

**FIRST AMENDMENT TO AND  
COMPLETE RESTATEMENT OF  
THE WESTERN ASBESTOS COMPANY/  
WESTERN MAC ARTHUR CO./MAC ARTHUR CO.**

**ASBESTOS PERSONAL INJURY SETTLEMENT  
TRUST DISTRIBUTION PROCEDURES**

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The Western Asbestos Company/Western Mac Arthur Co./Mac Arthur Co. Asbestos Personal Injury Settlement Trust Distribution Procedures ("TDP") contained herein provide for satisfying all asbestos-related personal injury and death claims caused by conduct of, and/or exposure to asbestos-containing products for which, The Western Asbestos Company, Western Mac Arthur Co., or Mac Arthur Co. (collectively, "Western"), its predecessors, successors, and assigns have legal responsibility (hereinafter for all purposes of this TDP defined as "Trust Claims"), as provided in and required by The Western Company Plan of Reorganization ("Plan") and The Western Asbestos Personal Injury Settlement Trust Agreement ("Trust Agreement"). The Plan and Trust Agreement establish The Western Asbestos Personal Injury Settlement Trust ("Trust"). The Trustees of the Trust ("Trustees") shall implement and administer this TDP in accordance with the Trust Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Glossary, attached as Exhibit 1 to the Plan.

**SECTION I**

**Introduction**

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

**1.2 Interpretation.** Nothing in this TDP shall be deemed to create a substantive right for any claimant.

## SECTION II

### Overview

**2.1 Trust Goals.** The goal of the Trust is to treat all claimants equitably. This TDP furthers that goal by setting forth procedures for processing and paying claims generally on an impartial, first-in-first-out ("FIFO") basis, with the intention of paying all claimants over time as equivalent a share as possible of the value of their claims based on historical values for substantially similar claims in the tort system. To this end, the TDP establishes for unliquidated claims in the Case Valuation Matrix ("Matrix"), attached hereto as Appendix I, a schedule of five asbestos-related diseases ("Compensable Diseases"), which have presumptive medical and exposure requirements ("Medical/Exposure Criteria"), criteria for establishing liquidated values ("Matrix Values"), anticipated average values ("Average Values"), and caps on liquidated values ("Maximum Values"). The Compensable Diseases, Medical/Exposure Criteria, Matrix Values, Average Values and Maximum Values, which are set forth in the attached Matrix, have all been selected and derived with the intention of achieving a fair allocation of the Trust funds as among claimants suffering from different disease processes in light of the best available information, considering the settlement history of Western and the rights claimants would have in the tort system absent the bankruptcy. The TDP also provides mechanisms for the treatment and payment of Liquidated Claims.

**2.2 Trust Claim Liquidation Procedures.** Trust Claims shall be processed based on their place in the FIFO Processing Queue to be established pursuant to Section 5.3 below. The Trust shall liquidate all Trust Claims that meet the presumptive Medical/Exposure Criteria in accordance with the Matrix. Claims that do not meet the presumptive Medical/Exposure Criteria

for the relevant Compensable Disease may undergo the Trust's Individual Review Process described in the Matrix. In such a case, notwithstanding that the claim does not meet the presumptive Medical/Exposure Criteria for the relevant Compensable Disease, the Trust can offer the claimant an amount up to the Average Value as defined in the Matrix of that Compensable Disease if the Trust is satisfied that the claimant has presented a claim that would be cognizable, valid and compensable in the tort system.

All unresolved disputes over a claimant's medical condition, exposure history and/or the liquidated value of the claim shall be subject to binding or non-binding arbitration, at the election of the claimant, under the Arbitration Rules. Disputes with the Trust that cannot be resolved by non-binding arbitration may enter the tort system as provided in Sections 5.9 and 7.3 below. However, if and when a claimant obtains a judgment in the tort system, the judgment will be payable (subject to the Payment Percentage, Maximum Annual Payment, Company Category Claims Payment Ratio and Disease Category Claims Payment Ratio provisions set forth below) as provided in Section 7.4 below.

**2.3 Trust Application of the Payment Percentage.** After the liquidated value of a Trust Claim is determined, the claimant will ultimately receive a pro-rata share of that value based on a Payment Percentage calculated as described in Section 4.2 below. The Initial Payment Percentage is expected to be 11.5% based upon currently available information. The Initial Payment Percentage shall be set by agreement between the Asbestos Claimants Committee and the Futures Representative prior to the Effective Date and if no agreement is reached, by the bankruptcy court. Any determination by the bankruptcy court will be on a motion by the Asbestos Claimants Committee, the Futures Representative or Western, to be heard before the first date

scheduled for hearing on confirmation of the Plan. All parties waive any right to move for reconsideration, to appeal or seek any other method of review of the ruling by the bankruptcy court on the Initial Payment Percentage or to request the bankruptcy court to abstain from ruling. The Initial Payment Percentage will be calculated on the assumption that the Matrix's Average Values will be achieved with respect to existing present claims liquidated under the Matrix and projected future claims.

The Payment Percentage may be adjusted upwards or downwards from time to time by the Trust with the consent of the TAC (as defined in Section 3.1 below) and the Futures Representative (as defined in Section 3.1 below) to reflect then-current estimates of the Trust's assets and its liabilities, as well as the estimated value of then-pending and future claims. However, any adjustment to the Initial Payment Percentage shall be made only pursuant to Section 4.2 below. If the Payment Percentage is increased over time, claimants who have previously been paid by the Trust will receive a proportional additional payment unless the Trust with consent of the TAC and the Futures Representative concludes that the amount is so modest and the administrative costs and burdens are so great in comparison to the benefits to claimants that such additional payments shall be omitted or deferred. A claimant may only participate in such additional payments which have been approved pursuant to Section 4.2 on or before the later of the following dates: (1) The fifteenth anniversary of the Trust's first payment to the claimant; or (2) the tenth anniversary of the resolution of the Coverage Litigation. If it becomes relevant, the date of resolution of the Coverage Litigation will be determined by the Trust with the consent of the Futures Representative.

