

**FIRST AMENDMENT TO AND COMPLETE RESTATEMENT OF  
WESTERN ASBESTOS SETTLEMENT TRUST CASE VALUATION MATRIX**

The Case Valuation Matrix (“Matrix”) is designed to approximate historical settlement values in the tort system. To achieve this goal, historical settlement values were evaluated in each jurisdiction where Western performed significant work and had a history of being sued and settling cases. These jurisdictions include California, Minnesota and North Dakota. Historical settlement values were adjusted to current settlement values using settlement data derived from other defendants who remained active in the tort system. Compensable diseases include mesothelioma, lung cancer, other cancers (as defined herein) and two grades of non-malignant asbestos-related disease. The Matrix establishes the minimum criteria which must be met in order to qualify in each disease category.

The following represents the average settlement values in each jurisdiction adjusted to current value (“Average Value”):

	<u>Western Asbestos Company/ Western Mac Arthur Co.</u>		<u>Mac Arthur Co.</u>	
		CA	MN	ND
Mesothelioma	\$	524,025	316,250	117,087
Lung Cancer	\$	199,195	137,050	44,777
Other Cancer	\$	75,000	73,800	16,884
Grade I Non-Malignancy	\$	51,557	57,200	16,500
Grade 11 Non-Malignancy	\$	21,816	30,150	12,000

The Matrix is designed to value cases using base case values for each disease in each jurisdiction. These base case values are then increased and/or decreased by a series of adjustment factors that approximate factors which add or subtract value to cases in the tort system. These base case values have been set to yield (after application of the adjustment factors) average liquidation values, that are equal to the historical Average Value described above. The base case values are:

	<u>Western Asbestos Company/ Western Mac Arthur Co.</u>		<u>Mac Arthur Co.</u>	
		CA	MN	ND
Mesothelioma	\$	276,479	148,678	58,544
Lung Cancer	\$	62,046	41,211	13,569
Other Cancer	\$	22,298	21,222	4,894
Grade I Non-Malignancy	\$	32,131	30,868	9,764
Grade 11 Non-Malignancy	\$	18,574	21,875	8,219

While the base case value for each disease may be different in various jurisdictions reflecting variations in historical settlement values, the adjustment factors will be the same for all jurisdictions. In determining which jurisdiction's base case value should be used to liquidate a claim, the jurisdiction in which the underlying tort action is filed (or litigation commenced for Minnesota cases) will control for California, Minnesota and North Dakota. In actions properly filed in jurisdictions other than California, Minnesota or North Dakota where MacArthur and/or Western MacArthur are subject to *in personam* jurisdiction as of November 11, 2002, the base case value will be determined by the Trust based on credible comparable settlement data, but in no event will the base case value in a MacArthur claim exceed the Minnesota base case value, and in no event will the base case value in a Western MacArthur claim exceed the California base case value.

## I. GENERAL CLAIM PROVISIONS

a. All claims after being valued at their respective base case value and any appropriate adjustments are subject to the following minimum and maximum values.

(i) **Minimum Value.** Any Injured Person who has submitted an approved claim under a Compensable Disease category and has submitted a Trust Claim form to the trust with all required documentation as outlined in the Trust Distribution Plan and herein, will receive a minimum of 10% of the Average Value of the claim for that disease in the controlling jurisdiction.

(ii) **Maximum Value.** Any Injured Person who has submitted an approved claim under a Compensable Disease category and has submitted a Trust Claim form to the trust with all required documentation as outlined in the Trust Distribution Plan and herein, will receive a maximum of four times the Average Value of the claim for that disease in the controlling jurisdiction, unless it qualifies as an Extraordinary Claim as defined in Section IX of the Matrix.

b. Any diagnosis of pulmonary asbestosis shall be made by a (i) a Pathologist, who personally reviewed the Injured Person's pathology, or (ii) an Internist, Pulmonologist or Occupational Medicine Physician who actually examined the Injured Person. These findings will be contained in a detailed narrative written report of the examination. All medical diagnoses in the Matrix are required to be made by Board-Certified physicians in appropriate specialties to a level of reasonable medical probability. Specifically, medical reports that only come to a conclusion that findings are "consistent with" asbestos-related disease will not, standing alone, be sufficient to establish compliance with the medical criteria in the Matrix. Medical experts who are not Board-Certified but who meet equivalent medical experience and expertise requirements may be approved by the Trust with the consent of the TAC and Futures Representative upon application by a Claimant.

c. The Trust may require the submission of x-rays, laboratory tests, medical examinations or reviews, medical reports, other medical evidence, or any other evidence to support or verify the Trust Claim, and may further require that medical evidence submitted comply with recognized medical and/or legal standards regarding equipment, testing methods, and procedures to assure that such evidence is reliable.

d. Claims based on conspiracy theories that do not involve exposure to asbestos-containing materials sold, installed or removed by Western are not compensable under this Matrix.

