bonneville Power Administration v. WPPSS and Chemical Bank*.

Publications

- Co-author, "Issue and Claim Preclusion," Commercial Litigation in New York State Courts (updated 2018)
- Co-author, Chapters 1-3 (1. Setting the Stage, 2. Theories of Liability, 3.

Defenses) in the ABA Guide to Mass Tort Litigation (December 2017)

- Co-author, “The ABC's of BMS: Surveying The Post-Bristol-Myers Squibb Landscape,” *Bloomberg Law* (December 22, 2017)
- Co-author, “On the Edge: New York County Asbestos Litigation at a Tipping Point,” U.S. Chamber Institute for Legal Reform (August 2016)
- Co-author, “Insights and Inconsistencies: Lessons from the Garlock Trust Claims,” ILR 2/2016
- Co-author, “Determining United States Jurisdiction Over Transnational Litigation,” 35 Rev. of Litig. 1 (2016)
- Co-Author, “Asbestos Litigation” in *Lawsuit Ecosystem II: New Trends,*
  Targets and Players, ILR 12/4/14
- Co-Author, “Asbestos Litigation,” in Lawsuit Ecosystem II, U.S. Chamber Institute for Legal Reform, December 2014
- “RICO and the Plaintiffs’ Bar: Pushing the Boundaries of Extraterritoriality” in
  Federal Cases from Foreign Places, ILR 10/14
- Litigating in the Field of Dreams: Asbestos Cases in Madison County,” ILR 12/17/13
- Co-Author, “Asbestos Litigation” in The New Lawsuit Ecosystem: Trends, Targets and Players, ILR 10/28/13
- Co-author, “Navigating Mass Torts and Product Liability Litigation in the U.S. Legal System - Reflecting on the Cross-Border Asbestos Problem for Japanese Companies,” *JCA Journal* (Japan) (May 2013)
- Co-Author, “Asbestos Litigation,” in The New Lawsuit Ecosystem, U.S. Chamber Institute for Legal Reform, 2013
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- Co-author, “Asbestos Bankruptcy Trusts and Their Impact on the Tort System,” *HeinOnline* (7 J.L. Econ. & Pol'y 281 2010-2011)
- “Litigating in the Field of Dreams: Asbestos Cases in Madison County, Illinois,” U.S. Chamber Institute for Legal Reform (October 2010)
- Co-author, “Chapter 91: Litigation -; An Overview,” *Securities Law Techniques* (Matthew Bender & Co., Inc. 2008)
- Co-author, LexisNexis Expert Commentaries on *Stoneridge Investment Partners LLC v. Scientific-Atlanta, Inc.* (January 15, 2008)
- “The Asbestos End-Game,” *New York University Annual Survey of American Law* (Vol. 62:2, 2006)
- “Comments for the University of Connecticut Asbestos Litigation Symposium,” *Connecticut Insurance Law Journal* (Vol. 12:2, 2006)
- “Mass Tort Screenings: The Legislative Options,” U.S. Chamber Institute for Legal Reform (July 2005)
- Co-author, “West Virginia Asbestos Mass Trial: Efficient Innovation or Constitutional Violation?” *Defense Counsel Journal* (July 2004)
- Co-author, “Fear of Cancer After the U.S. Supreme Court's ”Ayers“ Decision,” *New York Law Journal* (August 14, 2003)
- Co-author, “On Punitive Damages, Due Process and Horizontal Federalism,” *New York Law Journal* (May 28, 2003)
- Co-author, Complex Litigation, Practising Law Institute (November 1994)
- Co-author, “Using Decision-Deterrence Theory to Encourage

Socially Desirable Behavior," *Decision Theory and the Legal Process* (1979)

Speeches and Programs

- American Legislative Exchange Council Model "Asbestos Claims Transparency Act of 2007, draftsperson, presenter
- Congressional Testimony: Hearing on Asbestos Litigation Fraud and Abuse, House Judiciary Committee, Subcommittee on The Constitution, 9/9/2011
- Testimony before the ABA Task Force on Asbestos Trusts and the Tort System, June 5-6, 2013, Washington, D.C.
- Expert Reports and Testimony in The Federal Mogul Asbestos Personal Injury Trust v. Federal Mogul Ltd., et al., The High Court of Justice Queen's Bench Division Commercial Court (Claim No. 2012 Folio 1098) (2013-14)
- Before the U.S.-China Economic and Security Review Commission, "FSIA and Chinese State Owned Enterprises," January 26, 2017 (written and oral testimony)
- "The Fallout Surrounding Bankruptcy Trust Transparency," American Conference Institute," *Asbestos Claims and Litigation*, Chicago, June 27-28, 2016
- "State of the Market: Hotbed Jurisdictions and Key Filing Trends and Rulings," American Conference Institute, *Asbestos Claims & Litigation*, Philadelphia, January 14-15, 2016
- "Garlock Continued: Impact of Records Unsealed on Bankruptcy Trusts, How it Impacts Analysis of Future Liability, and the Latest on Courts and Legislature Providing for Greater Transparency Between the Trust Claim and Court Tort Systems," American Conference Institute, 19th National Advanced Forum on Asbestos Claims and Litigation, Chicago, June 23, 2015
- "Comments on 'Four Reasons Why Defendants Should Think Twice Before Involving Forum Non Conveniens,'" Works in Progress Program, Pepperdine University School of Law, October 30, 2014
- "Past Present and Future of NYCAL," SUNY Buffalo Law School, *Civil Justice Symposium 2014 Conference*, October 6, 2014
- "Update on the RAND ICJ Asbestos Bankruptcy Project," *Id.*
- "Asbestos Bankruptcy: A Discussion of the Top Trends in Today's Chapter 11 Cases," Perrin Conferences, *Asbestos Litigation Conference: A National Overview and Outlook*, San Francisco, CA, September 8-10, 2014
- "ILR Global Forum Shopping Webinar" September 4, 2014
- "RICO and Extraterritoriality," U.S. Chamber Institute for Legal Reform (webinar) September 4, 2014
- "Madison County," Asbestos Litigation Trends-Research From Key Jurisdictions Webinar, Speaker, U.S. Chamber Institute for Legal Reform (ILR), November 20, 2013
- "Diagnosing the Disease: Emerging Litigation Trends," U.S. Chamber Institute for Legal Reform, *Healing the U.S. Lawsuit System*, 14th Annual Legal Reform Summit, October 23, 2013, Washington, D.C.
- "Asbestos Bankruptcy Update," Speaker, Perrin Conferences' 2013 Asbestos Litigation Conference - A National Overview & Outlook, September 16-18, 2013
- CCEEE – Beijing Presentation on U.S. Products Liability – (July