**2.4 Trust's Determination of the Maximum Annual Payment.** The Trust shall estimate or model the amount of cash flow anticipated to be necessary over its entire life to ensure that funds will be available to treat all present and future claimants as similarly as possible. In each year, the Trust will be empowered to pay out all of the interest earned during the year, together with a portion of its principal, calculated so that the application of Trust funds over its life shall correspond with the needs created by the anticipated flow of claims (the "Maximum Annual Payment"). The Trust's distributions to claimants for that year shall not exceed the Maximum Annual Payment determined for that year; provided, however, that the Maximum Annual Payment limitation shall not apply to any Pre-Petition Liquidated Claims as defined in Section 5.2(a) below.

**2.5 Trust Claims Payment Ratio.** Based upon Western's claim settlement history and analysis of present and future claims, two kinds of Claims Payment Ratios have been determined, one relating to the company against which the claim is made ("Company Categories"), and a second relating to the category of disease claim against the particular company ("Disease Categories").

The Company Categories divide claims into those claims made against Western Asbestos Company and Western Mac Arthur Co. collectively, on the one hand, and those claims made against Mac Arthur Co., on the other. The Company Categories will be referred to herein as the "WAC/WMC Ratio" (referring to the Claims Payment Ratio applicable collectively to Western Asbestos Company and Western Mac Arthur Co.), and the "MAC Ratio" (referring to the company Claims Payment Ratio applicable to Mac Arthur Co.). The WAC/WMC Ratio has been set at 88.35% for claims of all Disease Categories, and the MAC Ratio has been set at 11.65% for

claims of all Disease Categories in Minnesota and North Dakota. The WAC/WMC Ratio and the MAC Ratio apply only to Trust Claims that were unliquidated as of the Petition Date. The Claims Payment Ratios shall not apply to any Pre-Petition Liquidated Claims.

In each year, after the determination of the Maximum Annual Payment, 88.35% of that amount will be available to pay liquidated claims against Western Asbestos Company and Western Mac Arthur Co., 11.65% will be available to pay liquidated claims against Mac Arthur Co. in Minnesota and North Dakota, referring in each instance to claims that have been liquidated since the Petition Date. Because virtually all claims against Western Asbestos Company and Western Mac Arthur Co. have been made historically in California, any claims from other jurisdictions against these companies will be carefully scrutinized. Similarly, because virtually all claims against Mac Arthur Co., when sued individually, have been made historically in Minnesota and North Dakota, any claims from other jurisdictions against Mac Arthur Co. will be carefully scrutinized.

In addition, Claims Payment Ratios have been established separately by Disease Category for the universe of claims against Western Asbestos Company and Western Mac Arthur Co. collectively, on the one hand, and for the universe of claims against Mac Arthur Co., on the other.

For claims against Western Asbestos Company and Western Mac Arthur Co. collectively, the Disease Category Claims Payment Ratio has been set at 84% for "Category A" claims, which consist of Trust Claims involving malignant claims that were unliquidated as of the Petition Date, and at 16% for "Category B" claims, which are Trust Claims involving non-malignant claims that were similarly unliquidated as of the Petition Date. The Disease Category Claims Payment Ratios shall not apply to any Pre-Petition Liquidated Claims. In each year, after the determination of the

Maximum Annual Payment, 84% of that amount will be available to pay liquidated Category A claims and 16% will be available to pay liquidated Category B claims that have been liquidated since the Petition Date.

In the event there are insufficient funds in any year to pay the liquidated claims against Western Asbestos Company and Western Mac Arthur Co. within either or both of the Disease Categories, the available funds within the particular Disease Category shall be paid to the maximum extent to claimants in the particular Disease Category based on their place in the FIFO Payment Queue described in Section 5.3(c) below based upon the date of claim liquidation. Claims for which there are insufficient funds will be carried to the next year where they will be placed at the head of the FIFO Payment Queue. If there are excess funds in either or both Disease Category, because there was an insufficient amount of liquidated claims to exhaust the respective Maximum Annual Payment amount for that Disease Category, then the excess funds for either or both Disease Categories will be rolled over and remain dedicated to the respective Disease Category to which they were originally allocated.

For claims against Mac Arthur Co., the Disease Category Claims Payment Ratio has been set at 71.5% in Minnesota and North Dakota for "Category A" claims, which consist of Trust Claims involving malignant claims that were unliquidated as of the Petition Date, and at 28.5% in Minnesota and North Dakota for "Category B" claims, which are Trust Claims involving non-malignant claims that were similarly unliquidated as of the Petition Date. The Disease Category Claims Payment Ratios shall not apply to any Pre-Petition Liquidated Claims. In each year, after the determination of the Maximum Annual Payment, 71.5% of the Minnesota and North Dakota amount will be available to pay liquidated Category A claims, and 28.5% of the Minnesota and

North Dakota amount will be available to pay liquidated Category B claims that have been liquidated since the Petition Date.

In the event there are insufficient funds in any year to pay the liquidated claims against Mac Arthur Co. within either or both of the Disease Categories, the available funds within the particular Disease Category shall be paid to the maximum extent to claimants in the particular Disease Category based on their place in the FIFO Payment Queue described in Section 5.3(c) below based upon the date of claim liquidation. Claims for which there are insufficient funds will be carried to the next year where they will be placed at the head of the FIFO Payment Queue. If there are excess funds in either or both Disease Category, because there was an insufficient amount of liquidated claims to exhaust the respective Maximum Annual Payment amount for that Disease Category, then the excess funds for either or both of the Disease Categories will be rolled over and remain dedicated to the respective Disease Category to which they were originally allocated.