## II. MESOTHELIOMA

a. **Base Case (“M”).** The base case value for a Mesothelioma case is referred to in this Agreement as “M”. A case will be considered a base case Mesothelioma under this Matrix when it satisfies each of the following criteria:

(i) Injured Person diagnosed with malignant Mesothelioma by a Pathologist, Internist, Pulmonologist or Occupational Medicine Physician;

(ii) Injured Person deceased at commencement of litigation or the time of filing of proof of claim, whichever is earlier;

(iii) Injured Person aged 75 years old at death;

(iv) Injured Person had a spouse;

(v) Injured Person had no other dependents or minor children at time of death;

(vi) Injured Person’s loss of earnings, pension, social security and home services total up to, but no more than, \$200,000;

(vii) Injured Person’s medical and funeral expenses total up to, but no more than, \$200,000;

(viii) Injured Person had Standard Exposure to Western’s asbestos-containing products in traditional occupations at traditional shipyard, refinery, power plants or other sites, as defined herein; and

(ix) The Injured Person had at least a 10-year latency period between the date of the first exposure to asbestos and the date of diagnosis of the disease.

b. **Adjustments.** Certain features of a Mesothelioma case will warrant an adjustment in the liquidated value either above or below the base case Mesothelioma value, as set forth herein. The following adjustments are provided as multipliers of the base case value M. For example, an adjustment of 1.3M for a Living 55 year-old mesothelioma Injured Person indicates that such an Injured Person would receive 1.3 times the base case Mesothelioma value. In situations where numerous adjustments are required for an Injured Person’s case, all of the applicable adjustment multipliers shall be multiplied together, and times the base case value M, to determine the liquidated value of the case. For example, an Injured Person who is age 55 (1.3M) and alive at the commencement of litigation or the time of filing of proof of claim, whichever is earlier (1.3M), and who had exposure at what is known to be a high exposure site (1.5M), would be eligible for a liquidated value of 1.3 times 1.3 times 1.5 or 2.535 M times the base case value.

(i) **Age.** Age shall be determined as of the commencement of litigation or the time of filing of the proof of claim, whichever is earlier. The adjustment factor for age shall be decreased .015 for every year over 75 years of age up to a maximum downward adjustment to .7M, and shall be increased .015 for every year under 75 years of age up to a maximum upward adjustment to 1.4M.

(ii) **Exposure.** The following adjustments are based on exposure in traditional occupations at traditional shipyard, refinery, power plant, or other sites as set forth herein:

<b>Exposure Rating</b>	<b>Adjustment</b>
Very high exposure sites, as defined herein	3.0 M
High exposure sites, as defined herein	1.5 M
Standard exposure sites, as defined herein	1.0 M
Low exposure sites, as defined herein	0.5 M
Very Low exposure sites, as defined herein	0.25 M

(iii) If an Injured Person is living as of the date litigation commences or the proof of claim is filed, whichever is earlier, the Injured Person's case will be adjusted by 1.3 M.

(iv) If an Injured Person does not have a spouse or minor children as of the date litigation commences or the proof of claim is filed, whichever is earlier, the Injured Person's case will be adjusted by .8 M. If an Injured Person has minor children, adult disabled dependent children or dependent minor grandchildren living with the Injured Person at the time of diagnosis, the Injured Person's case will be adjusted by 1.5 M.

(v) **Total Economic Loss (excluding medical and funeral expenses).** An Injured Person who has incurred economic losses for loss of earnings, pension, social security and home services in an amount greater than \$200,000, shall be adjusted upward .001 for every thousand dollars of economic loss over \$200,000, up to a maximum upward adjustment to 2 M. For example, a total economic loss of \$500,000 would result in an increase of .3 to 1.3 M. All claimed economic loss over \$200,000 must be supported by adequate documentation.

(vi) **Medical and Funeral Expenses.** An Injured Person who has or will incur medical and funeral expenses in an amount greater than the base Mesothelioma case maximum of \$200,000, shall be adjusted upward .001 for every thousand dollars of medical and funeral expenses over \$200,000, up to a maximum adjustment to 2M. All claimed medical and funeral expenses over \$200,000 must be supported by adequate documentation. Standard future medical expenses are presumed to be \$75,000. Future medical expenses exceeding \$75,000 require documentation supported by affidavit.