2013)
- "Ethics in Mass Tort Practice," HarrisMartin's Mass Tort Litigation Conference with Judge Marina Corodemus (Ret.), March 11, 2013
- "Navigating Mass Torts and Product Liability Litigation in the U.S.," The Orrick Library Series, November 27, 2012
- "Advice From the Experts: Successful Strategies for Winning Commercial Cases in New York State Courts," New York County Lawyers' Association, May 4, 2012
- "Case Study: Bisphenol A (BPA)," Judicial Symposium on Scientific Evidence in the Courts, George Mason University School of Law, April 24, 2012
- "Asbestos Bankruptcy Trusts -; A Point/Counter-Point Policy Discussion," Academy Educational Briefing, George Mason University School of Law, January 20, 2012

- "Congressional Civil Justice Caucus Academy Briefing: Point/Counter-Point Policy Discussion on Asbestos Bankruptcy Trusts," *George Mason School of Law, Law and Economic Center*, January 20, 2012

- "How Fraud and Abuse in the Asbestos Compensation System Affect Victims, Jobs, the Economy, and the Legal System," United States House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, September 9, 2011
- "Trial Courts & Bankruptcy Trusts," Asbestos Bankruptcy Conference, June 20, 2011
- "The Current Chapter of Asbestos Bankruptcy: The Impact on Claimants, Debtors, Insurers and Tort Defendants," Cutting - Edge Issues in Asbestos Litigation Conference, March 3-4, 2011
- "Asbestos Bankruptcy Trusts and Their Impact on the Tort System," 5th Annual Judicial *Symposium on Civil Justice Issues*, George Mason Judicial Education Program, December 5-7, 2010
- "Objection! Focusing on Fraud and Abuse in Litigation," U.S. Chamber Institute for Legal Reform's 11th Annual Legal Reform Summit, October 27, 2010
- American Legislative Exchange Council Model "Asbestos Claims Transparency
  Act of 2007, draftsperson, presenter
- ALI/ABA Academic Educational Program, "Mass Torts" at Law Schools Beijing
  and Shanghai, July 2007
- Invited Participant, Mass Torts Working Group, Federal Judicial Center, 12/8/98

Admissions

- New York

Court Admissions

- Supreme Court of the United States
- **United States Courts of Appeals |** Second Circuit
- **United States Courts of Appeals |** Sixth Circuit
- **United States District Courts |** Eastern District of Michigan
- **United States District Courts |** Eastern District of New York
- **United States District Courts |** Northern District of New York

- **United States District Courts |** Southern District of New York

Community

- Life Fellow, American Bar Foundation
- Fellow, New York Bar Foundation

EXHIBIT
I

Lisa T. Simpson

Partner
New York
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E lsimpson@orrick.com

As an experienced intellectual property and products liability litigator, Lisa Simpson's practice centers around consumers and their interaction with products and creative works, whether those products sit on a consumer shelf, reside on a computer as code, float through the airwaves as digital files or builds brands by developing consumer goodwill.

Practice Areas

- Intellectual Property
- Copyright, Trademark & False Advertising
- Complex Litigation & Dispute Resolution
- Mass Torts & Product Liability

Honors

- Ranked in *The World Trademark Review 1000* for Enforcement and Litigation in New York, 2020
- Recommended by *The Legal 500 USA* for Copyright and Trademark Litigation, 2019
- Columbia Law School Lecturer, Copyright and Trademark for Small Business and Technology Entrepreneurship Clinic, 2006 to present
- Duke Law School, Senior Lecturer, Wintersession, Practical Application of Trademark and Copyright Law, 2017 to present
- List of Top Women Attorneys in the NY Metro Area, *New York*

With expertise in the areas of trademark, copyright, false advertising and products liability, she focuses on companies within the technology, consumer goods and pharmaceutical industries.

Lisa has been recognized as one of the "Top 250 Women in IP" by *Managing Intellectual Property* and has received accolades from *American Lawyer*, *Benchmark Litigation, The Legal 500 USA* and *New York Times Magazine* with *World Trademark Review 1000* noting that Lisa "marries a rich comprehension of IP law with a gift for connecting with people, making full use of each advantage in the courtroom."