The Company Category Claims Payment Ratios and the Disease Category Claims Payment Ratios are depicted in the following table:

	WAC/WMC COMPANY CATEGORY	MAC COMPANY CATEGORY
		Minnesota and North Dakota
DISEASE CATEGORY A	84% of 88.35%	71.5% of 11.65%
DISEASE CATEGORY B	16% of 88.35%	28.5% of 11.65%
TOTALS ALL DISEASE CATEGORIES	88.35%	11.65%

**Adjustments to Forecast.** The Trustees, with the consent of the TAC and the Futures Representative, may in a particular year conform the Disease Category Claims Payment Ratios and the Company Category Claims Payment Ratios to the revised estimates of future claims prepared by Dr. Mark Peterson and Dr. Francine Rabinovitz presented to the Bankruptcy Court as part of the confirmation hearing ("Adjustment to Forecast"). There shall be no Disease Category Claims Payment Ratio for North Dakota in the MAC Company Category.

**Fundamental Adjustments.** The Company Category Claims Payment Ratio, the Disease Category Claims Payment Ratio and its rollover provisions shall be continued absent circumstances, such as a significant change in law or medicine, necessitating amendment to avoid manifest injustice ("Fundamental Adjustment"). The accumulation, rollover and subsequent delay of claims resulting from application of the Claims Payment Ratios, shall not, in and of itself, constitute such circumstances. Nor may an increase in the numbers of Disease Category B claims beyond those predicted or expected be considered as a factor in deciding whether to reduce the percentage allocated to Disease Category A. In considering whether to make any Fundamental

Adjustment to the Disease Category Claims Payment Ratio and/or its rollover provisions, the Trustees should also consider the reasons for which the Disease Category Claims Payment Ratio and its rollover provisions were adopted, the settlement history that gave rise to its calculation, and the foreseeability or lack of foreseeability of the reasons why there would be any need to make a Fundamental Adjustment. In that regard, the Trustees should keep in mind the interplay between the Payment Percentage and the Disease Category Claims Payment Ratio as it affects the net cash actually paid to claimants. In any event, no Fundamental Adjustment to the Disease Category Claims Payment Ratio may be made without the consent of the TAC and the Futures Representative pursuant to the consent process set forth in Section 2.2(f) of the Trust Agreement. However the Trustees may offer the option of a reduced payment percentage to either Disease Category for any or all Company Categories in return for prompter payment (the "Reduced Payment Option"), after first obtaining the consent of the TAC and the Futures Representative as described above.

The Company Category for a Trust Claim shall be determined by the jurisdiction where the tort action has been filed or litigation commenced. Litigation commenced in Minnesota and North Dakota shall be assigned to the MAC Company Category, and litigation filed in California shall be assigned to the WAC/WMC Company Category. Trust Claims based upon litigation commenced in any other jurisdiction shall be assigned to either the MAC Company Category or to the WAC/WMC Company Category in the sole discretion of the Trust.

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

## SECTION III

### TDP Administration

**3.1 Trust Advisory Committee and Futures Representative.** Pursuant to the Plan and the Trust Agreement, this TDP will be administered by the Trustees in consultation with a five-member Trust Advisory Committee ("TAC"), that represents the interests of holders of present Trust Claims, and a Legal Representative for Future Asbestos-Related Claimants ("Futures Representative"), who represents the interests of holders of Trust Claims that will be asserted in the future. The Trustees shall obtain the consent of the TAC and the Futures Representative to any amendments to these Procedures pursuant to Section 8.1 below, and to such other matters as are otherwise required below and in Section 2.2(f) of the Trust Agreement. The Trustees shall also consult with the TAC and the Futures Representative on such matters as are provided below and in Section 2.2(e) of the Trust Agreement. The initial members of the TAC and the initial Futures Representative are identified in the Trust Agreement.

**3.2 Consent and Consultation Procedures.** In those circumstances in which consultation or consent is required, the Trustees will provide written notice to the TAC and the Futures Representative of the specific amendment or other action that is proposed. The Trustees will not implement such amendment nor take such action unless and until the parties have engaged in the consultation process described in Section 2.2(e), or the Consent Process described in Sections 5.6 and 6.6 and if necessary, 5.7 and 6.7 of the Trust Agreement.

## SECTION IV

### Payment Percentage; Periodic Estimates

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

**4.2 Computation of Payment Percentage.** The Initial Payment Percentage is expected to be 11.5% based upon currently available information. The Initial Payment Percentage shall be set by agreement between the Asbestos Claimants Committee and the Futures Representative prior to the Effective Date and if no agreement is reached, by the bankruptcy court. Any determination by the bankruptcy court will be on a motion by the Asbestos Claimants Committee, the Futures Representative or Western, to be heard before the first date scheduled for hearing on confirmation of the Plan. All parties waive any right to move for reconsideration, to appeal or seek any other method of review of the ruling by the bankruptcy court on the Initial Payment Percentage or to request the bankruptcy court to abstain from ruling. The Payment Percentage shall be subject to change pursuant to the terms of this TDP and the Trust Agreement if the Trustees determine, with consent of the TAC and the Futures Representative, that an adjustment is required. Commencing on the first day of January, after the Plan has been

Confirmed, the Trustees shall reconsider the then applicable Payment Percentage to assure that it is based on accurate current information and may, after such reconsideration, change the Payment Percentage if necessary with the consent of the TAC and the Futures Representative. Thereafter, no less frequently than once every three years, commencing with the first day of January occurring after the Plan is consummated, the Trustees shall reconsider the then applicable Payment Percentage to assure that it is based on accurate, current information and may, after such reconsideration, change the Payment Percentage if necessary with the consent of the TAC and the Futures Representative. The Trustees shall also reconsider the then applicable Payment Percentage at shorter intervals if they deem such reconsideration to be appropriate or if requested to do so by the TAC or the Futures Representative. The Trustees must base their determination of the Payment Percentage on current estimates of the number, types, and values of present and future Trust Claims, the value and liquidity of the assets then available to the Trust for their payment, all anticipated administrative and legal expenses, and any other material matters that are reasonably likely to affect the sufficiency of funds to pay a comparable percentage of full value to all holders of Trust Claims. When making these determinations, the Trustees shall exercise common sense and flexibly evaluate all relevant factors. The Payment Percentage applicable to one category of claims may not be reduced to alleviate delays in another category claims payments caused by a backlog in that category. All claims will receive the same Payment Percentage.