### III. LUNG CANCER

a. **Base Case** (“LC”). The base case value for a Lung Cancer case is referred to in this Agreement as “LC”. A case will be considered a base case Lung Cancer under this Matrix when it satisfies each of the following criteria:

(i) Injured Person diagnosed with primary lung cancer by a Pathologist, Internist, Pulmonologist or Occupational Medicine Physician;

(ii) Injured Person deceased at time of commencement of litigation or the time of filing of the proof of claim, whichever is earlier;

(iii) Injured Person aged 75 years old at death;

(iv) Injured Person had a spouse;

(v) Injured Person had no other dependents or minor children at time of death;

(vi) Injured Person’s loss of earnings, pension, social security and home services total up to, but no more than, \$200,000;

(vii) Injured Person’s medical and funeral expenses total up to, but no more than, \$200,000;

(viii) Injured Person had Standard Exposure to Western’s asbestos-containing products in traditional occupations at traditional shipyard, refinery, power plant or other sites, as defined herein;

(ix) Injured Person had a 20-80 pack-year history of smoking;

(x) Injured Person was still smoking at the time of diagnosis, or had quit smoking less than 10 years before diagnosis;

(xi) Injured Person had been not diagnosed with clinical or pathological asbestosis, but Injured Person had both:

(A) A reliable history of exposure to asbestos; and

(B) Evidence of asbestos-related anatomical changes, such as: asbestos-related pleural disease, chest X-ray abnormalities graded 1/0 or higher on the ILO scale attributed to prior asbestos exposure, computed tomography (CT) evidence of interstitial disease attributed to prior asbestos exposure; and

(xii) The Injured Person had at least a 10-year latency period between the date of the first exposure to asbestos and the date of diagnosis of the disease.

b. **Adjustments.** Certain features of a Lung Cancer Case will warrant an adjustment in the liquidated value either above or below the base case Lung Cancer value, as set forth herein. The following adjustments are provided as multipliers of the base case value LC.

For example, an adjustment of 1.3 LC for a living 55 year-old lung cancer Injured Person **indicates that such an Injured Person would receive 1.3 times the base case Lung Cancer value.** In situations where numerous adjustments are required for an Injured Person’s case, all of the applicable adjustment multipliers shall be multiplied together, and times the base case value LC, to determine the liquidated value of the case. For example, an Injured Person who is age 55 (1.3 LC) and alive at the commencement of litigation or the time of filing of proof of claim, whichever is earlier (1.3 LC), and who had exposure at what is known to be a high exposure site (1.5 LC), would be eligible for a liquidated value of 1.3 times 1.3 times 1.5 or 2.535 LC times the base case value.

(i) **Age.** Age shall be determined as of the commencement of litigation or the time of filing of the proof of claim, whichever is earlier. The adjustment factor for age shall be decreased .015 for every year over 75 years of age up to a maximum downward adjustment to .7 LC, and shall be increased .015 for every year under 75 years of age up to a maximum upward adjustment to 1.4 LC.

(ii) **Exposure.** The following adjustments are based on exposure in traditional occupations at traditional shipyard, refinery or power plant, or other sites as set forth herein:

<b>Exposure Rating</b>	<b>Adjustment</b>
Very high exposure sites, as defined herein	3.0 LC
High exposure sites, as defined herein	1.5 LC
Standard exposure sites, as defined herein	1.0 LC
Low exposure sites, as defined herein	0.5 LC
Very Low exposure sites, as defined herein	0.25 LC

(iii) If an Injured Person is living as of the date litigation commences or the proof of claim is filed, whichever is earlier, the Injured Person’s case will be adjusted by 1.3 LC.

(iv) If an Injured Person does not have a spouse or minor children as of the date litigation commences or the proof of claim is filed, whichever is earlier, the Injured Person’s case will be adjusted by .8 LC. If an Injured Person has minor children, adult disabled dependent children or dependent minor grandchildren living with the Injured Person at the time of diagnosis, the Injured Person’s case will be adjusted by 1.5 LC.

(v) **Total Economic Loss (excluding medical and funeral expenses).** An Injured Person who has incurred economic losses for loss of earnings, pension, social security and home services in an amount greater than the greater than \$200,000, shall be adjusted upward .001 for every thousand dollars of economic loss over \$200,000, up to a maximum upward adjustment to 2 LC. For example, a total economic loss of \$500,000 would result in an increase

of .3 to 1.3 LC. All claimed economic loss over \$200,000 must be supported by adequate documentation.