Intellectual Property

Lisa handles a variety of high-profile trademark and copyright matters. Lisa's copyright experience includes some of the leading copyright cases of the past decade: she represents Oracle in its litigation with Google over the Java APIs, represented DISH Networks, LCC in its copyright litigation with the broadcast networks over various features offered by DISH's Hopper DVR, including AutoHop and Sling and served as counsel to Supap Kirtsaeng before the U.S. Supreme Court on the issue of the copyright first sale doctrine's applicability to goods manufactured abroad.

Lisa's trademark litigation has spanned a variety of courts and industries: she successfully defended trademark infringement claims in the Northern District of California on behalf of Sony over its popular "Gran Turismo" racing video game and scored two separate wins in the Southern District of New York and then in the Second Circuit on behalf of client Sanei in trademark litigation brought by fashion designer Jill Stuart. Lisa also successful established secondary meaning and secured a preliminary injunction for the New York City Triathlon in S.D.N.Y.

Products Liability and Consumer Class Action

Times Magazine, 2012-2019

- Named as New York Super Lawyer - Metro, 2012-2019
- IP Department of the Year 2016, *American Lawyer*
- IP Group of the Year, *Law360*, 2014, 2016
- "Top 250 Women in IP," *Managing Intellectual Property*, 2014
- "Future Star," *Benchmark Litigation,* 2015-2016
- "IP Star," *Managing Intellectual Property*, 2014
- U.S. Copyright Firm of the Year 2014, *Managing Intellectual Property*
- Editor, *Duke Journal of Law & Contemporary Problems*
- Member, Moot Court Board, Duke Law School

Education

- J.D., Duke Law School, 1994, *with high honors*
- A.B., English, Duke University, 1991, *cum laude*

Memberships

- New York Intellectual Property Law Association (NYIPLA)

Lisa serves as national and trial counsel to Johnson & Johnson in cases asserting claims arising from the use of its talcum powder products, including claims of mesothelioma and ovarian cancer. She also represented Wyeth and Dow Agrosciences in a variety of complex products liability and consumer class action litigations. Lisa served as national counsel in hundreds of product liability matters concerning injuries allegedly associated with childhood vaccines, handled litigations involving the labeling and advertising of Advil, and obtained the dismissal, prior to class certification, of a consumer class action in a matter concerning the calcium supplement Caltrate.

Current Pro Bono Representation

Lisa serves as trial counsel for Planned Parenthood of Indiana and Kentucky, securing an important trial win invalidating as unconstitutional a statewide law that jeopardized access to safe and legal abortion services in Kentucky.

Lisa also has served in a variety of firm management roles, including on the Firm's Management Committee, as Hiring Partner for the New York office as well as Partner-in-Charge of Firmwide Campus Recruiting and as a member of the Professional Development Committee.

Representative Engagements

Lisa's notable cases include the following:

Johnson & Johnson. Lisa serves as national and trial counsel to Johnson & Johnson, defending the company's talcum powder products against claims that those products cause mesothelioma, ovarian cancer and contain asbestos.

Sony Computer Entertainment America. Secured a unanimous Ninth Circuit victory, which affirmed the Northern District of California court's ruling that Sony's popular "Gran Turismo" racing video games are expressive works under the First Amendment and therefore not subject to VIRAG's trademark infringement claim. The Ninth Circuit rejected VIRAG's claim that the games were commercial speech and applied the *Rogers v. Grimaldi* test, finding that the use of VIRAG's trademark furthered the artistic goal of realism and did not mislead consumers.

Oracle America, Inc. Lisa represented Oracle in its recent copyright fair use jury trial against Google over the use of Oracle's JAVA source code in Google's Android operating system.

Coorstek Medical LLC. Lisa served as trial counsel in this bench trial in the District of Colorado concerning trade dress rights in the color pink for ceramic hip ball replacements.

Kirtsaeng v. John Wiley & Sons, Inc. Lisa obtained a victory in the U.S. Supreme Court on behalf of Petitioner Kirtsaeng concerning the application of the Copyright Act's first sale doctrine to foreign-manufactured goods.

DISH Network, LLC. Lisa represented DISH in its highly publicized copyright and breach of contract disputes with FOX, NBC, ABC and CBS in NY and California concerning DISH's Hopper DVR and successfully defeated Fox's and ABC's three separate motions for a preliminary injunction on DISH's PrimeTime Anytime, AutoHop

and Sling features, filed in NY and California federal court. Lisa and the DISH team also defeated two separate appeals by Fox of those ruling in the Ninth Circuit and the team obtained a favorable summary judgment decision dismissing the majority of Fox's copyright claims.

MGA Entertainment, Inc. Lisa represented MGA in its appeal to the Ninth Circuit with respect to its copyright and trade secret dispute with Mattel over the Bratz dolls and obtained a complete reversal of the District Court's order in MGA's favor. On retrial to a jury in the California district court, Lisa was a member of the trial team that obtained a complete victory for MGA. The jury held that MGA was the owner of the Bratz dolls and found that Mattel was liable to MGA for $309m on its counterclaims.

Sanei International Co., Ltd. Lisa successfully defeated two applications for preliminary injunction filed by designer JILL STUART against Japanese retailer Sanei, and obtained dismissal of two separate trademark, copyright and contract claims in litigations pending in SDNY. Lisa also successfully argued two separate appeals of those wins in the Second Circuit.

Lisa also represented Sanei in a separate trademark dispute over the fashion designer's trademark and name CHARLOTTE RONSON.