**4.3 Applicability of the Payment Percentage.** No holder of a Trust Claim shall receive a payment that exceeds the Trust's determination of the Initial Payment Percentage, or the Payment Percentage in effect at the time of payment in the case of all other Trust Claims unless a Reduced Payment Option applies. If a redetermination of the Payment Percentage has been

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

## **SECTION V**

### **Resolution of Trust Claims**

**5.1 Threshold Requirement for Submitting a Claim to the Trust.** If a Claimant or Injured Person has commenced litigation seeking compensation for asbestos-related injuries or death that are the subject of a claim in a court where one or more of the Debtors liable for such claim was subject to in personam jurisdiction as of July 1, 2002, then that jurisdiction shall determine which limitations period, category, Average Value, and base case shall be used subject to the exceptions stated herein. If multiple pre-petition lawsuits in different jurisdictions naming one or more of the Debtors liable for such claim have been filed for an Injured Person or Claimant, then such Injured Person or Claimant may choose the pre-petition jurisdiction (from among the different jurisdictions in which the pre-petition lawsuits naming one or more of the Debtors liable for such claim were filed for that Injured Party or Claimant, so long as in personam jurisdiction existed) in which the limitations period, category, Average Value, and base case shall be used. If a Claimant does not have a pending lawsuit against one or more of the Debtors at the

time of the submission to the Trust, then in lieu of having a tort action filed for purposes of this TDP, the Claimant or Injured Person must submit a verified certification under penalty of perjury, either of counsel based upon counsel's records, or of Claimant or Injured Person stating facts which establish in personam jurisdiction in a court where one or more of the Debtors liable for such claim was subject to in personam jurisdiction as of July 1, 2002 or incorporate a lawsuit which asserts those facts, and therefore such person can meet the jurisdictional requirements of the particular state in which the tort claim would have been timely and properly filed. The Trust shall have the right to contest any such certification. The jurisdiction so certified shall determine which limitations period, category, Average Value, and base case shall be used subject to the exceptions stated herein. To the extent that a claim is properly asserted under the foregoing rules against the Trust under a jurisdiction other than California, Minnesota or North Dakota, then the Trustees, in their discretion, may assign a valuation to such claim under one of the valuations provided for California, Minnesota or North Dakota as they deem appropriate. Notwithstanding any other provision hereof, the Trust shall not recognize a claim against Mac Arthur under the valuations provided for California, and under no circumstances shall the Trust recognize any liability as against Mac Arthur for any asbestos product sales, distributions and/or installations made by either Western MacArthur or Western Asbestos, nor shall the Trust recognize any liability as against Western Asbestos and Western MacArthur for any asbestos product sales, distributions and/or installations made by Mac Arthur.

**5.2 Statute of Limitations or Repose for Trust Claims.** The statute of limitations and the choice of law determination applicable to claims against the Trust shall be determined by reference to the tort system where a claim against a Debtor was pending on the filing date of these

cases, or where such a claim could have been timely and properly filed as asserted by the Claimant or Injured Person.

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

#### **5.3(a) Ordering of Claims.**

**5.3(a)(1) Establishment of the FIFO Processing Queue.** The Trust will order unliquidated claims for processing purposes on a FIFO basis except as otherwise provided herein (the "FIFO Processing Queue"). For all claims filed on or before the date six months after the Effective Date (the "Initial Claims Filing Date"), a claimant's position in the FIFO Processing Queue shall be determined as of the earlier of (i) the date prior to November 22, 2002, "Petition Date" (if any) that the specific claim was either served or filed against Western in a court in which Western could properly have been sued or was actually submitted to Western pursuant to an administrative processing agreement; (ii) the date before the Petition Date that a claim was filed or served against another defendant in the tort system if at the time the claim was subject to a tolling agreement with Western; (iii) the date after the Petition Date (if any) but before the Effective Date that the claim was filed or served against another defendant in a court in which Western could properly have been sued; or (iv) the date after the Effective Date but on or before the Initial Claims Filing Date that the claim was served or filed with the Trust. Following the Initial Claims Filing Date, the claimant's position in the FIFO Processing Queue shall be determined by the date the claim was filed with the Trust. For all claims 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.

**5.3(a)(2) Effect of Statutes of Limitations and Repose.** All claims

barred by the applicable statute of limitations or repose, as determined in Section 5.2 above, at the Petition Date shall remain barred on and after the Petition Date. All claims not so barred shall be tolled as of the Petition Date through and including April 22, 2005 without the need of the claimant to take any action whatsoever.

**5.3(b) Processing of Unliquidated Trust Claims.** Within six months after the establishment of the Trust, the Trustees with the consent of the TAC and the Futures Representative shall adopt procedures for reviewing and liquidating all unliquidated Trust Claims, which shall include deadlines for processing such claims. Such procedures shall also require claimants seeking resolution of unliquidated Trust Claims to first file a Trust Claim form, together with the required supporting documentation, in accordance with the provisions of Sections 6.1 and 6.2 below. It is anticipated that the Trust shall provide an initial response to the claimant within six months of receiving the Trust Claim form. All claims filed with the Trust shall be deemed to be a claim for the highest Compensable Disease for which the claim qualifies at the time of filing, with all lower Compensable Diseases for which the claim then qualifies or may qualify in the future subsumed into the higher Compensable Disease for both processing and payment purposes. Upon filing of a valid Trust Claim form with the required supporting documentation, the claim shall be placed in the FIFO Processing Queue in accordance with the ordering criteria described in Section 5.3(a) above.

