

**EXECUTION COPY**

**ASARCO LLC and certain related Debtors**

**ASBESTOS PERSONAL INJURY SETTLEMENT TRUST  
DISTRIBUTION PROCEDURES**

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## ASARCO LLC

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

The ASARCO LLC Asbestos Personal Injury Settlement Trust Distribution Procedures (the “**TDP**”) contained herein provide for resolving all Asbestos Personal Injury Claims, including all asbestos-related personal injury and death claims caused by the conduct of and/or the exposure to fibers or products for which ASARCO LLC and/or Lac d’Amiante du Québec Ltée, Lake Asbestos of Quebec, Ltd., LAQ Canada, Ltd., CAPCO Pipe Company, Inc., Cement Asbestos Products Company, Encycle, Inc., ASARCO Consulting, Inc., ALC, Inc., American Smelting and Refining Company, AR Mexican Explorations Inc., Asarco Master, Inc., Asarco Oil and Gas Company, Inc., Bridgeview Management Company, Inc., Covington Land Company, Government Gulch Mining Company, Limited, Southern Peru Holdings, LLC, AR Sacaton, LLC, a Delaware limited liability company, ASARCO Exploration Company, Inc., Wyoming Mining and Milling Company, Alta Mining and Development Company, Tulipan Company, Inc., Blackhawk Mining and Development Company, Limited, Peru Mining Exploration and Development Company, and Green Hill Cleveland Mining Company (collectively referred to as “**ASARCO**”), and their predecessors, successors, and assigns, have legal responsibility as provided in and required by the ASARCO Incorporated and Americas Mining Corporation’s Seventh Amended Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code as Modified on August 20, 2009, August 23, 2009, and August 27, 2009 (as it may be amended or modified, the “**Plan**”)<sup>1</sup> and the ASARCO LLC

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<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan and the Asbestos Trust Agreement, *provided, however*, that, unless otherwise

Asbestos Personal Injury Settlement Trust Agreement (the “**Asbestos Trust Agreement**”). The Plan and the Asbestos Trust Agreement establish the Asbestos Trust (the “**Asbestos Trust**”). The Trustees of the Asbestos Trust (the “**Trustees**”) shall implement and administer this TDP in accordance with the Asbestos Trust Agreement.

## **SECTION I**

### **Introduction**

**1.1 Purpose.** This TDP has been adopted pursuant to the Asbestos Trust Agreement. It is designed to provide fair, equitable and substantially similar treatment for all Asbestos Personal Injury Claims.

**1.2 Interpretation.** 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 the holders of Asbestos Personal Injury Claims as of the Effective Date.

**1.3 Definitions.** The following capitalized terms used herein shall have the meanings set forth below:

“Asbestos Trust Determined Claim” means an Asbestos Personal Injury Claim liquidated pursuant to this TDP.

“Chapter 11 Cases” means the cases under chapter 11 of the Bankruptcy Code pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, jointly administered and known as In re ASARCO LLC et al., Case No. 05-21207.

“CIP Agreements” means Asbestos In-Place Insurance Coverage regarding Asbestos Premises Liability Claims.

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stated, ASARCO shall have the meaning described in the preamble to this TDP. Demands channeled to the Asbestos Trust by the Plan shall only be eligible to become an Asbestos Trust Determined Claim if and when they become an Asbestos Personal Injury Claim.

“Pre-Petition Liquidated Asbestos Personal Injury Claim” means an Asbestos Personal Injury Claim that was liquidated by (i) a binding settlement agreement for the particular claim entered 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.

## SECTION II

### Overview

**2.1 Asbestos Trust Goals.** The goal of the Asbestos Trust is to treat all claimants similarly and equitably and in accordance with the requirements of Section 524(g) of the Bankruptcy Code. This TDP furthers that goal by setting forth procedures for resolving Asbestos Premises Liability Claims either in the tort system or by the TDP, depending on insurance coverage, and for processing and paying all other Asbestos Personal Injury Claims on an impartial, first-in-first-out (“**FIFO**”) basis, with the intention of paying all holders of Asbestos Trust Determined Claims 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.<sup>2</sup> To this end, the TDP establishes a schedule of eight asbestos-related diseases (“**Disease Levels**”), seven of which have presumptive medical and exposure requirements (“**Medical/Exposure Criteria**”) and specific liquidated values (“**Scheduled Values**”), and six 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, have been selected and derived from the best

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<sup>2</sup> 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.

available information considering the settlement histories of ASARCO and the rights claimants would have in the tort system absent the bankruptcy, with the intention of achieving a fair allocation of the Section 524(g) Trust Assets among claimants suffering from different diseases.

**2.1 (a) Asbestos Premises Liability Claims.** Asbestos Premises Liability Claims shall be liquidated pursuant to Section 5.3(c) of this TDP.

**2.1(b) Asbestos Personal Injury Claims.** Except as provided in Sections 2.1(a) and 5.3(c), to establish a valid Asbestos Personal Injury Claim, a claimant must meet the requirements set forth in this TDP. Asbestos Personal Injury Claims shall be processed, liquidated and paid based on the procedures provided in this TDP.

Because the assets expected to be contributed to the Asbestos Trust are estimated to be less than the value of all Asbestos Personal Injury Claims that are expected to be filed with the Asbestos Trust over its life, the holders of Asbestos Personal Injury Claims shall receive a pro rata portion of the liquidated value of their claims (a “**Payment Percentage**”) that shall be established pursuant to Sections 2.3 and 4.2. To the extent that the Asbestos Trust has liability for an Asbestos Trust Determined Claim, the Asbestos Trust shall pay the Asbestos Trust Determined Claim subject to the Maximum Annual Payment, Claims Payment Ratio and Payment Percentage, unless otherwise provided in this TDP.

**2.2 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). The Asbestos Trust shall take all reasonable steps to resolve Asbestos Personal Injury Claims as efficiently and expeditiously as possible at each stage of claims processing, including pro bono evaluation, mediation 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 individually evaluated pursuant to the valuation factors set forth in Section 5.3(b)(2). The Asbestos Trust shall make every effort to resolve each year at least that number of Asbestos Personal Injury Claims required to exhaust the Maximum Annual Payment for Category A Claims and Category B Claims, as those terms are defined below.

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

Claimants holding claims involving Disease Levels III-VIII may alternatively seek to establish a liquidated value for the claim that is greater than its Scheduled Value by electing the Asbestos Trust's Individual Review Process. However, the liquidated value of a claim that undergoes the Individual Review Process for valuation purposes may be determined to be less than the Scheduled Value for the applicable Disease Level, and in any event shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(b)(3), unless the claim qualifies as an Extraordinary Claim as defined in Section 5.4(a), in which case its liquidated

value cannot exceed the maximum extraordinary value specified in Section 5.4(a) for such claims. Disease Level VI (Lung Cancer 2) claims and all Foreign Claims may be liquidated only pursuant to the Asbestos Trust's Individual Review Process.

Based on ASARCO's claims settlement histories, 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, with the expectation that the combination of settlements at the Scheduled Values and those resulting from the Individual Review Process should result in the Average Values also set forth in that provision.

All unresolved disputes over a claimant's medical condition, exposure history and/or the liquidated value of the claim may be submitted to pro bono evaluation and/or mediation and shall be subject to binding or non-binding arbitration as set forth in Section 5.10, at the election of the claimant, under the ADR Procedures that are provided in Attachment A hereto or that will be attached as an exhibit to the Claims Materials to be prepared by the Asbestos Trust pursuant to Section 6.1. Asbestos Personal Injury Claims that are the subject of a dispute with the Asbestos Trust that are not resolved by the ADR Procedures may enter the tort system as provided in Sections 5.11 and 7.5. However, if and when a claimant obtains a judgment in the tort system, the judgment shall be payable (subject to the Payment Percentage, Maximum Annual Payment, and Claims Payment Ratio provisions set forth below) as provided in Section 7.6.

Asbestos Premises Liability Claims shall be handled pursuant to the procedures set forth in Section 5.3(c) of this TDP.

**2.3 Application of the Payment Percentage.** After the liquidated value of an Asbestos Personal Injury Claim other than a claim involving Other Asbestos Disease (Disease

Level I – Cash Discount Payment), as defined in Section 5.3(a)(3), is determined pursuant to the procedures set forth herein for Expedited Review, Individual Review, pro bono evaluation, mediation, 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. The Payment Percentage shall also apply to all Pre-Petition Liquidated Asbestos Personal Injury Claims as provided in Section 5.2 and to all sequencing adjustments paid pursuant to Section 7.4.

The initial Payment Percentage (the “**Initial Payment Percentage**”) has been set at twenty-two percent (22%) for Asbestos Personal Injury Claims other than Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy. The Initial Payment Percentage has been calculated on the assumption that the Average Values set forth in Section 5.3(b)(3) shall be achieved with respect to existing present claims and projected future claims involving Disease Levels III–VIII.