NYC Triathlon. Lisa obtained a preliminary injunction for NYC Triathlon in a trademark dispute over the use of its name, which included a judicial finding of secondary meaning in the NYC TRIATHLON service mark.

Microsoft. Lisa argued and won an appeal in New York's Appellate Division, First Department, affirming the dismissal of a breach of contract action against Microsoft.

Facebook, Inc. Lisa represented Facebook in a variety of matters, including New York-focused litigation relating to the Winklevoss twins' claims of ownership of Facebook and matters implicating the Communications Decency Act (CDA) and the Electronic Communications Protection Act. In a matter of first impression in New York, she obtained a dismissal of all claims against Facebook based on CDA immunity.

Wyeth. Lisa represented Wyeth in a variety of matters, including:

- Thimerosal-containing vaccines: Lisa served as national counsel to Wyeth in hundreds of product liability litigations throughout the United States concerning injuries, such as autism, allegedly associated with the use of the preservative thimerosal in childhood vaccines
- Advil: Lisa represented Wyeth over the course of seven years in several product liability litigations involving the labeling and advertising of its over-the-counter analgesic, Advil, in which plaintiffs alleged kidney disease caused by the use of Advil
- Caltrate: Lisa obtained the dismissal of a consumer class action prior to class certification in a matter concerning the calcium supplement Caltrate pending in New York state court

Dow AgroSciences. Lisa obtained the dismissal of state law claims brought by more than 300 residents of Ecuador alleging personal injuries from exposure to a commercial fungicide used on

banana crops.

iVillage/NBC. Lisa represented iVillage (which was acquired by NBC in 2006) in several significant lawsuits dealing with, among other issues:

- the protection of the company's iBABY trademark;
- the value of certain disputed employee stock options;
- the unauthorized use of one of the company's Internet bulletin boards to anonymously post vulgar, obscene, derogatory and defamatory messages;
- the defense and prosecution of claims involving a licensing dispute over trademarks and rights of publicity; and
- the complete dismissal of all federal claims, namely trademark infringement, false advertising, dilution and cybersquatting, asserted against iVillage in the Northern District of California based on iVillage's use of certain trademarks on its astrology website.

MP3.com. Lisa represented Internet music provider MP3.com in numerous litigations in which various record companies, including all the major records labels, asserted copyright claims arising from the launch of MP3.com's online music service. Lisa also represented MP3.com in litigation brought by several recording artists, as a purported class, who asserted various copyright claims against MP3.com and the major record labels.

Publications

- "Managing Litigation in the Ever-Changing Landscape of Copyright and Trademark Law," *Litigation Strategies for Intellectual Property Cases, 2015 Edition: Leading Lawyers on Analyzing Key Decisions and Effectively Litigating IP Cases*

Speeches and Programs

- "Developments in Digital Music," Intellectual Property Law Institute, September 26, 2016
- "Proving Secondary Meaning at the Preliminary Injunction Stage," ALM Corporate Counsel Copyright and Trademark Forum, November 2015
- "Who Does This Belong To? Protecting Your IP Rights," 2015 Orrick In-House Academy, January 2015
- "The First Sale Doctrine: Implications for Digital Rights in Print and Music," Advanced Copyright Law Annual Review, PLI, April 4, 2014
- "Protecting Design Rights: Comparing Design Patents, Trade Dress and Copyright -- Developments in Trade Dress," NYIPLA, July 17, 2013
- "*Kirtsaeng v. John Wiley & Sons. Inc.*: Statutory and Policy Perspectives," Current Developments in Copyright Law 2013, New York City Bar, June 4, 2013
- "A Matter of Import: Supreme Court's *Kirtsaeng* Decision Revisits First Sale Doctrine and Tackles Geographic Limitations on Exhaustion," The Copyright Society of the U.S.A., New York Chapter, April 30, 2013
- Addressed new developments under the Communications Decency Act ("CDA") and the Digital Millennium Copyright Act ("DMCA") for "New Social Media: Trademark, Copyright, Privacy and Patent Perspectives," New York City Bar, Women in IP, February 28, 2012

- "Trade Dress Protection and Store Brand/Private Labels," IP Trademark and Copyright Counsel Forum -- How to Protect Your Intellectual Property in a Changing World, November 10, 2009
- 2006-present: Guest Lecturer on Copyright and Trademark at Columbia Law School, Small Business Clinic.

Admissions

- New York

Court Admissions

- **United States Courts of Appeals** | Second Circuit
- **United States Courts of Appeals** | Ninth Circuit
- **United States Courts of Appeals** | Federal Circuit
- **United States District Courts** | Southern District of New York
- **United States District Courts** | Eastern District of New York
- **United States District Courts** | Western District of New York
- **United States District Courts** | District of Colorado
- Supreme Court of the United States

EXHIBIT
J

Laurie Strauch Weiss

Partner
New York
T +1 212 506 3749
E lstrauchweiss@orrick.com

Laurie Strauch Weiss is a partner in the New York office. She represents clients in large, complex and multi-party class action litigation, and has handled significant actions involving the chemical, tobacco and medical device industries.

Laurie advises companies on overall strategies, from pre-litigation assessments to the final resolution of matters, which often involve novel scientific issues. Her clients frequently enlist her to strategically address the scientific claims asserted by non-governmental organizations, the plaintiffs' bar and consumer advocacy groups which affect the reputation of their products both before and during litigation.

Laurie is a frequent lecturer, author and media source on topics concerning mass tort/class actions, complex scientific issues and expert witnesses.