(vi) **Medical and Funeral Expenses.** An Injured Person who has or will incur medical and funeral expenses in an amount greater than the base Lung Cancer case maximum of \$200,000, shall be adjusted upward .001 for every thousand dollars of medical and funeral expenses over \$200,000, up to a maximum adjustment to 2 LC. All claimed medical and funeral expenses over \$200,000 must be supported by adequate documentation. Standard future medical expenses are presumed to be \$75,000. Future medical expenses exceeding \$75,000 require documentation supported by affidavit.

(vii) **Medical Causation.** The following adjustments apply to Injured Persons who have different smoking histories and/or medical findings than those described for the base Lung Cancer case. In no event can any of the adjustments listed below be combined for an overall causation adjustment in excess of 3.0 LC.

<b>Causation Information</b>	<b>Adjustment</b>
Pathological diagnosis of asbestosis, or occupational levels of asbestos bodies or asbestos fibers in lung tissue	2.0 LC
Clinical diagnosis of asbestosis (in absence of pathological diagnosis)	1.5 LC
No radiographic evidence of asbestos exposure and no increased fiber burden as a marker of asbestos exposure (Applicable to smokers only)	0.5 LC
Lifetime non-smoker	2.0 LC
1-20 pack-years of smoking	1.2 LC
Over 80 pack-years of smoking	0.6 LC
Diagnosis over 10 years since Injured Person quit smoking	1.2 LC
Diagnosis over 15 years since Injured Person quit smoking	1.5 LC

#### **IV. OTHER CANCER**

a. **Base Case (“OCA”).** The base case value for an Other Cancer case is referred to in this Agreement as “OCA”. A case will be considered a base case Other Cancer under this Matrix when it satisfies each of the following criteria:

(i) Injured Person diagnosed with laryngeal, esophageal, kidney, colo-rectal cancer, non-Hodgkin’s lymphoma or chronic lymphocytic leukemia by a Pathologist, Internist, Pulmonologist or Occupational Medicine Physician;

(ii) Injured Person deceased at commencement of litigation or the time of filing of proof of claim, whichever is earlier;

(iii) Injured Person aged 75 years old at death;

(iv) Injured Person had a spouse;

(v) Injured Person had no other dependents or minor children at time of death;

(vi) Injured Person's loss of earnings, pension, social security and home services total up to but no more than, \$200,000;

(vii) Injured Person's medical and funeral expenses total up to, but no more than, \$200,000;

(viii) Injured Person had Standard Exposure to Western's asbestos-containing products in traditional occupations at traditional shipyard, refinery, power plant or other sites, as defined herein;

(ix) Injured Person had a 20-80 pack-year history of smoking;

(x) Injured Person was still smoking at the time of diagnosis, or had quit smoking less than 10 years before diagnosis;

(xi) Injured Person not diagnosed with clinical or pathological asbestosis, but Injured Person had both:

(A) A reliable history of exposure to asbestos, and

(B) Evidence of asbestos-related anatomical changes, such as: asbestos-related pleural disease chest X-ray abnormalities graded 1/0 or higher attributed to prior asbestos exposure on the ILO scale, or computed tomography (CT) evidence of interstitial disease attributed to prior asbestos exposure; and

(xii) The Injured Person had at least a 10-year latency period between the date of the first exposure to asbestos and the date of manifestation of the disease.

b. **Adjustments.** Certain features of an Other Cancer case will warrant an adjustment in the liquidated value either above or below the base case Other Cancer value, as set forth herein. The following adjustments are provided as multipliers of the base case value OCA. For example, an adjustment of 1.3 OCA for a living 55 year-old other cancer Injured Person indicates that such an Injured Person would receive 1.3 times the base case Other Cancer value. In situations where numerous adjustments are required for an Injured Person's case, all of the applicable adjustment multipliers shall be multiplied together and times the base case value OCA, to determine the liquidated value of the case. For example, an Injured Person who is age 55 (1.3 OCA) and alive at the commencement of litigation or the time of filing of proof of claim, whichever is earlier (1.3 OCA), and who had exposure at what is known to be a high exposure



site (1.5 OCA), would be eligible for a liquidated value of 1.3 times 1.3 times 1.5 or 2.535 OCA times the base case value.

(i) **Age.** Age shall be determined as of the commencement of litigation or the time of filing of the proof of claim, whichever is earlier. The adjustment factor for age shall be decreased .015 for every year over 75 years of age up to a maximum downward adjustment to .7 OCA, and shall be increased .015 for every year under 75 years of age up to a maximum upward adjustment to 1.4 OCA.