The five Compensable Diseases covered by this TDP are set forth in detail in the Matrix attached as Appendix I. The Compensable Diseases, Matrix Values, and Medical/ Exposure Criteria shall apply to all unliquidated claims filed with the Trust.

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

**5.3(c) Payment of Claims.** Trust Claims shall be paid in FIFO order based on the date their liquidation became final (the "FIFO Payment Queue"), all such payments being subject to the applicable Payment Percentage, Maximum Annual Payment, Company Category Claims Payment Ratio, and Disease Category Claims Payment Ratio, except as otherwise provided herein. For all claims liquidated on the same date, each claimant's position in the FIFO Payment Queue shall be determined by the date of the diagnosis of the claimant's asbestos-related disease.

**5.4 Resolution of Pre-Petition Trust Claims.** As soon as practicable after the Effective Date, the Trust shall pay all Trust Claims that were liquidated by (i) a settlement agreement entered into prior to the Petition Date for the particular claim, or (ii) a default judgment, stipulated judgment, Miller Schugart judgment or other judgment entered on or before June 3, 2002, (collectively, "Pre-Petition Liquidated Claims"). Notwithstanding the foregoing, these payments shall be subject to the limitations set forth below in this section. The liquidated value of a Pre-Petition Liquidated Claim shall be the amount agreed to in the binding settlement agreement, or the amount of the 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 as of the Petition Date; however, pursuant to Section 7.2 below, the liquidated value of a Pre-Petition Liquidated Claim shall not include any punitive or exemplary damages.

The amount due on all California default judgments as of June 3, 2002, without regard to any partial satisfaction thereof ("California Liquidated Judgments") shall be processed as follows: twelve (12%) percent of the amount of each of the California Liquidated Judgments shall be

deferred ("Deferred Liquidated Value") until the amount collected by the Trust on behalf of all Trust beneficiaries reaches an aggregate amount in excess of \$1.34 billion dollars ("Trigger Point"). Thereafter, the Deferred Liquidated Value shall be included as part of the California Liquidated Judgment amount in the calculation of future distributions from the Trust above the Trigger Point to all Trust beneficiaries. The amount due on all Minnesota default judgments as of June 3, 2002, shall be defined as "Minnesota Liquidated Judgments". The holders of the California Liquidated Judgments and the Minnesota Liquidated Judgments (collectively, "Liquidated Judgments") have already been paid a portion of their respective Liquidated Judgments out of the USF&G Settlement Judgment Escrow ("Escrow Payments"), and the Trust shall be entitled to offset the amount of those Escrow Payments dollar for dollar against any amounts the Trust would otherwise be obligated to pay the Liquidated Judgment holders until the full amount of the Escrow Payments has been credited. Thereafter, Liquidated Judgment holders shall participate in all Trust distributions to Trust beneficiaries, subject to the "Trigger Point" as described above for California Liquidated Judgments.

Pre-Petition Liquidated Claims shall be processed and paid within 90 days of the Effective Date, if feasible, or as soon thereafter as is possible. The amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Maximum Annual Payment, Company Category Claims Payment Ratio or Disease Category Claims Payment Ratio, but shall be subject to the Payment Percentage provisions set forth in Section 4.2 above.

**5.5 Hardship Claims.** At any time the Trust may liquidate and pay certain Trust Claims that qualify as Hardship Claims. Such claims may be considered separately no matter what the order of processing otherwise would have been under this TDP. A Hardship Claim,

following its liquidation, shall be placed at the head of the FIFO Liquidation Queue for purposes of payment, subject to the Maximum Annual Payment, Company Category Claims Payment Ratio and Disease Category Claims Payment Ratio described above. A Trust Claim qualifies for payment as an Hardship Claim if the Trust, in its sole discretion, determines (a) that the claimant needs financial assistance on an immediate basis based on the claimant's expenses and all sources of available income, and (b) that there is a causal connection between the claimant's dire financial condition and the claimant's asbestos-related disease.

**5.6 Contribution Claims.** Contribution Claims that are asserted against the Trust based upon theories of contribution or indemnification under applicable law may not be processed or paid by the Trust unless such claim would not be disallowed by Section 502(e) of the Code if the Trust were a debtor in a case under the Code, and (b) the holder of such claim (the "Indirect Claimant") establishes to the satisfaction of the Trustees that (i) the Indirect Claimant has paid in full the liability and obligations of the Trust to the direct claimant to whom the Trust would otherwise have had a liability or obligation under these Procedures, (ii) the direct claimant and the Indirect Claimant have forever released the 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 Trust superior to the rights of the related direct claimant against the Trust, including any rights with respect to the timing, amount or manner of payment.

The Trust shall not pay any Indirect Claimant unless and until the Indirect Claimant's aggregate liability for the direct claimant's claim has been fixed, liquidated and paid by the Indirect Claimant pursuant to final judgment and not by settlement.

The credit or offset which a co-defendant is entitled in the tort system for settlement with the trust is the amount of the Trust's Payment to the Claimant shall be (a) the actual amount received to date by the Claimant; or (b) if no funds have yet been received, the amount of the liquidated value agreed to by the Claimant and the Trust, multiplied by the pro rata share in effect at the time the set-off is being applied.

Contribution Claims shall be processed in accordance with procedures to be developed and implemented by the Trustees, which procedures (a) shall determine the validity, allowability and enforceability of such claims; and (b) only then shall otherwise provide the same liquidation and payment procedures and rights to the holders of such claims as the Trust would have afforded the holders of the underlying valid Trust Claims.