The Payment Percentage may be adjusted upwards or downwards from time to time by the Asbestos Trust with the consent of the Section 524(g) Trust Advisory Committee (the “**TAC**”) and the FCR to reflect then-current estimates of the Asbestos Trust’s assets and its liabilities, as well as then-estimated values of then-pending and future claims. Any adjustment to the Initial Payment Percentage shall be made only pursuant to Section 4.2. 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 as provided in Section 4.3. Because there is uncertainty in the prediction of both the number and severity of future Asbestos Personal Injury Claims, and the amount of the Asbestos Trust’s assets, no guarantee can be made of any Payment Percentage of an Asbestos Personal Injury Claim’s liquidated value.

**2.4 Asbestos Trust's Determination of the Maximum Annual Payment .** The Asbestos Trust, in consultation with its advisors and with the consent of the TAC and FCR, shall estimate the amount of cash flow anticipated to be necessary over the life of the Asbestos Trust by year and prepare a schedule setting forth the maximum annual payment (the "**Maximum Annual Payment**") to be distributed by the Asbestos Trust annually for the life of the Asbestos Trust to ensure that funds shall be available to treat all present and future holders of Asbestos Personal Injury Claims as similarly as possible, and taking into account the Payment Percentage provisions set forth in Sections 2.3, 4.2 and 4.3. The initial Maximum Annual Payment for each year of the life of the Asbestos Trust shall be determined promptly after the Effective Date of the Plan. The Maximum Annual Payment may be adjusted annually by the Trustees with the consent of the TAC and the FCR. The Asbestos Trust's distributions to all claimants for a particular year shall not exceed the Maximum Annual Payment determined for that year plus any excess funds rolled over from earlier years as provided in Section 2.5.

In the event there are insufficient amounts in any year to pay the Asbestos Trust Determined Claims, the available funds shall be paid to the maximum extent to the holders of such claims based on their place in the FIFO Payment Queue. Asbestos Trust Determined Claims for which there are insufficient amounts shall maintain their place in the FIFO Payment Queue and shall be carried to the next year.

The Maximum Annual Payment does not apply to (i) Asbestos Personal Injury Claims that arose prior to the entry of the Confirmation Order; (ii) Asbestos Personal Injury Claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment); (iii) Pre-Petition Liquidated Asbestos Personal Injury Claims where the claimant has elected to retain the

liquidated value as provided in Section 5.2; and (iv) Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy.

**2.5 Claims Payment Ratio.** Based on ASARCO's claims settlement histories and analysis of present and future claims, a Claims Payment Ratio for Asbestos Personal Injury Claims that arise after the entry of the Confirmation Order has been determined which, as of the Effective Date, has been set at 90% for Category A Claims and at 10% for Category B Claims. Category A Claims consist of Asbestos Personal Injury Claims involving severe asbestosis and malignancies (Disease Levels IV–VIII). Category B Claims consist of Asbestos Personal Injury Claims involving Nonmalignant Asbestos Disease (Disease Levels II and III). The Claims Payment Ratio does not apply to (i) Asbestos Personal Injury Claims that arose prior to the entry of the Confirmation Order; (ii) Asbestos Personal Injury Claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment); (iii) Pre-Petition Liquidated Asbestos Personal Injury Claims where the claimants have elected to retain the liquidated value as provided in Section 5.2; and (iv) Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy.

In each year, after the determination of the Maximum Annual Payment described in Section 2.4, 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 placed in the FIFO Payment Queue described in Section 5.1(b). 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. Claims for which there are insufficient funds allocated to the relevant Category shall be carried over to the next year where they shall maintain their places in

the FIFO Payment Queue. If there are excess funds in either or both Categories, because there is an insufficient amount of Asbestos Trust Determined Claims to exhaust the respective Maximum Annual Payment allocated amount for that Category, then the excess funds for either or both Categories shall roll into the next year, remain dedicated to the respective Category to which they were originally allocated, and be added to the Maximum Annual Payment for such next year subject to the Claims Payment Ratio.

The 90%/10% Claims Payment Ratio and its rollover provision shall apply to all Asbestos Personal Injury Claims (except (i) Asbestos Personal Injury Claims that arose prior to the entry of the Confirmation Order; (ii) Asbestos Personal Injury Claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment); (iii) Pre-Petition Liquidated Asbestos Personal Injury Claims where the claimants have elected to retain the liquidated value as provided in Section 5.2; and (iv) Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy) and shall not be amended until the third anniversary of the date the Asbestos Trust first accepts for processing proof of claim forms and other materials required to file a claim with the Asbestos 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 amendments to the Claims Payment Ratio to avoid a manifest injustice. The accumulation, rollover and subsequent delay of payment 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 at the time of entry of the Confirmation Order shall not be considered as a factor in deciding whether to reduce the percentage allocated to Category A Claims.

In considering whether to amend 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 settlement histories that gave rise to its calculation, and the foreseeability or lack of foreseeability of the reasons why there would be any need to make an amendment. In that regard, the Trustees should keep in mind the interplay between the Payment Percentage and the Claims Payment Ratio as it affects the net cash actually paid to claimants.

In any event, no amendment to the Claims Payment Ratio to reduce the percentage allocated to Category A Claims may be made without the unanimous consent of the TAC members and the consent of the FCR, and the percentage allocated to Category A Claims may not be increased without the consent of the TAC and the FCR. The consent process set forth in Sections 5.7(b) and 6.6(b) of the Asbestos Trust Agreement shall apply in the event of any amendments to the Claims Payment Ratio. The Trustees, 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, indirect Asbestos Personal Injury Claims, if any, shall be subject to the same categorization, evaluation, and payment provisions of this TDP as Asbestos Personal Injury Claims.

### **SECTION III**

#### **TDP Administration**

**3.1 Trust Advisory Committee and Future Claims Representative.** Pursuant to the Plan and the Asbestos Trust Agreement, the Asbestos Trust and this TDP shall be administered by the Trustees 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 Trustees shall obtain the consent of the TAC and the FCR on any amendments to this TDP pursuant to Section 8.1, on other matters required by the TDP and on matters provided by Section 2.2(f) of the Asbestos Trust Agreement. The Trustees shall also consult with the TAC and the FCR on such matters as are provided in the TDP and in Section 2.2(e) of the Asbestos Trust Agreement. The initial Trustees, the initial members of the TAC and the initial FCR are identified in the Asbestos Trust Agreement.

**3.2 Consent and Consultation Procedures.** In those circumstances in which consultation or consent is required, the Trustees shall provide written notice to the TAC and the FCR of the specific amendment or other action that is proposed. The Trustees shall not implement the amendment nor take action unless and until the Trustees, TAC and FCR 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 Asbestos Trust Agreement, respectively.

## **SECTION IV**

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

**4.1 Uncertainty of ASARCO's Personal Injury Asbestos Liabilities.** As discussed above, there is inherent uncertainty regarding ASARCO's total asbestos-related tort liabilities, as well as the total value of the assets available to the Asbestos 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 Trustees must determine from time to time the percentage of full liquidated value that holders of present and future



Asbestos Personal Injury Claims shall be likely to receive, *i.e.*, the “Payment Percentage” described in Sections 2.3 and 4.2.

**4.2 Computation of Payment Percentage.** As provided in Section 2.3, the Initial Payment Percentage shall be twenty-two percent (22%) for Asbestos Personal Injury Claims other than Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy, unless the Trustees, with the consent of the TAC and the FCR, determine that the Initial Payment Percentage should be changed to assure that the Asbestos Trust shall be in a financial position to pay holders of claims in substantially the same manner. Notwithstanding the foregoing, in no event shall the holder of an Asbestos Personal Injury Claim that is liquidated by the Asbestos Trust receive a payment less than the product of the application of the Initial Payment Percentage to the liquidated value of the claim, if the claimant voted on the Plan pursuant to the voting procedures approved by the Bankruptcy Court.

The Payment Percentage shall be subject to change pursuant to the terms of this TDP and the Asbestos Trust Agreement if the Trustees with the consent of the TAC and FCR 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 third anniversary of the Effective Date, the Trustees shall reconsider the then applicable Payment Percentage to assure that the Payment Percentage is based on accurate and current information. After such reconsideration, the Trustees may, if necessary, change the Payment Percentage with the consent of the TAC and the FCR. The Trustees shall also reconsider the then applicable Payment Percentage at shorter intervals if they deem reconsideration to be appropriate or if requested to do so by the TAC or the FCR.

The Trustees must base their 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 Trust for payment of Asbestos Trust Determined Claims, 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 Trustees shall exercise common sense and flexibly evaluate all relevant factors. The Payment Percentage applicable to Category A Claims 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.