Prior to joining Orrick, Laurie was an associate at Donovan Leisure Newton & Irvine LLP, where she gained extensive experience in complex litigation including class actions based on product liability, securities RICO and fraud claims.

Representative Engagements

- Alien Tort Statute (ATS), chemical and environmental pollution litigation. Ms. Strauch Weiss represented Dow Chemical and Dow AgroSciences in Viera v. Eli Lilly, a lawsuit alleging violations of ATS. The case, filed by 40 Brazilian residents in federal court in Indiana, claims personal injuries as a result of localized environmental pollution allegedly emanating from manufacturing sites in Brazil. In September 2010, Laurie's team obtained a dismissal with prejudice of plaintiffs' claims based on the ATS. Plaintiffs's subsequent motion to reconsider the dismissal was denied in May 2011. It was a precedent-setting ruling in that it denied alleged international environmental pollution claims brought pursuant to the ATS.
- Breast implant/medical device litigation. Laurie represented The Dow Chemical Company with respect to claims involving silicone breast implants manufactured by Dow Corning Corporation (DCC), as well as counseling on the overall strategy to litigate and resolve breast implant litigation against the company which resulted in the successful consensual resolution of that case. She continues to advise Dow Chemical regarding matters related to the Settlement Facility-Dow Corning Trust, the DCC Litigation Facility, Inc., and foreign litigation.

Practice Areas

- Mass Torts & Product Liability
- Complex Litigation & Dispute Resolution

Honors

- Recognized in *Benchmark Litigation* 2013-2015, Products Liability (National); General Commercial and Products Liability (New York)
- Named to the “Top 250 Women in Litigation,” *Benchmark Litigation* 2013-2015
- Recognized in *Euromoney's Expert Guide to the World's Leading Litigation and Product Liability Lawyers* 2012; 2014
- Recognized in *Euromoney's Expert Guide to Women in Business Law* (United States: Product Liability) 2012-2013
- Endorsed in *PLC Which lawyer?* 2012 for Life Sciences: Product Liability (USA)
- Editor, *Boston College Law Review*

Education

- J.D., Boston College Law School, 1992
- B.A., Cornell University, *with distinction in all subjects*

Memberships

- Member, Product Liability *Law360* Editorial

Advisory Board, 2011 - present

- Member, DRI - The Voice of the Defense Bar, Toxic Tort and Environmental Law Committee
- Member, ALI CLE (formerly ALI-ABA) Litigation Advisory Panel, 2009 - present

- Agent Orange herbicide litigation. Laurie represented Dow Chemical in its historic and complete win in actions brought under the ATS filed by Vietnam War veterans and by Vietnamese nationals alleging personal injuries from exposure to the herbicide Agent Orange. In the case, the Second Circuit issued three opinions affirming summary judgment for Dow, as well as for the other defendants. The U.S. Supreme Court denied certiorari in March 2009. When The American Lawyer gave Orrick an honorable mention in its “Litigation Department of the Year” 2010 issue, the magazine cited the Agent Orange victory as an example of our firm's sterling appellate record for product liability defendants. Ms. Strauch Weiss also represents Dow Chemical in ongoing litigation related to Agent Orange.
- Asbestos litigation. Laurie acts as counsel to Union Carbide in connection with asbestos-related personal injury lawsuits. In that capacity, she has developed and coordinated a national scientific and medical defense for Union Carbide.
- Asbestos litigation. Laurie represented the Manville Trust in a series of multibillion dollar suits brought in federal court against the tobacco industry to recover tobacco's share of liability for those injured by occupational and other exposure to asbestos.

Publications

- “Female Powerbrokers Q&A: Orrick's Laurie Strauch Weiss,” *Law360,* January 30, 2014
- Co-author, “Supreme Court Limits ATS Litigation - But Door Remains Slightly Ajar,” *Corporate Counsel,* Spring 2013, Vol. 27, No. 2, ABA Section of Litigation, July 8, 2013
- Co-author, “Defending Against Alien Tort Statute Cases Post-Kiobel - What Are the Key Defenses?,” The American Law Institute Continuing Legal Education, June 12, 2013
- Co-author, “Navigating Mass Torts and Product Liability Litigation in the U.S. Legal System - Reflecting on the Cross-Border Asbestos Problem for Japanese Companies,” *JCA Journal* (Japan), May 2013
- “Q&A With Orrick's Laurie Strauch Weiss,” *Law360*, February 27, 2013
- Co-author, “Litigation Update: Foreign Defendants May Encounter Additional Burdens When Challenging 'Personal Jurisdiction,'” Orrick Client Alert, January 9, 2012
- Co-Author (with Russell Cohen), “From the Experts: Recent Developments in Alien Tort Statute Litigation,” Law.com, December 23, 2011
- Co-author, “China Report: Navigating the U.S. Legal System,” written for the Chinese Industrial Federation, March 2011
- Co-author, “Exposure Torts,” A Practitioner's Guide to Class Actions, Chapter 17C, American Bar Association, 2010
- Co-author, “Issue and Claim Preclusion,” chapter in *Commercial Litigation in the New York State Courts*, West Pub. Co., 2010
- Co-author with Adam Zimmerman, “How One State's Law May Reshape the Vioxx Litigation,” *New York Law Journal*, November 7, 2006
- Author, “Expert Witness Malpractice Actions: Emerging Trend or Aberration?,” *The Practical Litigator*, March 2004
- “Legal Framework for the Estimation of Asbestos-related Personal Injury Claims in Chapter 11 Bankruptcies,” published June and November 2001
- Managing Editor, ALI-ABA, 3 vol. set, *Civil Practice and*