#### **5.7 Claim Auditing and Review Procedures.**

**5.7(a) Claims Audit Program.** The Trust with consent of the TAC and Futures Representative may develop methods for auditing the reliability of evidence reasonably related to the value of the claim, including additional reading of x-rays and verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including exposure to asbestos-containing products manufactured or distributed by Western, and requesting from claimants or other Trusts, claims materials submitted to other Trusts. In the event that the Trust reasonably determines that any unreliable individual or entity has engaged in a pattern or practice of providing unreliable medical or other evidence to the Trust, it may decline to accept additional evidence from such provider in the future. Further, in the event that an audit reveals that fraudulent information has been provided to the Trust, the Trust may penalize any responsible claimant or claimant's attorney by disallowing the related Trust Claim or by other means

including, but not limited to, requiring the claimant or attorney submitting the fraudulent information to pay the costs associated with the audit and any future related audit or audits, reordering the priority of payment of all affected claimants' Trust Claims, raising the level of scrutiny of additional information submitted from the medical facility or other source, refusing to accept additional evidence from the same, 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 Rule 11 sanctions.

**5.7(b) Review by the Trust for the benefit of the TAC and Futures**

**Representative.** The Trust shall cause a review of the filed claims, paid claims, average payments and disallowed claims by Compensable Disease to be performed bi-annually or upon the request of the TAC or the Futures Representative, sufficient to allow an estimation of the adequacy of the Trust fund to compensate Claimants as compared to the current claims forecast.

**5.8 Second Disease Claims.**

**5.8(a) Second Disease (Malignancy) Claims.** The holder of a claim involving a non-malignant asbestos-related disease may file a new claim for a malignant disease that is subsequently diagnosed ("Second Disease Claim"). Any payments to which such claimant may be entitled for such asbestos-related malignancy shall be reduced by the amount paid by the Trust and/or the USF&G Settlement Judgment Escrow for the non-malignant asbestos-related disease.

5.8(b) Second Disease Default Judgment Claims. Claimants who took personal injury defaults are allowed to file i) a wrongful death claim, if the claimant subsequently died of an asbestos-related disease and/or ii) a Second Disease Claim. These claims will be valued,

pursuant to the Matrix, at either i) one-half (½) of the otherwise appropriate liquidated value of the wrongful death or Second Disease Claim award from the Trust; or ii) at full value of the new claim, wrongful death claim or Second Disease Claim less a dollar for dollar credit on money actually received out of the Judgment Escrow and amounts paid pursuant to Section 5.4, as the claimant may elect.

## **5.9 Arbitration.**

**5.9(a) Establishment of Arbitration Procedures.** The Trust, with the consent of the TAC and the Futures Representative, shall institute Arbitration Rules for resolving disputes concerning the Trust's outright rejection or denial of a claim, or concerning the claimant's medical condition or exposure history for purposes of categorizing a claim. Binding and non-binding arbitration shall also be available for resolving disputes over the liquidated value of a claim. In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in the Matrix. In the case of an arbitration involving the liquidated value of a claim, the arbitrator shall consider the same valuation factors that are set forth in the Matrix. With respect to all claims eligible for arbitration, the claimant, but not the Trust, may elect either non-binding or binding arbitration. If the claimant elects non-binding arbitration, claimant will be responsible for 1/2 of arbitrator's fees and costs. The Arbitration Rules may be modified by the Trust with the consent of the TAC and the Futures Representative. Such amendments may also include adoption of mediation procedures as well as establishment of an Extraordinary Claims Panel to review such claims pursuant to the Matrix.

**5.9(b) Claims Eligible for Arbitration.** A claim is eligible for arbitration, if it has been rejected by the Trust, or the Trust has made an offer which was rejected by the claimant. The claimant must notify the Trust of such rejection in writing.

**5.9(c) Limitations on and Payment of Arbitration Awards.** The arbitrator shall not return an award in excess of the appropriate Matrix Value for such claim based upon the facts as found by the arbitrator. For an Extraordinary Claim, the arbitrator shall not return an award greater than the Maximum Extraordinary Value for such a claim as set forth in the Matrix. A claimant who submits to arbitration and who accepts the arbitral award will receive payments in the same manner as one who accepts the Trust's original valuation of the claim.

**5.10 Litigation.** A claimant who elects non-binding arbitration and then rejects the arbitral award retains the right to exit to the tort system pursuant to Sections 7.3 below. However, a claimant shall be eligible for payment of a judgment for monetary damages obtained in the tort system from the Trust's available cash only as provided in Section 7.4 below.

## **SECTION VI**

### **Claims Materials**

**6.1 Claims Materials.** The Trust shall prepare suitable and efficient claims materials ("Claims Materials"), and shall provide such Claims Materials upon written request. The Trust Claim form to be submitted to the Trust shall include a certification by the claimant or his or her attorney sufficient to meet the requirements of Rule 11(b) of the Federal Rules of Civil Procedure. A copy of the Trust Claim forms to be used by the Trust for Pre-Petition Liquidated Claims and unliquidated Claims will be created with the consent of the TAC and the Futures Representative within three months of the establishment of the Trust. The Trust Claim forms may be changed by

the Trust with the consent of the TAC and the Futures Representative. The Trust shall also establish procedures for electronic filing of claims.