**4.3 Applicability of the Payment Percentage.** Except as otherwise provided in Section 5.1(b) for Asbestos Trust Determined 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, no holder of any Asbestos Trust Determined Claim, other than an Asbestos Trust Determined Claim for Other Asbestos Disease (Disease Level I – Cash Discount Payment) or an Asbestos Premises Liability Claim covered by an applicable Asbestos Insurance Policy, shall receive a payment that exceeds the liquidated value of the claim times the Payment Percentage in effect at the time of payment. Asbestos Trust Determined Claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment) shall not be subject to the Payment Percentage, but shall instead be paid the full amount of their Scheduled Value as set forth in Section 5.3(a)(3).

If a redetermination of the Payment Percentage has been proposed in writing by the Trustees 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.

There is uncertainty surrounding the amount of the Asbestos Trust's future assets. There is also uncertainty surrounding the totality of the Asbestos Personal Injury Claims to be paid over time, as well as the extent to which changes in existing federal and state law could affect the Asbestos Trust's liabilities under this TDP. If the value of the Asbestos Trust's future assets increases significantly and/or if the value or volume of Asbestos Personal Injury Claims actually filed with the Asbestos Trust is significantly lower than originally estimated, the Asbestos 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 FCR, make a determination to increase the Payment Percentage due to a material change in the estimates of the Asbestos Trust's future assets and/or liabilities, the Trustees shall also make supplemental payments to all claimants who have previously been paid by the application of the lower Payment Percentage to the liquidated amount of their claims. The amount of any supplemental payment shall be the liquidated value of the claim plus any sequencing adjustment paid under Section 7.4 times the

newly adjusted Payment Percentage, less all amounts previously paid to the claimant with respect to the claim.

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 that was also suspended because it would have been less than \$100.00. However, the Trustees' obligation shall resume and the Trustees shall pay any aggregate supplemental payments due the claimant when the total exceeds \$100.00.

## **SECTION V**

### **Resolution of Asbestos Personal Injury 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**"). For all claims filed on or before the date that is 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 (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 specific claim was either filed against ASARCO in the tort system or was actually submitted to ASARCO pursuant to an administrative settlement agreement; (ii) the date prior to the Petition Date that the asbestos claim was filed against another defendant in the tort system if at the time the claim was subject to a tolling

agreement with ASARCO; (iii) the date after the Petition Date but before 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 that the asbestos 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 ASARCO in this Chapter 11 proceeding; or (v) the date a ballot was submitted on behalf of the claimant for purposes of voting to accept or reject the Plan pursuant to the voting procedures approved by the Bankruptcy Court. The Initial Claims Filing Date shall not apply to holders of Pre-Petition Liquidated Asbestos Personal Injury Claims who elect to retain the liquidated values of their claims nor shall it apply to holders of Asbestos Premises Liability Claims.

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

**5.1(a) (2) Effect of Statutes of Limitations and Repose.** All Asbestos Personal Injury Claims other than Pre-Petition Liquidated Asbestos Personal Injury Claims must meet either (i) for claims first filed in the tort system against ASARCO prior to the Petition Date, the applicable federal, state or foreign statute of limitations or 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 ASARCO in the tort system prior to the Petition Date, the applicable federal, state or foreign statute of

limitations or repose that was in effect at the time of the filing of the claim with the Asbestos 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 ASARCO prior to April 11, 2005 (the **“Petition Date of the Subsidiary Debtors”**) or August 9, 2005 (the **“Petition Date of ASARCO LLC”**), as the case may be, whether in the tort system or by submission of the claim to ASARCO pursuant to an administrative settlement agreement; (B) the tolling of the claim against ASARCO prior to the Petition Date of the Subsidiary Debtors or the Petition Date of ASARCO LLC, as the case may be, by an agreement or otherwise, provided the tolling agreement was still in effect on the relevant Petition Date; or (C) the Petition Date of the Subsidiary Debtors or the Petition Date of ASARCO LLC, as the case may be.

If an Asbestos Personal Injury 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 or repose 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. In addition, any claims that were first diagnosed after April 11, 2005, irrespective of the application of any relevant federal, state or foreign statute of limitations 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. The processing of any Asbestos Personal Injury Claim by the Asbestos Trust may be deferred at the election of the claimant pursuant to Section 6.3.

**5.1(b) Payment of Claims.** Asbestos Personal Injury Claims that have been liquidated by the Expedited Review Process as provided in Section 5.3(a), by the Individual Review Process as provided in Section 5.3(b), by pro bono evaluation, mediation or arbitration

as provided in Section 5.10, or by litigation in the tort system provided in Section 5.11, shall be paid in FIFO order based on the date their liquidation became final (the “**FIFO Payment Queue**”), all payments being subject to the applicable Payment Percentage, the Maximum Annual Payment, the Claims Payment Ratio, and the sequencing adjustment provided for in Section 7.4, except as otherwise provided herein.

Where the claimant is deceased or incompetent, and the settlement and payment of his or her claim must be approved by a court of competent jurisdiction or through a probate process prior to acceptance of the claim by the claimant’s representative, an offer made by the 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 the 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. 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. For purposes of placement in the FIFO Payment Queue, the date of final liquidation shall be the date the Trustees of the Asbestos Trust approve the Asbestos Personal Injury Claim for payment or as otherwise provided for in the ADR Procedures or litigation.

This Section 5.1(b) shall not apply to Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy.

**5.1(c) Effect of Claims Filed in the Bankruptcy Case.** Regardless of whether a claimant filed a proof of claim against ASARCO in the Chapter 11 Cases, a claimant must file a claim with the Asbestos Trust in accordance with this TDP in order to be compensated. Proofs of claim filed against ASARCO in the Chapter 11 Cases shall not be processed and paid by the Asbestos Trust. Failure to have filed a proof of claim against ASARCO in the Chapter 11 Cases shall not, in and of itself, bar or prohibit liquidation of a claim filed with the Asbestos Trust.

**5.2 Resolution of Pre-Petition Liquidated Asbestos Personal Injury Claims.**

**5.2(a) Processing and Payment – ASARCO Identified.** The holder of a Pre-Petition Liquidated Asbestos Personal Injury Claim may file a claim with the Asbestos Trust for the liquidated value of the Pre-Petition Liquidated Asbestos Personal Injury Claim or for a value to be determined under this TDP.

On or before the Effective Date, ASARCO shall deliver to the Asbestos Trust a schedule of the Pre-Petition Liquidated Asbestos Personal Injury Claims with the supporting database (the **“Approved Pre-Petition Liquidated Asbestos Personal Injury Claims”**). The Asbestos Trust shall provide each claimant on the schedule of Approved Pre-Petition Liquidated Asbestos Personal Injury Claims notice of (i) the liquidated amount of the claim, (ii) the right of the claimant to make the election provided in this Section 5.2(a), and (iii) instructions for making the election, and, if electing to retain the liquidated amount of the claim, instructions for executing and delivering the release provided under Section 7.7.

If the holder of the Approved Pre-Petition Liquidated Asbestos Personal Injury Claim elects to retain the liquidated value of the claim, the Asbestos Trust shall pay the Approved Pre-



Petition Liquidated Asbestos Personal Injury Claim as soon as practical upon receipt by the Asbestos Trust of a release executed by the claimant. Payment of the liquidated value of the Approved Pre-Petition Liquidated Asbestos Personal Injury Claim shall be subject to the Payment Percentage and the sequencing adjustment provided in Section 7.4, except as otherwise provided herein, but shall not be subject to the Maximum Annual Payment and the Claims Payment Ratio and shall not be subject to Section 5.3.

If the holder of the Approved Pre-Petition Liquidated Asbestos Personal Injury Claim elects to file a claim with the Asbestos Trust to be liquidated under this TDP, the holder shall be deemed to waive the liquidated value of the Approved Pre-Petition Liquidated Asbestos Personal Injury Claim, and the claim shall be processed under Section 5.3.

**5.2(b) Processing and Payment – Claimant Identified.** If the holder of an Asbestos Personal Injury Claim files a claim with the Asbestos Trust for a Pre-Petition Liquidated Asbestos Personal Injury Claim that was not scheduled by ASARCO as an Approved Pre-Petition Liquidated Asbestos Personal Injury Claim, the claimant must submit all documentation necessary to demonstrate to the Asbestos Trust that the claim was liquidated in the manner described in the definition of Pre-Petition Liquidated Asbestos Personal Injury Claim above, which documentation shall include (A) a court authenticated copy of the jury verdict (if applicable), a non-final judgment (if applicable), a final judgment (if applicable), or an executed settlement agreement (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.

The liquidated value of a Pre-Petition Liquidated Asbestos Personal Injury Claim shall be the unpaid portion of the agreed amount 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 7.3, the liquidated value of a Pre-Petition Liquidated Asbestos Personal Injury Claim shall not include any punitive or exemplary damages. Payments of the liquidated values of Pre-Petition Liquidated Asbestos Personal Injury Claims shall be subject to the Payment Percentage and the sequencing adjustment provided in Section 7.4, except as otherwise provided herein, but shall not be subject to the Maximum Annual Payment and the Claims Payment Ratio. 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 Personal Injury Claim (*i.e.*, pro bono evaluation, mediation, arbitration and litigation in the tort system as set forth in Sections 5.10 and 5.11).