Litigation in Federal and State Courts, (8th ed.), August 1998

Speeches and Programs

- "Kiobel: The Supreme Court Redefines Alien Tort Statute Litigation - What's Left?," ALI-CLE, June 12, 2013
- "Navigating Mass Torts and Product Liability Litigation in the U.S.," The Orrick Library Series, November 27, 2012
- "Pre-Settlement Considerations: Negotiation and Settlement - Strategies and Best Practices," 6th Annual Chemical and Industrial Products Regional Workshop, October 13, 2011
- "Update on Emerging Areas of Product Liability Litigation: No-Injury Class Actions and Recent Developments with the Alien Tort Statute," Perrin Conferences' The New Era of Product Liability Law - Emerging Issues Driving Mass Tort & Environmental Litigation, May 5, 2011
- "Evidence, Procedure and Trial Update," ALI-ABA, March 27, 2009
- "China Product Recalls: Mass Recalls, Mass Litigation," ALI-ABA, May 29-31, 2008
- "New Developments in Spoliation," Civil Practice and Litigation Techniques in Federal and State Courts, ALI-ABA, March 2007
- "Spoliation of Expert Evidence," Opinion and Expert Testimony in Federal and State Courts, ALI-ABA, May 2005, February 2006 and January 2007
- "Expert Witness Malpractice Actions: Emerging Trend or Aberration?" - in Opinion and Expert Testimony in Federal and State Courts, ALI-ABA, May 2005, February 2006, January 2007 and February 2008 (article cited in *Hoskins v. Metzger*, 102 So.3d 752 (Fla. Dist. Ct. App. 12/19/2012))
- "Recent Developments in Mass Tort Litigation," ALI-ABA China Program, Renmin University of China Law School, Beijing, China and Shanghai Jiao Tang University Law School, Law Society of Shanghai, Shanghai, China, June 2006
- "Preclusion of Legal Experts as Expert Witnesses," New Directions in Expert Testimony: Scientific, Technical and Other Specialized Knowledge Evidence in Federal and State Courts, ALI-ABA, May 2000/April 2004; update pub. April 2004

Admissions

- New York

Court Admissions

- Supreme Court of the United States
- Supreme Judicial Court of Massachusetts
- **United States Courts of Appeals |** Second Circuit
- **United States District Courts |** Eastern District of Michigan
- **United States District Courts |** Eastern District of New York
- **United States District Courts |** Southern District of New York

EXHIBIT
K

Christopher Vejnoska

Partner and General Counsel
San Francisco
T +1 415 773 5916
E cvejnoska@orrick.com

Chris serves as Orrick's General Counsel. In his practice, he is a first chair trial lawyer with more than 25 years of experience handling high stakes, precedent-setting cases, particularly in the products liability arena. He has had years where clients asked him to serve as trial counsel for five or more products cases, and his most recent products liability engagements include leading a cross-office team in defending multiple Chinese companies in an MDL and serving as trial counsel for a large talc company. Chris also is the President of a captive insurance company owned by Orrick and a number of other law firms.

Chris also has acted as national counsel for companies facing thousands of mass tort product liability claims and complex, multiparty class action litigation, and has counseled multinational companies entangled in lengthy, enterprise-threatening litigation and negotiated legal and business solutions involving billions of dollars. He has extensive experience in complex and commercial litigation, ranging from insurance recovery disputes to trade secrets issues, and has significant experience in assisting foreign aerospace companies with international arbitration disputes with first-tier aircraft manufacturers.

Earlier in his career, Chris represented large public companies in mergers, acquisitions, strategic investments and private financings; private companies in initial public offerings; and emerging growth companies in general corporate matters. Chris' transactional experience also offers clients a unique perspective on risk mitigation strategies to avoid costly litigation in the future.

Chris also is the Chair of Orrick's Risk Management Committee. Prior to joining the firm, Chris was a partner at Clifford Chance and a partner at Brobeck, Phleger & Harrison, where he was a member of the Policy Committee, a member of the Executive Committee, Chair of the Risk Management Committee and Chair of the Hiring Committee.

Representative Engagements

Practice Areas

- Mass Torts & Product Liability
- Complex Litigation & Dispute Resolution
- Trade Secrets Litigation
- International Arbitration & Dispute Resolution
- Class Action Defense
- 3D Printing

Honors

- John Harvard Scholar
- Harvard College Scholar
- University Nominee for the Rhodes Scholarship, Marshall Scholarship and Sheldon Fellowship (Harvard College)

Education

- J.D., Harvard Law School, 1980
- B.A., Harvard College, 1977, *cum laude*

Memberships

- State Bar of California
- Association of Business Trial Lawyers

Chris's select engagements of work include the following:

Mass Torts and Product Liability Litigation

- **Johnson & Johnson.** Acting as first chair trial counsel for the company in its asbestos-related talc litigation.
- **Union Carbide Corporation.** Serving as counsel and first chair trial counsel in the defense of asbestos personal injury claims.
- **Chinese Manufacturer.** Representing one of China's largest building materials companies in complex federal multidistrict litigation involving allegations of defective drywall; the matter involves more than 30,000 plaintiffs and 10,000 defendants.
- **Fibreboard Corporation.** Starting in the late 1980s, served as national coordinating counsel for Fibreboard in more than 300 product liability cases, many of which were brought as national or statewide class actions, involving asbestos-containing insulation products including class and consolidated actions involving all primary and secondary schools in the United States, all colleges and universities, U.S. government-owned buildings, and public buildings in numerous states and cities. He also served as Fibreboard's national coordinating counsel in the defense of more than 200,000 asbestos-related personal injury cases and assisted in negotiations regarding global settlement and the resolution of thousands of trust cases.
- **Owens Corning.** Served as co-national coordinating counsel for Owens Corning in more than 100,000 asbestos-related personal injury claims, including representing Owens Corning in a national settlement program that resolved tens of thousands of these cases.
- **International Product Manufacturer.** Represented a large multinational manufacturer of respirators in a number of silica cases, and another large international product manufacturer in asbestos litigation.

Insurance Coverage Disputes

- **Fibreboard Corporation.** Represented Fibreboard in its insurance coverage case against its insurers for personal injury liabilities extending over a period of almost 50 years. Served as one of Fibreboard's trial counsel in *In re Asbestos Insurance Coverage Cases*, a trial that spanned more than five years and was described by *The Washington Post* as the largest trial in U.S. history. By winning all the major issues in the trial, Fibreboard was able to obtain several billion dollars from its insurers in a global settlement.
- **Odwalla.** In litigation involving the AIG Insurance Group, successfully negotiated the defense and indemnification by Odwalla's insurers of claims alleging that e-coli contamination of the company's apple juice had caused death and other bodily injuries, and also assisted with its defense against food contamination claims.
- **Mentor Corporation.** Litigated claims against Mentor Corporation's insurers in California and Minnesota for liabilities arising from its breast implant devices, and negotiated the funding by those insurance companies of Mentor's nationwide mandatory class settlement of all breast implant claims, which was the first such settlement in the implant litigation. Also counseled Mentor in its pursuit of coverage for claims arising from other medical devices.
- **Wyeth.** Served as trial counsel in a multiweek arbitration in

Bermuda over coverage for injuries allegedly caused by defective birth control implants.
- **Leading Electronics Company.** Represented a large electronics company, a union ERISA plan and an Internet-based company in separate insurance coverage disputes.

Additional Commercial Experience

- **Environmental Claims.** In *In re Sacramento River Spill Cases I and II*, defended Southern Pacific Railroad against claims arising out of a derailment and toxic spill into the Dunsmuir River.
- **Trade Secrets and Proprietary Information Litigation.** Represented a technology company in a licensing and trade secret dispute with a Taiwanese competitor.
- **Accounting Dispute.** Arbitrated a complex accounting treatment matter for a major energy company.
- **Commercial Disputes.** Represented two aerospace companies in significant aircraft manufacturing disputes and international arbitrations; a well-known computer company in litigation involving promissory notes; and an alternative energy company against various equipment and financial claims in separate disputes.

Publications

- "Lessons Learned: Practical Advice for New Defendants in American Asbestos Litigation," *JCA Journal*, September 9, 2013.
- "Jury Instructions on Electronic Media: What Message Are We Sending Jurors?," Bloomberg BNA's *Electronic Commerce & Law Report*, March 4, 2013 (also published in Bloomberg BNA's *United States Law Week*, March 5, 2013).

Speeches and Programs

- "Navigating Mass Torts and Product Liability Litigation in the U.S.," The Orrick Library Series, November 27, 2012.

Admissions

- California

Court Admissions

- Federal District Court
- **United States Courts of Appeals** | Ninth Circuit

EXHIBIT L

Proposed Order

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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

ORDER APPOINTING SANDER L. ESSERMAN AS LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS

This matter coming before the Court on the *Motion of the Official Committee of Asbestos Personal Injury Claimants for an Order Appointing Sander L. Esserman as Legal Representative for Future Asbestos Claimants* (the "**Motion**"),[2] filed by the Committee; the Court having reviewed the Motion and the Exhibits thereto, including the Esserman Declaration attached thereto as Exhibit B, and having heard the statements of counsel regarding the relief requested in the Motion at a hearing before the Court (the "**Hearing**"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding

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

[2] Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

pursuant to 28 U.S.C. § 157(b)(2), and (c) notice of the Motion and the Hearing was sufficient under the circumstances and no other or further notice is or shall be required; and the Court having determined that the legal and factual bases set forth in the Motion and the Esserman Declaration and at the Hearing establish good and sufficient cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. Pursuant to sections 105(a) and 524(g)(4)(B)(i) of the Bankruptcy Code, Sander L. Esserman is hereby appointed as the FCR in these Chapter 11 Cases for the purpose of representing and protecting the rights of the future claimants. As FCR, Mr. Esserman shall represent the interests of, appear on behalf of, and be a fiduciary to future claimants to protect the rights and interests of such future claimants and shall be entitled to compensation in connection therewith from the date of the filing of the Motion. However, Mr. Esserman had no obligation to perform the duties of FCR until the Court has entered this Order and shall not be liable to any party on account of any services performed prior to entry of this Order. Mr. Esserman will have no other obligations except those that may be prescribed by orders of the Court and accepted by Mr. Esserman.

3. As FCR, Mr. Esserman shall be a party in interest in these cases and shall have standing under section 1109(b) of the Bankruptcy Code to be heard on any issue in these cases in the Bankruptcy Court, the District Court, or any other court affecting the rights of future claimants. As FCR, Mr. Esserman shall have the powers and duties of a committee set forth in section 1103 of the Bankruptcy Code as are appropriate for an FCR.