(ii) **Exposure.** The following adjustments are based on exposure in traditional occupations at traditional shipyard, refinery, power plant or other sites, as set forth herein:

<b>Exposure Rating</b>	<b>Adjustment</b>
Very high exposure sites, as defined herein	3.0 OCA
High exposure sites, as defined herein	1.5 OCA
Standard exposure sites, as defined herein	1.0 OCA
Low exposure sites, as defined herein	0.5 OCA
Very Low exposure sites, as defined herein	0.25 OCA

(iii) If an Injured Person is living as of the date litigation commences or the proof of claim is filed, whichever is earlier, the Injured Person's case will be adjusted by 1.3 OCA.

(iv) If an Injured Person does not have a spouse or minor children as of the date litigation commences or the proof of claim is filed, whichever is earlier, the Injured Person's case will be adjusted by .8 OCA. If an Injured Person has minor children, adult disabled dependent children or dependent minor grandchildren living with the Injured Person at the time of diagnosis, the Injured Person's case will be adjusted by 1.5 OCA.

(v) **Total Economic Loss (excluding medical and funeral expenses).** An Injured Person who has incurred economic losses for loss of earnings, pension, social security and home services in an amount greater than \$200,000, shall be adjusted upward .001 for every thousand dollars of economic loss over \$200,000, up to a maximum upward adjustment to 2 OCA. For example, a total economic loss of \$500,000 would result in an increase of .3 to 1.3 OCA. All claimed economic loss over \$200,000 must be supported by adequate documentation.

(vi) **Medical and Funeral Expenses.** An Injured Person who has or will incur medical and funeral expenses in an amount greater than the base Other Cancer case maximum of \$200,000, shall be adjusted upward .001 for every thousand dollars of medical and funeral expenses over \$200,000, up to a maximum adjustment to 2 OCA. All claimed medical and funeral expenses over \$200,000 must be supported by adequate documentation. Standard

future medical expenses are presumed to be \$75,000. Future medical expenses exceeding \$75,000 require documentation supported by affidavit.

(vii) **Medical Causation.** The following adjustments apply to Injured Persons who have different smoking histories and/or medical findings than those described for the base Other Cancer case. In no event can any of the adjustments listed below be combined for an overall causation adjustment in excess of 3.0 OCA.

<b>Causation Information</b>	<b>Adjustment</b>
Pathological diagnosis of asbestosis, or occupational levels of asbestos bodies or asbestos fibers in lung tissue	2.0 OCA
Clinical diagnosis of asbestosis (in absence of pathological diagnosis)	1.5 OCA
No radiographic evidence of asbestos exposure and no increased fiber burden as a marker of asbestos exposure	0.25 OCA
Lifetime non-smoker	2.0 OCA
1-20 pack-years of smoking	1.2 OCA
Over 80 pack-years of smoking	0.6 OCA
Diagnosis over 10 years since Injured Person quit smoking	1.2 OCA
Diagnosis over 15 years since Injured Person quit smoking	1.5 OCA

(viii) **Other Organ Cancers.** An Injured Person who has not been diagnosed with cancers of the organs described for the base Other Cancer case (i.e., laryngeal, esophageal kidney, colo-rectal cancers, non-Hodgkin’s lymphoma and chronic lymphocytic leukemia) may still obtain compensation under this Matrix, if the Injured Person has been diagnosed with a primary cancer of a different organ and a Board-Certified specialist in an appropriate specialty or a Board-Certified occupational medicine physician at the time of the report attributes the malignancy to prior asbestos exposure. An Injured Person’s case which meets the criteria set forth above, subject to the Trust’s consent, shall be classified as an “Other Organ Cancer” and will be adjusted by .5 OCA.

**V. GRADE I NON-MALIGNANCY**

a. **Base Case (“I”).** The base case value for a Grade I Non-malignancy Case is referred to in this Matrix as “I”. A case will be considered a base case Grade I Non-malignancy under this Matrix when it satisfies each of the following criteria:

- (i) Injured Person aged 75 years old;
- (ii) Injured Person has a spouse;

- (iii) Injured Person has no other dependents or minor children;
- (iv) Injured Person's loss of earnings, pension, social security and home services total up to, but no more than, \$200,000;
- (v) Injured Person's medical and funeral expenses total up to, but no more than, \$200,000;
- (vi) Injured Person had Standard Exposure to asbestos-products in traditional occupations at traditional shipyard, refinery, power plant or other sites, as defined herein;
- (vii) Injured Person satisfies all the following criteria of interstitial lung disease with impairment of lung function:

1. The Injured Person must establish at least a 10-year latency period between the date of the first exposure to asbestos and the date of diagnosis of the disease, and clinical evidence of asbestosis defined in subsection 2;