**6.2 Content of Claims Materials.** The Claims Materials shall include a copy of this TDP, such instructions as the Trustees shall approve, and Trust Claim forms. The Trust Claim forms shall be submitted with supporting documentation in accordance with the relevant criteria used to liquidate Pre-Petition claims, as set forth below. At a minimum, the unliquidated Trust Claim form shall require:

a) Claimant provide, in substance, all relevant information called for in the San Francisco Superior Court General Order 129 Form Interrogatories, Set 1 and Set 2 and Minnesota Plaintiff's Set 1 Answers to Defendant's Interrogatories, with the exposure used to qualify for the particular category highlighted and the pages tabbed;

b) Medical records, medical reports and/or death certificates evidencing the claimed disease, with the diagnosis highlighted and the pages tabbed. For lung cancer and other cancer cases, evidence of markers or other factors which would lead to an upward adjustment under the Matrix will be highlighted and the pages tabbed. For Grade I claims, evidence of x-ray and PFT values that would lead to an increased award will be highlighted and the pages tabbed.

c) For Serious Asbestosis claims, evidence to support this categorization will be highlighted and the pages tabbed.

d) For an Injured Person seeking a multiplier for an economic loss in excess of the base case amount, an economic report of evidence supporting claimed wage/pension/home services loss, with total claimed loss highlighted and the page tabbed.

e) For an Injured Person seeking a multiplier for medical expenses in excess of the base case amount, an affidavit summarizing medical expenses, or submission of medical bills to substantiate the total claimed amount.

f) An endorsed/filed copy of the face page of the complaint or equivalent proof of commencement of litigation if applicable, or alternatively a certification under Section 5.1.

g) Social security records or equivalent information, if available, in evidentiary or affidavit form.

**6.3 Withdrawal of Claims.** A claimant can withdraw a Trust Claim at any time upon written notice to the Trust and file another claim subsequently without affecting the status of the claim for statute of limitations purposes, but any such claim filed after withdrawal shall be given a place in the FIFO Processing Queue based the date of such subsequent filing. A claim will be deemed to have been withdrawn if the claimant neither accepts, rejects, nor initiates arbitration within six months of the Trust's offer of payment or rejection of the claim. Upon written request and good cause, the Trust may extend this period for an additional six months.

**6.4 Filing Fees.** There will be a filing fee of \$250.00 for each unliquidated claim which will be refunded by the Trust if the claim is allowed. The Trust may waive the refundable filing fee if it is determined that such a fee would create undue hardship for the claimant. The size of the fee will be reviewed by the Trust on a yearly basis.

**6.5 Assignment of Direct Actions to the Trust.** Signature by an asbestos related claimant on his or her Trust Claim form will constitute his or her assignment to the Trust of any Direct Action he or she might have against any Asbestos Insurance Company. Such signature will

also authorize the Trust to act as his or her sole attorney in fact to prosecute any such Direct Action at the Trust's sole discretion.

## **SECTION VII**

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

**7.1 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 Liquidation Queues, Maximum Annual Payment, Company Category Claims Payment Ratio and Disease Category Claims Payment Ratio requirements set forth above, the Trustees shall proceed with due diligence to liquidate valid Trust Claims, and shall make payments to holders of such claims in accordance with this TDP promptly as funds become available and as claims are liquidated, while maintaining sufficient resources to pay future valid claims in substantially the same manner. Because the Trust's income over time remains uncertain, and decisions about payments must be based on estimates that cannot be done precisely, they may have to be revised in light of experiences over time, and there can be no guarantee of any specific level of payment to claimants. However, the Trustees shall use their best efforts to treat similar claims in substantially the same manner, consistent with their duties as Trustees, the purposes of the Trust, the established allocation to Categories A and B, and the practical limitations imposed by the inability to predict the future with precision. In the event that the Trust faces temporary periods of limited liquidity, the Trustees may, with the consent of the TAC and the Futures Representative, suspend the normal order of payment and may temporarily limit or suspend payments altogether, and if appropriate, at any time may offer a Reduced Payment Option.

**7.2 Punitive Damages.** In determining the value of any liquidated or unliquidated Trust Claim, punitive or exemplary damages, i.e., damages other than compensatory damages, shall not be considered or allowed, notwithstanding their availability in the tort system.

**7.3 Suits in the Tort System.** If the holder of a disputed claim disagrees with the Trust's determination regarding the Compensable Disease 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 5.9 above and rejected the resulting arbitration award, the holder may file a lawsuit in the jurisdiction where in personam jurisdiction over the Trust can be obtained. Any such lawsuit must be filed by the claimant in his or her own right and name and not as a member or representative of a class. No such lawsuit may be consolidated with any other lawsuit, with the exception of a personal injury or survival claim which may be consolidated with a wrongful death claim brought as a result of the death of the Injured Party. All defenses (including, with respect to the Trust, all defenses which could have been asserted by Western) shall be available to the Trust at trial; however, the Trust may waive any defense and/or concede any issue of fact or law. If the claimant was alive at the earlier of the date on which the initial complaint was filed or the date the Trust Claim form was filed, the case will be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim. An insurer as to which the Trust asserts coverage liability in respect to the claim of a claimant filing a lawsuit consistent with the provisions of this Section (a "Litigation Claim"), which insurer continues to be entitled under the terms of its policies and applicable state law to participate in the resolution of a claim against the Debtors or the Trust,

may participate in the resolution of the Litigation Claim to the extent so entitled so long as it continues to be prosecuted in a court of law.

**7.4 Payment of Judgments for Money Damages.** If and when a claimant obtains a judgment in the tort system, the claim shall be placed in the FIFO payment queue based on the date on which the judgment became final. Thereafter, the claimant shall receive from the Trust an initial payment (subject to the Payment Percentage, the Maximum Annual Payment, Company Category Claims Payment Ratio and Disease Category Claims Payment Ratio provisions set forth above) of an amount equal to one-hundred percent (100%) of the lesser of a) the jury award or b) the greater of (i) the Trust's last offer to the claimant or (ii) the award that the claimant declined in non-binding arbitration. The claimant shall receive the balance of the judgment, if any, in ten (10) equal installments in years six (6) through fifteen (15) following the year of the initial payment (also subject to the Payment Percentage, the Maximum Annual Payment, Company Category Claims Payment Ratio and Disease Category Claims Payment Ratio provisions set forth above). Under no circumstances shall interest be paid under otherwise applicable law on any judgments obtained in the tort system.