Pre-Petition Liquidated Asbestos Personal Injury Claims filed by the claimants and not scheduled as an Approved Pre-Petition Liquidated Asbestos Personal Injury Claim shall be processed and paid in accordance with their order in the FIFO Processing Queue and the FIFO Payment Queue. Pre-Petition Liquidated Asbestos Personal Injury Claims shall be placed in the FIFO Payment Queue upon a determination by the Asbestos Trust of the unpaid amount of a binding settlement, jury verdict, non-final judgment or final judgment or upon a resolution by mediation, arbitration or litigation. If any Pre-Petition Liquidated Asbestos Personal Injury Claims are filed on the same date, the claimants' position in the FIFO Processing Queue shall be determined by the date of the settlement agreement, jury verdict or judgment, as the case may be.

If any Pre-Petition Liquidated Asbestos Personal Injury Claims are placed in either the FIFO Processing Queue or the FIFO Payment Queue on the same dates, the position of the claimants in the respective queue shall be determined by the dates of the claimants' birth, with older claimants given priority over younger claimants.

Asbestos Premises Liability Claims that were liquidated before the Petition Date shall be tendered by the Asbestos Trust to the relevant insurer or insurers for handling as provided in the CIP Agreements or in the applicable Asbestos Insurance Policy.

**5.3 Resolution of Unliquidated Asbestos Personal Injury Claims.** Within six (6) months after the establishment of the Asbestos Trust, the Trustees, with the consent of the TAC and the FCR, shall adopt procedures for reviewing and liquidating all Asbestos Personal Injury Claims other than Pre-Petition Liquidated Asbestos Personal Injury Claims, which shall include deadlines for processing the claims. The procedures shall also require that claimants seeking resolution of unliquidated Asbestos Personal Injury Claims must file a proof of claim form, together with the required supporting documentation, in accordance with the provisions of Sections 6.1 and 6.2. It is anticipated that the Asbestos Trust shall provide an initial response to the claimant within six (6) months of receiving a completed 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, and to select Expedited Review or Individual Review as provided below. 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).

**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 Asbestos Personal Injury Claims (except those involving Lung Cancer 2 – Disease Level VI and all Foreign Claims (as defined below), which shall only be liquidated pursuant to the Asbestos Trust's Individual Review Process), where the claim can easily be verified by the Asbestos 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). Expedited Review is also intended to provide qualifying claimants with fixed and certain claims payments.

Claims that undergo Expedited Review and meet the presumptive Medical/Exposure Criteria for the relevant Disease Level shall be paid the Scheduled Value for the relevant Disease Level set forth in Section 5.3(a)(3). However, except for claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment), all claims liquidated by Expedited Review shall be subject to the applicable Payment Percentage. Except for claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment), Asbestos Personal Injury Claims that arose prior to the entry of the Confirmation Order, and Pre-Petition Liquidated Asbestos Personal Injury Claims when the claimant has elected to retain the liquidated value, all claims liquidated by Expedited Review shall be subject to the applicable Maximum Annual Payment,

and the Claims Payment Ratio limitations set forth above. 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 Trust's Individual Review Process set forth in Section 5.3(b).

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

**5.3(a)(2) 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 seven Disease Levels eligible for Expedited Review, and shall advise the claimant of its determination. If the Medical and Exposure Criteria for a Disease Level are determined to have been met, 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 and Claims Payment Ratio, if any.

**5.3(a)(3) Disease Levels, Scheduled Values and Medical/Exposure Criteria.** The eight Disease Levels covered by this TDP, together with the Medical/Exposure Criteria for each and the Scheduled Values for the seven Disease Levels eligible for Expedited

Review, are set forth below. These Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all Asbestos Personal Injury Claims filed with the Asbestos Trust (except for a Pre-Petition Liquidated Asbestos Personal Injury Claim where the claimant has elected to retain the liquidated value) on or before the Initial Claims Filing Date provided in Section 5.1 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 FCR, 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.

<b><u>Disease Level</u></b>	<b><u>Scheduled Value</u></b>	<b><u>Medical/Exposure Criteria</u></b>
Mesothelioma (Disease Level VIII)	\$170,000	(1) Diagnosis <sup>3</sup> of mesothelioma; and (2) ASARCO Exposure as defined in Section 5.7(b)(3).
Lung Cancer 1 (Disease Level VII)	\$60,000	(1) Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-

<sup>3</sup> The requirements for a diagnosis of an asbestos-related disease that may be compensated under the provisions of this TDP are set forth in Section 5.7.

<sup>4</sup> Evidence of “Bilateral Asbestos-Related Nonmalignant Disease,” for purposes of meeting the criteria for establishing Disease Levels I, II, III, V, and VII, means either (i) a chest X-ray read by a qualified B reader of 1/0 or higher on the ILO scale or (ii)(x) a chest X-ray read by a qualified B reader or other Qualified Physician, (y) a CT scan read by a Qualified Physician, or (z) pathology, in each case showing 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 ASARCO 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

**Disease Level**

**Scheduled Value**

**Medical/Exposure Criteria**

		Related Nonmalignant Disease <sup>4</sup> , (2) six months ASARCO Exposure, (3) Significant Occupational Exposure <sup>5</sup> to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.
Lung Cancer 2 (Disease Level VI)	None	(1) Diagnosis of a primary lung cancer; (2) ASARCO Exposure, and (3) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.  Lung Cancer 2 (Disease Level VI) claims are claims that do not meet the more stringent medical and/or exposure requirements of Lung Cancer 1 (Disease Level VII) claims. All claims in this Disease Level shall be individually evaluated. The estimated likely average of the individual evaluation awards for this category is \$15,000, with such awards capped at \$35,000 unless the claim qualifies for Extraordinary Claim treatment.  Disease Level VI claims that show no evidence of either an underlying Bilateral Asbestos-Related Nonmalignant Disease or Significant Occupational Exposure may be individually evaluated, although it is not expected that such

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diagnosis of asbestos-related disease, shall be evidence of a Bilateral Asbestos-Related Nonmalignant Disease for purposes of meeting the presumptive medical requirements of Disease Levels I, II, III, V and VII. 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 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-ray and/or CT scan readings are submitted for deceased holders of Asbestos Personal Injury Claims.

<sup>5</sup> The term "Significant Occupational Exposure" is defined in Section 5.7(b)(2).

<u>Disease Level</u>	<u>Scheduled Value</u>	<u>Medical/Exposure Criteria</u>
Other Cancer (Disease Level V)	\$20,000	claims shall be treated as having any significant value, especially if the claimant is also a Smoker. <sup>6</sup> In any event, no presumption of validity shall be available for any claims in this category.  (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 ASARCO 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 (Disease Level IV)	\$50,000	(1) Diagnosis of asbestosis with ILO of 2/1 or greater, or asbestosis determined by pathological evidence of asbestos, plus (a) TLC less than 65%, or (b) FVC less than 65% and FEV1/FVC ratio greater than 65%, (2) six months ASARCO 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.
Nonmalignant Asbestos Disease (Disease Level III)	\$7,500	(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 ASARCO Exposure, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing

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<sup>6</sup> There is no distinction between Non-Smokers and Smokers for either Lung Cancer 1 (Disease Level VII) or Lung Cancer 2 (Disease Level VI), although a claimant who meets the more stringent requirements of Lung Cancer 1 (Disease Level VII) (evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease plus Significant Occupational Exposure), and who is also a Non-Smoker, may wish to have his or her claim individually evaluated by the Asbestos Trust. In such a case, absent circumstances that would otherwise reduce the value of the claim, it is anticipated that the liquidated value of the claim might well exceed the \$60,000 Scheduled Value for Lung Cancer 1 (Disease Level VII) shown above. "Non-Smoker" means a claimant who either (a) never smoked or (b) has not smoked during any portion of the twelve (12) years immediately prior to the diagnosis of the lung cancer.



<u>Disease Level</u>	<u>Scheduled Value</u>	<u>Medical/Exposure Criteria</u>
Nonmalignant Asbestos Disease (Disease Level II)	\$3,000	asbestos exposure as a contributing factor in causing the pulmonary disease in question.  (1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease, (2) six months ASARCO Exposure, and (3) five years cumulative occupational exposure to asbestos.
Other Asbestos Disease (Disease Level I – Cash Discount Payment)	\$400	(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease or an asbestos-related malignancy other than mesothelioma, and (2) ASARCO Exposure.