2. Clinical Evidence of Asbestosis. A diagnosis of pulmonary asbestosis by a Pulmonologist, Internist or Occupational Medicine Physician who actually examined the Injured Person based on the following minimum objective criteria:

(a) Chest X-rays which, in the opinion of a Certified B-reader, show small irregular opacities of ILO Grade 1/0 or greater, or a report from a Pulmonologist, Internist or Occupational Medicine Physician that the Injured Person has evidence of asbestos related interstitial fibrosis on high resolution CT scan; and

(b) Pulmonary Function Testing results demonstrating either:

1)  $FVC < 80\%$  of Predicted Value with  $FEV_{1}/FVC \geq 65\%$  (actual value) if the individual tested is at least 70 years old at the date of testing,  $\geq 70\%$  (actual value) if the individual tested is at least 60 years old but less than 70 years old at the date of testing, and  $\geq 75\%$  (actual value) if the individual tested is less than 60 years old at the date of testing; or

2)  $TLC < 80\%$  of Predicted Value; or

3)  $DLCO < 75\%$  of Predicted Value with  $FEV_{1}/FVC \geq 65\%$  (actual value) if the individual tested is at least 70 years old at the date of testing,  $\geq 70\%$  (actual value) if the individual tested is at least 60 years old but less than 70 years old at the date of testing, and  $\geq 75\%$  (actual value) if the individual tested is less than 60 years old at the date of testing and a statement by a Pulmonologist or an Occupational Medicine Physician stating that the asbestos-related lung disease is the probable explanation for the test result.

3. Those claims wherein the Injured Person suffers from extensive disabling asbestos-related pleural disease may be submitted to the Individual Review process, as described in Section VIII of this Matrix, provided however such a claim shall not be limited to Average Value and may be awarded up to the Maximum Value for Grade I.

b. **Adjustments.** Certain features of a Grade I Non-malignancy Case will warrant an adjustment in the liquidated value either above or below the base case Grade I Non-malignancy value, as set forth herein. The following adjustments are provided as multipliers of the base case value I. For example, an adjustment of 1.3 I for a 55 year-old Grade I non-malignancy Injured Person indicates that such an Injured Person would receive 1.3 times the base case Grade I Non-malignancy value. In situations where numerous adjustments are required for an Injured Person's case, all of the applicable adjustment multipliers shall be multiplied together and times the base case value I, to determine the liquidated value of the case. For example, an Injured Person who is age 55 (1.3 I) and determined to be an Enhanced Grade I non-malignancy Injured Person as defined in section (vi) herein (1.5 I) and who had exposure at what is known to be a high exposure site (1.5 I), would be eligible for a liquidated value of 1.3 times 1.5 times 1.5, or 2.925 I, times the base case value.

(i) **Age.** Age shall be determined as of the commencement of litigation or the time of filing of the proof of claim, whichever is earlier. The adjustment factor for age shall be decreased .015 for every year over 75 years of age up to a maximum downward adjustment to .7 I, and shall be increased .015 for every year under 75 years of age up to a maximum upward adjustment to 1.4 I.

(ii) **Exposure.** The following adjustments are based on exposure in traditional occupations at traditional shipyard, refinery or power plant, or other sites as set forth herein:

<b>Exposure Rating</b>	<b>Adjustment</b>
Very high exposure sites, as defined herein	3.0 I
High exposure sites, as defined herein	1.5 I
Standard exposure sites, as defined herein	1.0 I
Low exposure sites, as defined herein	0.5 I
Very Low exposure sites, as defined herein	0.25 I

(iii) If an Injured Person does not have a spouse or minor children as of the date litigation commences or the proof of claim is filed, whichever is earlier, the Injured Person's case will be adjusted by .8 I. If an Injured Person has minor children, adult disabled dependent children or dependent minor grandchildren living with the Injured Person at the time of diagnosis, the Injured Person's case will be adjusted by 1.5 I.

(iv) **Total Economic loss (excluding medical).** An Injured Person who has incurred economic losses for loss of earnings, pension, social security and home services in an amount greater than \$200,000, shall be adjusted upward .001 for every thousand dollars of economic loss over \$200,000, up to a maximum upward adjustment to 2 I. For example, a total economic loss of \$500,000 would result in an increase of .3 to 1.3 I. All claimed economic loss over \$200,000 must be supported by adequate documentation.

(v) **Medical Expenses.** An Injured Person who has or will incur medical expenses in an amount greater than the base Grade I Non-malignancy case maximum of \$200,000, shall be adjusted upward .001 for every thousand dollars of medical and funeral expenses over \$200,000, up to a maximum adjustment to 2 I. All claimed medical and funeral expenses over \$200,000 must be supported by adequate documentation. Standard future medical expenses are presumed to be \$75,000. Future medical expenses exceeding \$75,000 require documentation supported by affidavit.