**7.5 Releases.** The Trustees shall have the discretion, with the consent of the TAC and Futures Representative, to determine the form and substance of the releases to be provided to the Trust in order to maximize recovery for claimants against other tortfeasors without increasing the risk or amount of claims for indemnification or contribution from the Trust. The Release utilized by the Trust shall include all Personal Injury, Wrongful Death, and/or Derivative claims related to the Injured Party, with the exception of the Second Disease Claims, as described above in Section 5.8. As a condition to making any payment to a claimant, the Trust shall obtain a general, partial,

limited, Naig-Pierringer, or other release as appropriate in accordance with the applicable state or other law. If allowed by state law, the endorsing of a check or draft for payment by or on behalf of a claimant shall constitute such a release.

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

**7.7 Trust Disclosure of Information.** Periodically, but not less often than once a year, the Trust shall make available to claimants and other beneficiaries, a statistical summary of the number of claims by Compensable Diseases that have been resolved by settlement, arbitration or trial by jurisdiction.

## **SECTION VIII**

### **Miscellaneous**

**8.1 Amendments.** Except as otherwise provided herein, the Trustees may amend, modify, delete, or add to any provisions of this TDP (including, without limitation, amendments to conform this TDP to advances in scientific or medical knowledge or other changes in circumstances), provided they first obtain the consent of the TAC and the Futures Representative pursuant to the Consent Process set forth in Sections 5.6 and 6.6 and, if necessary, Sections 5.7 and 6.7 of the Trust Agreement, except that the right to amend the Company Category Claims Payment Ratio and Disease Category Claims Payment Ratio provisions set forth above) are

governed by the restrictions in Section 2.5 above, and the right to adjust the Payment Percentage is governed by Section 4.2 above.

**8.2 Severability.** Should any provision contained in this TDP be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this TDP. Should any provision contained in this TDP be determined to be inconsistent with or contrary to Western's obligations to any insurance company providing insurance coverage to Western in respect of claims for personal injury based on Western Exposure, no payment shall be made by the Trust in respect of any such claim from proceeds from said insurance coverage.

**8.3 Governing Law.** This TDP shall be governed by, and construed in accordance with, the laws of the State of California, without regard to California conflict of laws principles.

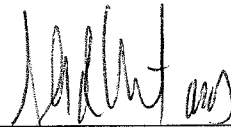
**8.4 Attorneys' Fees.** Attorneys' fees payable in connection with Trust claims paid through this TDP, whether based on hourly rates or where calculated as a percentage of recovery, shall be the lower of the fee provided in the contract between claimant and counsel or 25% of the recovery, exclusive of costs chargeable to the claimant, which costs shall be deducted from the gross amount paid before computation of fees. This recovery shall be measured by the actual payments from the Trust to the claimant, not the liquidated value of the claim. Legal fees shall be paid as payment to claimants are made by the Trust.

**8.5 Exception in Minnesota and California.** The holder of an asbestos claim who is a citizen of the State of Minnesota or California has the option to name the Trust as a party defendant where the only claims against the Trust are for Western related personal injury, wrongful death or derivative claim case filed or served in Minnesota or California. However, the

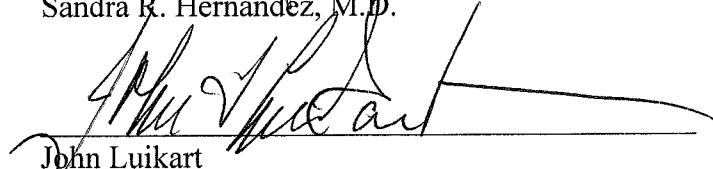
Trust shall not participate in the litigation and shall be removed from all service lists. No payment shall be made to such holder of an asbestos claim except as provided by the Matrix and the TDP. In the event a Minnesota or California citizen opts to name the Trust in an action commenced in a Minnesota or California state court, the Trust shall not consent to remove the action to any federal court and if requested to do so, shall provide a declaration that it did not consent to any removal. The Trust shall not be required to answer or participate in the litigation and no payment shall be made to such Injured Person except as provided by the TDP and Matrix.

IN WITNESS WHEREOF, the Trustees of the Western Asbestos Settlement Trust have executed this First Amendment to and Complete Restatement of The Western Asbestos Company/Western Mac Arthur Co./Mac Arthur Co. Asbestos Personal Injury Settlement Trust Distribution Procedures this 14<sup>th</sup> day of December, 2006.

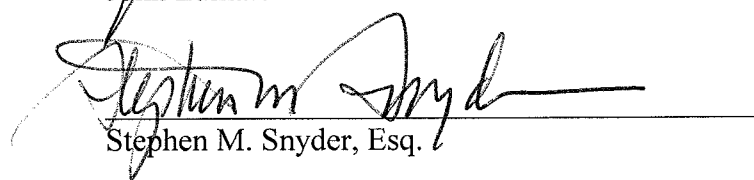
TRUSTEES:



Sandra R. Hernandez, M.D.



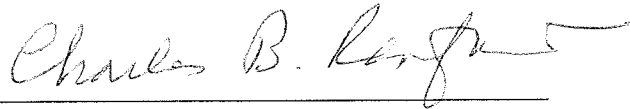
John Luikart



Stephen M. Snyder, Esq.

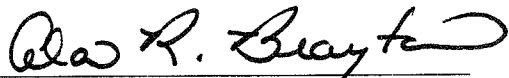
Consented to by:

FUTURES REPRESENTATIVE



The Hon. Charles B. Renfrew

TRUST ADVISORY COMMITTEE

By: 

Alan R. Brayton, Esq., Chair