### **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 compensable 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). 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, V, VII or VIII exceeds the Scheduled Value for the relevant Disease Level also set forth in said provision. However, until the Asbestos 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 Asbestos Trust’s Expedited Review Process. In the event of 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 Trust’s Individual Review process. 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 ASARCO has legal responsibility occurred outside of the United States and its Territories and Possessions.

In reviewing Foreign Claims, the Asbestos 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), including the remedies available in the Claimant's Jurisdiction. The Asbestos 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).

For purposes of the Individual Review process for Foreign Claims, the Trustees, 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 Trust; provided however, that the 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 physician or other professional licensing provisions and/or medical customs or practices of the foreign country in question.

When the Asbestos Trust has sufficient historical settlement, verdict and other valuation data for claims from a particular foreign jurisdiction, the Trustees, with the consent of the TAC and the FCR, may establish a separate valuation matrix for the particular Foreign Claims based on that data.

**5.3(b)(1)(A) Review of Medical/Exposure Criteria.** The Asbestos 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 Disease Levels I–V, VII or VIII. In such a case, the Asbestos Trust shall either deny the claim or, if the Asbestos Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the tort system, the Asbestos Trust may 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–VIII shall also be eligible to seek Individual Review of the liquidated value of their claims, as well as of their medical/exposure evidence. The Individual Review Process is intended to result in payments equal to the full liquidated value for each claim multiplied by the 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–VIII shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(b)(3), unless the claim meets the requirements of an Extraordinary Claim described in Section 5.4(a), in which case its liquidated value cannot exceed the maximum extraordinary value set forth in Section 5.4(a) for such claims. Because the detailed examination and valuation process pursuant to Individual Review requires substantial time and effort, claimants 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, the Asbestos Trust shall devote reasonable resources to the review of all claims to ensure that there is a reasonable balance maintained in reviewing all classes of claims.

### **5.3(b)(2) Valuation Factors to Be Considered in Individual Review.**

The Asbestos 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 Trust shall 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, 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, or to conduct that exposed the claimant to an asbestos-containing product, for which ASARCO has legal responsibility (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.

For these purposes, the “**Claimant's Jurisdiction**” is the jurisdiction in which the claim was filed (if at all) against ASARCO in the tort system prior to the Petition Date. If the claim was not filed against ASARCO 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 ASARCO 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 where the governing law of the Claimant’s Jurisdiction could only be the Alabama Wrongful Death Statute, the Claimant’s Jurisdiction for the claim shall be the Commonwealth of Pennsylvania. In this situation, the 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. This choice of law provision shall only govern the rights between the Asbestos Trust and the claimant including, but not limited to, suits in the tort system pursuant to Section 7.5. To the extent the Asbestos Trust seeks recovery from any entity that provided insurance coverage to ASARCO, the Alabama Wrongful Death Statute shall govern.

With respect to the “Claimant’s Jurisdiction,” in the event a claimant makes a claim for compensatory damages that would otherwise satisfy the criteria for payment under this TDP, where the claimant would have been foreclosed from payment because the governing law of the Claimant’s Jurisdiction (the “**Foreclosed Jurisdiction**”) describes the claim as a claim for “exemplary” or “punitive” damages and the claimant would have no other remedy for compensation under the law of the Foreclosed Jurisdiction, the claimant may elect the Commonwealth of Pennsylvania as the Claimant’s Jurisdiction. In this situation, the 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. This choice of law provision shall govern only the rights between the Asbestos Trust and the claimant including, but not limited to, suits in the tort system pursuant to Section 7.5. To the extent the Asbestos Trust seeks recovery from any entity that provided insurance coverage to ASARCO, the law of the Foreclosed Jurisdiction shall govern.

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

<u>Scheduled Disease</u>	<u>Scheduled Value</u>	<u>Average Value</u>	<u>Maximum Value</u>
Mesothelioma (Disease Level VIII)	\$170,000	\$280,000	\$900,000
Lung Cancer 1 (Disease Level VII)	\$60,000	\$90,000	\$150,000
Lung Cancer 2 (Disease Level VI)	None	\$15,000	\$35,000
Other Cancer (Disease Level V)	\$20,000	\$32,000	\$75,000
Severe Asbestosis (Disease Level IV)	\$50,000	\$70,000	\$125,000
Nonmalignant Asbestos Disease (Disease Level III)	\$7,500	\$8,000	\$25,000
Nonmalignant Asbestos Disease (Disease Level II)	\$3,000	None	None
Other Asbestos Disease – Cash Discount Payment (Disease Level I)	\$400	None	None

These Scheduled Values, Average Values and Maximum Values shall apply to all Asbestos Personal Injury Claims filed with the Asbestos Trust (except for a Pre-Petition Liquidated Asbestos Personal Injury Claim where the claimant has elected to retain the liquidated value) on or before the Initial Claims Filing Date as provided in Section 5.1. Thereafter, the Asbestos Trust, with the consent of the TAC and the FCR pursuant to Sections 5.7(b) and 6.6(b) of the Asbestos Trust Agreement, may change these valuation amounts for good cause and consistent with other restrictions on the amendment power.

**5.3(b)(4) Claims Processing Under Individual Review.** At the conclusion of the Individual Review Process, the Asbestos Trust shall: (1) determine the liquidated value, if any, of the claim; and (2) advise the claimant of its determination. If the Asbestos Trust establishes a liquidated value, it shall tender to the claimant an offer of payment of the aforementioned determined value multiplied by the applicable Payment Percentage, together with a form of release approved by the Asbestos Trust. If the claimant accepts the offer of payment 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 and Claims Payment Ratio, if any.

**5.3(c) Handling, Litigation and Payment of Asbestos Premises Liability**

**Claims.** Notwithstanding anything to the contrary in this TDP or the Asbestos Trust Agreement, unless otherwise approved by the TAC and the FCR, this paragraph Section 5.3(c), shall govern the handling of the Asbestos Premises Liability Claims.

Claimants holding Asbestos Premises Liability Claims who wish to recover on such claims must file a lawsuit against the Asbestos Trust in the federal or state court of the claimant's choosing as permitted under applicable federal or state law. All lawsuits brought against the Asbestos Trust involving Asbestos Premises Liability Claims must be filed by the claimant in his or her own right and name and not as a member of a class. Service of process on the Asbestos Trust may be made, pursuant to applicable federal or state law where the lawsuit is filed, on the following: **[insert when available]**.

Where a lawsuit was pending against ASARCO LLC prior to the Petition Date of ASARCO LLC, the lawsuit may proceed, subject, however, to all defenses, including those based on venue, forum non conveniens and jurisdiction; provided, however, that within 180 days

of the Effective Date, the plaintiff in the lawsuit must file and serve an amendment to the lawsuit substituting the Asbestos Trust as successor to ASARCO LLC as party defendant.

The Asbestos Trust shall tender the lawsuit to the applicable Asbestos Insurance Company for defense and indemnification, with such notice and information as may be required under the terms and conditions of the Asbestos In-Place Insurance Coverage and/or CIP Agreements. The time within which the Asbestos Trust is required to answer or otherwise respond to any summons or complaint involving an Asbestos Premises Liability Claim that is served on the Asbestos Trust shall automatically be extended by twenty (20) days.

In the event that the Asbestos Insurance Company does not accept the tender of the lawsuit, the claimant may proceed against the Asbestos Trust for the entry of a judgment provided the claimant covenants not to execute on the judgment.

In exchange for the covenant not to execute on the judgment, the claimant may file a claim with the Asbestos Trust to be processed under Section 5.3(a) or 5.3(b). The claimant shall file a proof of claim with supporting material as provided under Section 6.1, with the claim placed in the FIFO Processing Queue as of the date of the filing of the lawsuit against the Asbestos Trust. The claim will be paid in the order of the FIFO Payment Queue. The Payment Percentage shall apply to the payment of the claim.

In the situation where the Asbestos Insurance Company does not accept the tender of the lawsuit, the Asbestos Trust will assess the good faith of the Asbestos Insurance Company. If the Asbestos Trust concludes that the Asbestos Insurance Company did not act in good faith, the Asbestos Trust shall provide the claimant with written notice of a right of the claimant to proceed with appropriate litigation against the Asbestos Insurance Company with the Asbestos Trust subrogated to any recovery by the claimant from the Asbestos Insurance Company to the extent



of a payment by the Asbestos Trust to the claimant under this Section 5.3(c). Within ninety (90) days of such written notice but, in no event, not later than six (6) months before the running of the applicable statute of limitations, the claimant shall provide written notice to the Asbestos Trust of whether the claimant will proceed with such litigation. The Asbestos Trust shall cooperate with the claimant in the prosecution of the litigation. If the claimant elects not to proceed with the litigation, the Asbestos Trust reserves the right to commence and prosecute the litigation against the Asbestos Insurance Company.