(vi) **Enhanced Grade I Non-Malignancy.** If an Injured Person has evidence of asbestosis of a severity exceeding the following criteria, the liquidated value of that Injured Person's case will be adjusted by 1.5 I.

1. The Injured Person must establish at least a 10-year latency period between the date of first exposure to asbestos and the date of manifestation of the disease, and either clinical or pathological evidence of asbestosis as defined in subsection 2 or 3;

2. Clinical Evidence of Asbestosis. A diagnosis of pulmonary asbestosis by an Internist, Pulmonologist or an Occupational Medicine Physician who actually examined the Injured Person based on the following minimum objective criteria:

Chest X-rays which, in the opinion of a Certified B-reader, show small irregular opacities of ILO Grade 1/1 or greater, or asbestos related interstitial fibrosis on high resolution CT scan; and Pulmonary Function Testing results demonstrating either:

(a)  $FVC < 60\%$  of Predicted Value with  $FEV-1/FVC \geq 65\%$  (actual value) if the individual tested is at least 70 years old at the date of testing,  $\geq 70\%$  (actual value) if the individual tested is at least 60 years old but less than 70 years old at the date of testing, and  $\geq 75\%$  (actual value) if the individual tested is less than 60 years old at the date of testing; or

(b)  $TLC < 70\%$  of Predicted Value; or

(c)  $DLCO < 60\%$  of Predicted Value with  $FEV-1/FVC \geq 65\%$  (actual value) if the individual tested at least 70 years old at the date of testing,  $\geq 70\%$  (actual value) if the individual tested is at least 60 years old but less than 70 years old at the date of testing, and  $\geq 75\%$  (actual value) if the individual tested is less than 60 years old at the date of testing and a statement by a Pulmonologist, Internist or an Occupational Medicine Physician at the time of the stating that the asbestos-related lung disease is the probable explanation for the test result; or

(d)  $VO_{MAX} < 20\text{mL (kg}\cdot\text{min)}$  or  $< 5.7$  METS with  $FEV-1/FVC \geq 65\%$  (actual value) if the individual tested is at least 70 years old at the date of testing,  $\geq 70\%$  (actual value) if the individual tested is at least 60 years old but less than 70 years old at the date of testing, and  $\geq 75\%$  (actual value) if the individual tested is less than 60 years old at the date of testing and a statement by a Pulmonologist, Internist or an Occupational Medicine Physician stating that the asbestos-related lung disease is the probable explanation for the test result.

3. Pathological Evidence of Asbestosis. A statement by a Pathologist, Pulmonologist, Internist or an Occupational Medicine Physician that a representative section of lung tissue demonstrates asbestosis as defined by the 1982 report of the Pneumoconiosis Committee of the College of American Pathologists and the National Institute for Occupational Safety and Health including the “demonstration of discrete foci of fibrosis in the walls of respiratory bronchioles associated with accumulations of asbestos bodies”, and also that there is no more probable explanation for the presence of the fibrosis than prior asbestos exposure.

(vii) **“Serious asbestosis”** is asbestosis with ILO 2/2 or greater and AMA Class IV Impairment, or where the Injured Person is on oxygen with a report by a Pulmonologist or an Occupational Medicine Physician that asbestosis is the predominant cause of the need for oxygen. “Asbestosis death” is where asbestosis is listed as the cause or a significant contributing cause of death on the death certificate, or where a report from a Pathologist, Pulmonologist, or an Occupational Medicine Physician states that asbestosis was a significant contributing cause of death. If an Injured Person has evidence of serious asbestosis or asbestosis death, and exposure to Western products or conduct was a substantial contributing cause of the serious asbestosis or asbestosis death, then the valuation criteria for lung cancer, including the base Lung Cancer case, as defined in (II)(a), shall be utilized to determine the value of the claim. An Injured Party who qualifies for Serious Asbestosis automatically meets the requirements for Grade I Non-Malignancy claims.