4. In his role as the FCR, Mr. Esserman may employ attorneys and other professionals consistent with sections 105, 327, and 1103 of the Bankruptcy Code, subject to prior approval of this Court. Such attorneys and other professionals will be subject to the terms of the Interim

Compensation Order. In addition, without further Court approval, Mr. Esserman may utilize the services of his firm, Stutzman Bromberg, for primarily administrative matters and other specific assignments. Payment of Stutzman Bromberg's fees or the reimbursement of any of Stutzman Bromberg's expenses will be subject to the terms of the Interim Compensation Order and Mr. Esserman will include the services provided by Stutzman Bromberg in his applications for payment, pursuant and subject to the orders and procedures of this Court.

5. Compensation, including professional fees and reimbursement of expenses, shall be payable to Mr. Esserman and his professionals from the Debtors' estates, subject to approval of this Court, and in accordance with the terms, conditions and procedures set forth in the Interim Compensation Order. Mr. Esserman will be compensated at the rate of $850 per hour for calendar year 2020, subject to periodic adjustment (generally annually) in the ordinary course of Mr. Esserman's business, plus reimbursement of reasonable and documented out-of-pocket expenses.

6. The FCR shall not be liable for any damages, or have any obligation other than as prescribed by order of the Court; provided, however, that the FCR may be liable for damages caused by willful misconduct or gross negligence. The FCR shall not be liable to any person as a result of any action or omission taken or made in good faith. The Debtors jointly and severally shall indemnify, defend and hold harmless Mr. Esserman, his partners, associates, principals, employees and professionals (individually an "**Indemnified Party**") from all claims against any of them, and all losses, claims, damages, or liabilities (or actions in respect thereof) to which any of them may become subject, as a result of or in connection with such party rendering services pursuant to any order approving this Motion or to the FCR, unless and until it is finally judicially determined that such losses, claims, damages or liabilities were caused by willful misconduct or gross negligence on the part of such Indemnified Party. If before the earlier of (i) the entry of an order confirming one or more plans of reorganization in these cases, and such order(s) having

become final and no longer subject to appeal, and (ii) the entry of an order closing these Chapter 11 Cases, an Indemnified Party believes that he, she or it is entitled to payment of any amount by the Debtors on account of the Debtors' obligations to indemnify, defend, and hold harmless as set forth herein, including, without limitation, the advancement of defense costs, the Indemnified Party must file an application for such amounts with the Court, and the Debtors may not pay any such amounts to the Indemnified Party before the entry of an order by the Court authorizing such payments. The preceding sentence is intended to specify the period of time during which the Court has jurisdiction over the Debtors' obligations to indemnify, defend and hold harmless as set forth herein, and is not a limitation on the duration of the Debtors' obligation to indemnify any Indemnified Party. In the event that a cause of action is asserted against any Indemnified Party arising out of or relating to the performance of his, her or its duties pursuant to any order.

7. Mr. Esserman and any Court-approved counsel retained by Mr. Esserman in his role as FCR shall be deemed members of the "Master Service List" for purposes of the Case Management Order.

8. Unless otherwise ordered by this Court or as provided for in any confirmed plan of reorganization, Mr. Esserman's appointment as FCR shall terminate upon the effective date of a plan of reorganization in these Chapter 11 Cases or otherwise by written resignation or incapacity to serve.

9. This Court shall retain exclusive jurisdiction to interpret, enforce and implement the terms and provisions of this Order and to resolve any disputes arising hereunder.

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

United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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

NOTICE OF HEARING

PLEASE TAKE NOTICE that the Official Committee of Asbestos Personal Injury Claimants in the above-captioned chapter 11 case has filed the *Motion of the Official Committee of Asbestos Personal Injury Claimants for an Order Appointing Sander L. Esserman as Legal Representative for Future Asbestos Claimants and Opposition to the Debtors' Motion for an Order Appointing Joseph W. Grier, III, as Legal Representative for Future Asbestos Claimants* (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that your rights may be affected by this Motion. You should read the Motion carefully and discuss it with your attorney. If you do not have an attorney, you may wish to consult with one.

PLEASE TAKE FURTHER NOTICE that, pursuant to Fed. R. Bankr. P. 8006, written responses, if any, must be filed **on or before September 18, 2020** (the "**Response Deadline**"), in order to be considered. If you do not want the Court to grant the relief requested in the Motion, or if you oppose it in any way, you MUST:

1. File a formal, written response with the Bankruptcy Court at:

   Clerk, United States Bankruptcy Court
   Charles Jonas Federal Building
   401 West Trade Street
   Charlotte, North Carolina 28234-4189

2. Serve a copy of your response on all parties in interest, including:

   a) U.S. Bankruptcy Administrator
      402 West Trade Street
      Charlotte, NC 28202

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

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d) CAPLIN & DRYSDALE, CHARTERED
Kevin C. Maclay
Todd E. Phillips
One Thomas Circle NW, Suite 1100
Washington, DC 20005

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held at **1:00 p.m. on SEPTEMBER 29, 2020**, before the Honorable Judge J. Craig Whitley in the Bankruptcy Courtroom 1-4, 401 West Trade Street, Charlotte, North Carolina.

PLEASE TAKE FURTHER NOTICE that if you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting the relief requested. No further notice of the hearing will be given.

Dated: September 4, 2020

/s/ Glenn C. Thompson
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