In the event that the Asbestos Insurance Company accepts the tender of the lawsuit but there is a subsequent determination that the Asbestos Premises Liability Claim is not covered or only partially covered by the CIP Agreements or any other Asbestos Insurance Policy covering Asbestos Premises Liability Claims, the claimant may file a claim with the Asbestos Trust. The claim shall be placed in the FIFO Processing Queue as of the date of the filing of the lawsuit provided herein, processed under Section 5.3(a) or (b), and paid in the order of the FIFO Payment Queue. The Payment Percentage shall apply to the payment of the claim.

Notwithstanding any judgment obtained by a claimant in the tort system, no punitive or exemplary damages may be recovered from the Asbestos Trust.

The Asbestos Trust shall define or specify in the Claims Materials to be adopted pursuant to Section 6.1 the procedural mechanisms for the determinations to be made by the Asbestos Trust hereunder.

The holder of both an Asbestos Premises Liability Claim and another Asbestos Personal Injury Claim may proceed under this Section 5.3(c) or under Section 5.3(a) or (b), at the option of the holder of the claim. An election to proceed under Section 5.3(a) or (b) shall constitute an

irrevocable waiver of the right to proceed under Section 5.3(c). This Section 5.3(c) shall not be amended without the approval of the TAC and the FCR.

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

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

Any dispute as to Extraordinary Claim status shall be submitted to a special panel established by the Asbestos Trust with the consent of the TAC and the FCR (the “Extraordinary Claims Panel”). All decisions of the Extraordinary Claims Panel shall be final as to the Asbestos Trust and not subject to any further administrative or judicial review by the Asbestos Trust. A claimant may either accept or reject the decision of the Extraordinary Claims Panel. In the event the claimant rejects the decision of the Extraordinary Claims Panel, the claimant may proceed under the ADR Procedures provided in Section 5.10. An Extraordinary Claim, following its liquidation, shall be placed in the FIFO Payment Queue ahead of all other Asbestos Personal Injury Claims except Disease Level I Claims and Exigent Claims, which shall be paid first in that order in the FIFO Payment Queue, based on the date of liquidation, subject to the Maximum Annual Payment and Claims Payment Ratio described above. For purposes of clarification,

holders of Pre-Petition Liquidated Asbestos Personal Injury Claims who have elected to retain the liquidated values will be maintained and paid separately from the FIFO Payment Queue for Asbestos Personal Injury Claims as provided in Section 5.2(a).

**5.4(b) Exigent Claims.** At any time the Asbestos Trust may liquidate and pay Asbestos Personal Injury Claims that qualify as Exigent Health Claims or Exigent Hardship Claims as defined below (“Exigent Claim”). Exigent Claims may be considered separately no matter what the order of processing otherwise would have been under this TDP. An Exigent Claim, following its liquidation, shall be placed first in the FIFO Payment Queue ahead of all other liquidated Asbestos Personal Injury Claims except Disease Level I Claims and shall be subject to the Maximum Annual Payment and Claims Payment Ratio described above.

**(1) Exigent Health Claims.** An Asbestos Personal Injury Claim qualifies as an Exigent Health Claim if the claim meets the Medical/Exposure Criteria for Mesothelioma (Disease Level VIII) and the claimant is living when the claim is filed. A claim in Disease Levels IV–VII qualifies as an Exigent Health Claim if the claim meets the Medical/Exposure Criteria for the Disease Level, and the claimant provides a declaration or affidavit, made under penalty of perjury by a physician who has examined the claimant within one hundred twenty (120) days of the date of declaration or affidavit, stating (a) that there is substantial medical doubt that the claimant will survive beyond six (6) months from the date of the declaration or affidavit, and (b) that the claimant’s terminal condition is caused by the relevant asbestos-related disease.

**(2) Exigent Hardship Claims.** 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 IV) or an asbestos-related malignancy (Disease Levels V–

VIII), and the Asbestos Trust, in its sole discretion, determines (i) that the claimant needs immediate financial assistance based on the claimant's expenses and all sources of available income, and (ii) that there is a causal connection between the claimant's dire financial condition and the claimant's asbestos-related disease.

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

**5.6 Indirect Asbestos Personal Injury Claims.** Indirect Asbestos Personal Injury Claims asserted against the Asbestos Trust based on theories of contribution or indemnification under applicable law shall be treated as valid and paid by the Asbestos Trust subject to the applicable Payment Percentage if (a) the claim satisfied the requirements of any applicable Bar Date established by the Bankruptcy Court, and is not otherwise disallowed by Section 502(e) of the Bankruptcy Code or subordinated under Section 509(c) of the Bankruptcy Code, and (b) the

holder of the claim (the “**Indirect Claimant**”) establishes to the satisfaction of the Trustees that (i) the Indirect Claimant has paid 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 released the Asbestos Trust from all liability to the Direct Claimant, and (iii) the claim is not otherwise barred by a statute of limitations or repose or by other applicable law. In no event shall any Indirect Claimant have any rights against the 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 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 Trust) or a Final Order provided that the 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 Trustees.

If an Indirect Claimant cannot meet the presumptive requirements set forth above, the Indirect Claimant may request that the Asbestos 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 Trust had to the Direct Claimant. If the Indirect Claimant can show that it has paid all or a portion of a liability or obligation, the Asbestos Trust may reimburse the Indirect Claimant the amount of the liability or obligation so paid, times the then applicable Payment Percentage. However, in no event shall the 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 Personal Injury 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 Personal Injury 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 5.10. If the dispute is not resolved pursuant to the ADR Procedures, the Indirect Claimant may litigate the dispute in the tort system pursuant to Sections 5.11 and 7.5.

The Trustees 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 Trustees consistent with the provisions of this Section 5.6, which procedures (a) shall determine the validity, allowability and enforceability of the claims; and (b) shall otherwise provide the same liquidation and payment procedures and rights to the holders of the claims as the Asbestos 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 Trust as a diagnosis.<sup>7</sup>

**5.7(a)(1)(A) Disease Levels I–IV.** Except for asbestos claims filed against ASARCO or any other defendant in the tort system prior to the Petition Date, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I–IV) shall be based in the case of a claimant who was living at the time the claim was filed on a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease. All living claimants must also provide (i) for Disease Levels I–III, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 4 above); (ii) for Disease Level IV, an ILO reading of 2/1 or greater or pathological evidence of asbestosis, and (iii) for Disease Levels III and IV, pulmonary function testing.<sup>8</sup>

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<sup>7</sup> All diagnoses of Nonmalignant Asbestos Disease (Disease Levels II and III) not based on pathology shall be presumed to be based on findings of bilateral asbestosis or pleural disease, and all diagnoses of Mesothelioma (Disease Level VIII) shall be presumed to be based on findings that the disease involves a malignancy. However, the Asbestos Trust may rebut these presumptions.

<sup>8</sup> "Pulmonary function testing" or "PFT" shall mean testing that is in material compliance with the quality criteria established by the American Thoracic Society ("ATS") and is performed on equipment which is in material compliance with ATS standards for technical quality and calibration. PFT performed in a hospital accredited by the JCAHO, or performed, reviewed or

In the case of a claimant who was deceased at the time the claim was filed, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I–IV) shall be based upon (i) either (a) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease; (b) pathological evidence of the non-malignant asbestos-related disease; or (c) in the case of Disease Levels I–III, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 4 above), and for Disease Level IV, either an ILO reading of 2/1 or greater or pathological evidence of asbestosis; and (ii) for either Disease Level III or IV, pulmonary function testing.

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

**5.7(a)(1)(C) Exception to the Exception for Certain Pre-Petition Claims.** If the holder of an Asbestos Personal Injury Claim that was filed against ASARCO 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

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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 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.



physical examination of the holder as described in Sections 5.7(a)(1)(A), or if the holder has filed that 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 that medical evidence to the Asbestos Trust notwithstanding the exception in Section 5.7(a)(1)(A).

**5.7(a)(2) Credibility of Medical Evidence.** Before making any payment to a claimant, 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 or other diagnostic imaging, 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 the 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 ASARCO 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 or federal judge using the same methodology and standard, is presumptively reliable, although the Asbestos Trust may seek to rebut the presumption. Notwithstanding the foregoing or any other provision of this TDP, any medical evidence submitted by a physician or entity that the Asbestos Trust has

determined, after consulting with the TAC and FCR, to be unreliable shall not be acceptable as medical evidence in support of any Asbestos Personal Injury 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 Trust in any Individual Review proceeding conducted pursuant to 5.3(b) or any Extraordinary Claim proceeding conducted pursuant to 5.4(a).

**5.7(b) Exposure Evidence.**

**5.7(b)(1) In General.** As set forth above in Section 5.3(a)(3), to qualify for any Disease Level, the claimant must demonstrate a minimum exposure to any products or materials containing asbestos that were mined, manufactured, sold, supplied, produced, specified, selected, distributed or in any way marketed by ASARCO (or any past or present ASARCO Protected Party or Affiliate, or any of the predecessors of ASARCO or any of their past or present Affiliates, or any other Entity for whose products or operations ASARCO allegedly has liability or is otherwise liable). Claims based on conspiracy theories that involve no exposure to such products or materials are not compensable under this TDP. To meet the presumptive exposure requirements of Expedited Review set forth in Section 5.3(a)(3), the claimant must show (i) for all Disease Levels, ASARCO Exposure as defined in Section 5.7(b)(3); (ii) for Nonmalignant Asbestos Disease Level II, six (6) months ASARCO Exposure, plus five years cumulative occupational asbestos exposure; and (iii) for Nonmalignant Asbestos Disease (Disease Level III), Severe Asbestosis (Disease Level IV), Other Cancer (Disease Level

V) or Lung Cancer 1 (Disease Level VII), the claimant must show six (6) months ASARCO Exposure, plus Significant Occupational Exposure to asbestos as defined below. If the claimant cannot meet the relevant presumptive exposure requirements for a Disease Level eligible for Expedited Review, the claimant may seek Individual Review pursuant to Section 5.3(b) of his or her claim based on exposure to an asbestos-containing product or to conduct for which ASARCO 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 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) ASARCO Exposure.** The claimant must demonstrate meaningful and credible exposure: (A) to any products or materials containing asbestos that were mined, manufactured, sold, supplied, produced, specified, selected, distributed or in any way marketed by CAPCO or ASARCO (or any past or present ASARCO Protected Party or Affiliate, or any of the predecessors of ASARCO or any of their past or present Affiliates, or any other Entity for whose products or operations ASARCO allegedly has liability or is otherwise liable) (“**CAPCO Exposure**”); (B) to any products or materials containing asbestos mined, sold or distributed by LAQ or ASARCO (or any past or present ASARCO Protected Party or

Affiliate, or any of the predecessors of ASARCO or any of their past or present Affiliates, or any other Entity for whose products or operations ASARCO allegedly has liability or is otherwise liable) (“**LAQ Exposure**”); or (C) to asbestos or asbestos-containing materials at premises owned, leased, rented, occupied or controlled by ASARCO (or any past or present ASARCO Protected Party or Affiliate, or any of the predecessors of ASARCO or any of their past or present Affiliates, or any other Entity for whose products or operations ASARCO allegedly has liability or is otherwise liable) (“**Premises Exposure**”). A holder of an Asbestos Personal Injury Claim attempting to establish Premises Exposure must demonstrate 30 days exposure to asbestos or asbestos-containing materials at premises owned, leased, rented, occupied or controlled by ASARCO. The holder of an Asbestos Personal Injury Claim asserting more than one category of ASARCO Exposure may only recover on one claim under the TDP. For purposes of clarification, a claimant demonstrating both CAPCO Exposure and LAQ Exposure may only recover one Asbestos Personal Injury Claim. A claimant demonstrating CAPCO Exposure or LAQ Exposure and Premises Exposure must make the election provided under Section 5.3(c). A claimant demonstrating Premises Exposure may proceed with a claim pursuant to Section 5.3(c).

Meaningful and credible exposure evidence under (A), (B) or (C) of this Section 5.7(b)(3) (“**ASARCO Exposure**”) 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 the 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 under either Expedited or Individual Review shall be set forth on the proof of

claim form to be used by the Asbestos Trust. The Asbestos Trust may also require submission of other or additional evidence of exposure when deemed necessary.

Evidence submitted to establish proof of ASARCO 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 ASARCO has legal responsibility, except to the extent such evidence is required elsewhere in this TDP. Similarly, failure to identify ASARCO Exposure 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.

**5.8 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 and other diagnostic imaging, and verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including exposure to asbestos-containing products mined, manufactured or distributed by ASARCO prior to April 11, 2005. 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 the 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 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.** The holder of an Asbestos Personal Injury Claim involving a non-malignant asbestos-related disease (Disease Levels I–IV) may assert a new Asbestos Personal Injury Claim against the Asbestos Trust for a malignant disease (Disease Levels V–VIII) that is subsequently diagnosed. Any additional payments to which the claimant may be entitled with respect to the 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 Asbestos Trust, with the consent of the TAC and the FCR, shall institute pro bono evaluation, mediation and binding and non-binding arbitration procedures in accordance with the Alternative Dispute Resolution Procedures (“**ADR Procedures**”), included in Attachment A hereto or to be attached as an exhibit to the Claims Materials to be prepared by the Asbestos Trust under Section 6.1, for resolving disputes concerning whether a settlement agreement with ASARCO is binding and judicially enforceable in the absence of a Final Order of the Bankruptcy Court; determining whether the Asbestos Trust's rejection or denial of a claim was proper; determining whether the claimant's medical condition or exposure history meets the requirements of this TDP for purposes of categorizing a claim involving Disease Levels I–VIII; or determining any other dispute expressly

made eligible for ADR Proceedings by this TDP. Pro bono evaluation, mediation, and binding and non-binding arbitration shall also be available for resolving disputes over the liquidated value of a claim involving Disease Levels II–VIII, as well as disputes over the unpaid portion of a Pre-Petition Liquidated Asbestos Personal Injury Claim described in Section 5.2 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. In the case of an arbitration involving the liquidated value of a claim involving Disease Levels II–VIII, the arbitrator shall consider the same valuation factors that are set forth in Section 5.3(b)(2). In order to facilitate the Individual Review Process, the Asbestos Trust may from time to time develop a valuation model that enables the Asbestos Trust to efficiently make initial liquidated value offers on those claims in the Individual Review Process. In an arbitration involving any such claim, the Asbestos Trust shall neither offer into evidence or describe any such model nor assert that any information generated by the model has any evidentiary relevance or should be used by the arbitrator in determining the presumed correct liquidated value in the arbitration. The underlying data that was used to create the model may be relevant and may be made available to the arbitrator but only if provided to the claimant or his or her counsel ten days prior to the arbitration proceeding. 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 set forth in Attachment A hereto or to be attached as an exhibit to the Claims Materials may be modified by the Asbestos Trust with the consent of the TAC and the FCR.

**5.10(b) Claims Eligible for Arbitration.** Except as otherwise provided herein, in order to be eligible for arbitration, the claimant must first complete the Individual Review Process

with respect to the disputed issue. The claimant may elect to submit to pro bono evaluation or to mediate the disputed issue prior to arbitration as set forth in the ADR Procedures. Individual Review shall be treated as completed for these purposes when the claim has been individually reviewed by the Asbestos Trust, the Asbestos Trust has made an offer on the claim, the claimant has rejected the liquidated value resulting from the Individual Review, and the claimant has notified the Asbestos Trust of the rejection in writing. Individual Review shall also be treated as completed if the Asbestos Trust has rejected the claim.

**5.10(c) Limitations on and Payment of Arbitration Awards.** In the case of a claim involving Disease Levels I and 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–VIII, the arbitrator shall not return an award in excess of the Maximum Value for the appropriate Disease Level as set forth in Section 5.3(a)(3), 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 the claim as set forth in Section 5.4(a). The claim of a claimant who submits to arbitration and who accepts the arbitral award shall be placed in the FIFO Payment Queue as of the date of the arbitral award, and paid subject to the application of the Maximum Annual Payment, Claims Payment Ratio and Payment Percentage, as applicable.

## **5.11 Litigation.**

**5.11(a) In General.** Claimants who elect non-binding arbitration and then reject the arbitral award retain the right to institute a lawsuit in the tort system against the Asbestos Trust pursuant to Section 7.5. The holder of an Asbestos Premises Liability Claim may recover any judgment from the Asbestos Insurance Company to the extent of coverage. All other



claimants 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 7.6.

**5.11(b) Asbestos Personal Injury Claims Covered by Asbestos Insurance**

**Policies.** Notwithstanding any provision of this TDP, the holder of an Asbestos Personal Injury Claim who contends that the claim is covered by an Asbestos Insurance Policy may request that the Asbestos Trust suspend processing of the claim pending liquidation of the value of the claim by litigation in the tort system and the Asbestos Trust, with the consent of the TAC and the FCR, shall deal with that request appropriately.

**5.11(c) The Right to Establish Certain Procedures.** The Asbestos Trust has the right to establish procedures with the consent of the TAC and the FCR for claimants who hold direct action rights against an Asbestos Insurance Company other than a Settling Asbestos Insurance Company to pursue such rights in the tort system.

**SECTION VI**

**Claims Materials**

**6.1 Claims Materials.** The Asbestos Trust shall prepare suitable and efficient claims materials ("**Claims Materials**") for all Asbestos Personal Injury Claims, and shall provide the Claims Materials to the claimants upon written request. The proof of claim form 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 or by other electronic

means. 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. The Asbestos Trust shall also prepare procedures as otherwise mandated by this TDP.

**6.2 Content of Claims Materials.** The Claims Materials shall include a copy of this TDP, instructions adopted by the Trustees, and a detailed proof of claim form. If feasible, the forms used by the Asbestos Trust to obtain claims information shall be the same or substantially similar to those used by other asbestos claims resolution organizations. 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 Personal Injury Claim at any time upon written notice to the Asbestos Trust and file another claim subsequently, provided, however, that the subsequent claim must be filed within the applicable statute of limitations in effect at the time the claim was initially filed. A claim filed after withdrawal shall be given a place in the FIFO Processing Queue based on the date of the subsequent filing. A claimant can also request that the processing of his or her Asbestos Personal Injury 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 deferral, a sequencing adjustment on the claimant's Asbestos Personal Injury Claim as provided in Section 7.4 shall not accrue and payment of a sequencing adjustment shall be deemed waived by the claimant. Except for Asbestos Personal Injury 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 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 ADR Procedures within six (6) months 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.** The Trustees shall have the discretion to determine, with the consent of the TAC and the FCR, (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 Asbestos Trust and (b) whether a filing fee should be required for any Asbestos Personal Injury Claims.

**6.5 Confidentiality of Claimants' Submissions.** All submissions to the Asbestos Trust by a holder of an Asbestos Personal Injury Claim or a proof of claim form and materials related to the claim 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 the claimant's 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 claimant, or in response to a valid subpoena. Furthermore, the Asbestos Trust shall provide counsel for the claimant a copy of any subpoena as soon as practical upon being served. The Asbestos Trust shall on its own initiative or on request of the claimant take all necessary and appropriate steps to preserve the privileges. 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 Policies or the Asbestos Insurance Settlement Agreements; 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 the 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.

## **SECTION VII**

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

**7.1 Costs Considered.** Notwithstanding any provisions of this TDP to the contrary, the Trustees shall 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 Trustees shall have discretion regarding the amount of transaction costs to be expended by the Asbestos Trust so that valid Asbestos Personal Injury 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 Asbestos Trust whatever the costs, or declining to

accept medical evidence from sources that the Trustees have determined to be unreliable pursuant to Section 5.7(a)(2) or to the Claims Audit Program described in Section 5.8.

**7.2 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 and the Claims Payment Ratio requirements set forth above, the Trustees shall proceed as quickly as possible to liquidate valid Asbestos Personal Injury Claims, and shall make payments to holders of 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, payments 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 Asbestos 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 Trust faces temporary periods of limited liquidity, the Trustees may, with the consent of the TAC and the FCR, suspend the normal order of payment and may temporarily limit or suspend payments altogether, and may offer a Reduced Payment Option as described in Section 2.5.

**7.3 Punitive Damages.** 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 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 Asbestos Trust in the tort system pursuant to Sections 5.11 and 7.5. 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. Claims asserted by a claimant for compensatory damages that satisfy the criteria for payment under this TDP, where the claimant would have been foreclosed from payment because the governing law of the Foreclosed Jurisdiction defines the claim as “exemplary” or “punitive” damages and the claimant would have no other remedy for compensation under the law of the Foreclosed Jurisdiction, shall be treated as compensatory damages determined pursuant to the statutory and common law of the Commonwealth of Pennsylvania, without regard to its choice of law principles.

#### **7.4 Sequencing Adjustment.**

**7.4(a) In General.** Except for any Asbestos Personal Injury Claim involving Other Asbestos Disease (Disease Level I – Cash Discount Payment) and subject to the limitations set forth below, a sequencing adjustment shall be paid on all Asbestos Personal Injury Claims with respect to which the claimant has had to wait a year or more for payment following the date the claim was placed in the FIFO Processing Queue, or, with respect to certain holders of Pre-Petition Liquidated Asbestos Personal Injury Claims, the Petition Date, provided, however, that no claimant shall receive a sequencing adjustment for a period in excess of seven

(7) years. The sequencing adjustment factor shall be three percent (3%) per annum for each of the first five (5) years after the Effective Date; thereafter, the Asbestos Trust shall have the discretion to change the sequencing adjustment factor with the consent of the TAC and the FCR.

**7.4(b) Unliquidated Asbestos Personal Injury Claims.** A sequencing adjustment shall be payable on the Scheduled Value of any unliquidated Asbestos Personal Injury Claim that meets the requirements of Disease Levels II–V, VII and VIII, liquidated under this TDP by Expedited Review, Individual Review, or the ADR Procedures. No sequencing adjustment shall be paid on any claim involving Disease Level I or on any claim liquidated in the tort system pursuant to Sections 5.3(c), 5.11 and 7.5. The sequencing adjustment on an Asbestos Personal Injury Claim liquidated under this TDP that meets the requirements of Disease Level VI shall be based on the Average Value for that Disease Level. Sequencing adjustments on all claims under this Section 7.4(b) shall be measured from the date of payment back to the date that is one year after the date the claim was placed in the FIFO Processing Queue.

**7.4(c) Pre-Petition Liquidated Asbestos Personal Injury Claims.** A sequencing adjustment shall be payable on the liquidated value of a Pre-Petition Liquidated Asbestos Personal Injury Claim where the claimant has elected to retain the liquidated value as described in Section 5.2(a). The sequencing adjustment shall be measured from the date of payment back to the date that is one year after the Petition Date.

**7.5 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, the claimant's exposure history or the liquidated value of the claim, and if the holder has first submitted the claim to non-binding arbitration as provided in Section 5.10, the claimant may file a lawsuit against the Asbestos Trust in the Claimant's Jurisdiction as defined in Section 5.3(b)(2). Any lawsuit must

be filed by the claimant in the claimant's own right and name and not as a member or representative of a class, and no 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 ASARCO) 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.

**7.6 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 Trust an initial payment (subject to the applicable Payment Percentage, the Maximum Annual Payment and the Claims Payment Ratio 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 the 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 and the Claims Payment Ratio provisions above in effect on the date of the payment of the subject installment).

In the case of a claim involving Disease Levels I and II, the total amounts paid with respect to the claim shall not exceed the Scheduled Value for that Disease Level. In the case of non-Extraordinary Claims involving Disease Levels III–VIII, the total amounts paid with respect to the



claims shall not exceed the Maximum Values for the Disease Levels set forth in Section 5.3(b)(3). In the case of Extraordinary Claims, the total amounts paid with respect to the claims shall not exceed the maximum extraordinary values for the claims set forth in Section 5.4(a). Under no circumstances shall (a) sequencing adjustments be paid pursuant to Section 7.4 or (b) interest be paid under any statute on any judgments obtained in the tort system.

A judgment on an Asbestos Premises Liability Claim entered under Section 5.3(c) shall not be subject to this Section 7.6.

**7.7 Releases.** The Trustees shall have the discretion to determine the form and substance of the releases to be provided to the Asbestos Trust in order to maximize recovery for claimants against other tortfeasors without increasing the risk or amount of claims for indemnification or contribution from the Asbestos Trust. As a condition to making any payment to a claimant, the Asbestos Trust shall obtain a general, partial, or limited release as appropriate in accordance with the applicable state or other law. If allowed by state law, the endorsing of a check or draft for payment by or on behalf of a claimant may, in the discretion of the Asbestos Trust, constitute such a release. Holders of Asbestos Premises Liability Claims paid by an Asbestos Insurance Company shall also execute any releases required by the Insurer.

**7.8 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 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 Trust Disclosure of Information.** Periodically, but not less often than once a year, the Asbestos Trust shall make available to claimants and other interested parties, the number of claims by Disease Levels that have been resolved by the Individual Review Process and by the ADR Procedures 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 and in the CIP Agreements, 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 FCR pursuant to the Consent Process set forth in Sections 5.7(b) and 6.6(b) of the Asbestos Trust Agreement, except that the right to amend the Claims Payment Ratio is governed by the restrictions in Section 2.5, and the right to adjust the Payment Percentage is governed by Section 4.2. Nothing herein is intended to preclude the TAC or the FCR from proposing to the Trustees, in writing, amendments to this TDP. Any amendment proposed by the TAC or the FCR shall remain subject to Section 7.3 of the Asbestos Trust Agreement.

**8.2 Severability.** A determination that any provision contained in this TDP is unenforceable 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 ASARCO's obligations to any insurance company providing insurance coverage to ASARCO in respect of claims for personal injury based on exposure to an asbestos-containing product or to conduct for which ASARCO has legal responsibility, the

Asbestos Trust with the consent of the TAC and the FCR may amend this TDP and/or the Asbestos Trust Agreement to make the provisions of either or both documents consistent with the duties and obligations of ASARCO to the insurance company.

**8.3 Governing Law.** Except for purposes of determining the 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 liquidation of Asbestos Personal Injury Claims in the case of Individual Review, pro bono evaluation, mediation, arbitration or litigation in the tort system shall be the law of the Claimant's Jurisdiction as described in Section 5.3(b)(2).