## **VI. GRADE II NON-MALIGNANCY**

a. **Base Case (“II”).** The base case value for a Grade II Non-malignancy Case is referred to in this Matrix as “II”. A case will be considered a base case Grade II Non-malignancy under this Matrix when it satisfies each of the following criteria:

(i) Injured Person aged 75 years old;

(ii) Injured Person had Standard Exposure to Western asbestos-products in traditional occupations at traditional shipyard, refinery, power plant or other sites, as defined herein;

(iii) Injured Person satisfies the following criteria for asbestos-related disease:

1. The Injured Person must establish at least a 10-year latency period between the date of the first exposure to asbestos and the date of diagnosis of the disease; and

2. The Injured Person must establish evidence of an asbestos related disease including:

(a) Clinical Evidence of Asbestosis. A diagnosis of pulmonary asbestosis by an Internist, Pulmonologist or qualified Occupational Medicine Physician who actually examined the Injured Person based on the following minimum objective criteria:

1) Chest X-rays which, in the opinion of a Certified B-reader, show small irregular opacities of ILO Grade 1/0 or greater, or

2) Asbestos related interstitial fibrosis on high resolution CT scan or appropriate diagnostic imaging procedure; or

(b) Clinical Evidence of Asbestos-Related Pleural Disease. A diagnosis of asbestos-related pleural disease by an Internist, Pulmonologist or Occupational Medicine Physician.

b. **Adjustments.** Certain features of a Grade II Non-malignancy case will warrant an adjustment in the liquidated value either above or below the base Grade II Non-malignancy value, as set forth herein. The following adjustments are provided as multipliers of the base case value II. For example, an adjustment of 1.3 II for a 55 year-old Grade II non-malignancy Injured Person indicates that such an Injured Person would receive 1.3 times the base case Grade II Non-malignancy value. In situations where numerous adjustments are required for an Injured Person's case, all of the applicable adjustment multipliers shall be multiplied together and times the base case value II, to determine the liquidated value of the case. For example, an Injured Person who is age 55 (1.3 II) and who had exposure at what is known to be a high exposure site (1.5 II), would be eligible for a liquidated value of 1.3 times 1.5, or 1.95 II, times the base case value.

(i) **Age.** Age shall be determined as of the commencement of litigation or the time of filing of the proof of claim, whichever is earlier. The adjustment factor for age shall be decreased .015 for every year over 75 years of age up to a maximum downward adjustment to .7 II, and shall be increased .015 for every year under 75 years of age up to a maximum upward adjustment to 1.4 II.

(ii) **Exposure.** The following adjustments are based on exposure in traditional occupations at traditional shipyard, refinery or power plant, or other sites as set forth herein:

<b>Exposure Rating</b>	<b>Adjustment</b>
Very high exposure sites, as defined herein	3.0 II
High exposure sites, as defined herein	1.5 II
Standard exposure sites, as defined herein	1.0 II
Low exposure sites, as defined herein	0.5 II
Very Low exposure sites, as defined herein	0.25 II

## VII. EXPOSURE REQUIREMENTS

a. **Standard Exposure Criteria.** Exposure to asbestos-containing material for which Western is responsible can be established by deposition testimony, invoices, affidavits, business records, deck logs, military service records or other credible evidence acceptable to the Trust, that establishes the Injured Person's presence at a particular ship, facility, job site, building or buildings, or location during a time period in which the asbestos-containing material for which Western is responsible was present. The Trust shall have the right to consider all other appropriate evidence of exposure and may establish appropriate alternative exposure criteria after consultation with the Trust Advisory Committee ("TAC") and the Futures Representative. The burden shall be on the Claimant or Injured Person to establish exposure to Western products.

1. **Ship Exposure.** Evaluation of shipboard exposure shall be as follows:

a) Claims of shipboard exposure will require evidence that Western products were actually installed on the ship, and that the Injured Person can demonstrate presence in an area of the ship that would constitute an exposure to these products.

b) Exposure on board a ship at a shipyard during a repair or overhaul will constitute an exposure at that shipyard if the Injured Person remained onboard during the repair or overhaul, subject to meeting the duration of exposure requirements outlined herein.

c) Evidence that an Injured Person was subsequently present on a ship that was repaired or overhauled at a shipyard where Western products were used is not sufficient to constitute exposure. See Dumin v. Owens Corning Fiberglas Corp., 28 Cal. App. 4th 650 (1994).

d) It shall not be sufficient for an Injured Person to show that Western products were generally used at a shipyard where a particular ship that the Injured Person worked on was repaired. Specific identification of Western products on board the ship, and meeting the duration of exposure requirements on the ship are both required. See Dumin v. Owens Corning Fiberglas Corp., 28 Cal. App. 4th 650 (1994).

e) An Injured Person who served on ships built at Kaiser Shipyards Nos. 2, 3, 4, Richmond, California and Bethlehem Steel Shipbuilding, San Francisco, California, shall have their claims liquidated as Standard Exposure claims, subject to meeting the minimum exposure criteria outlined herein.

2. **Derivative Exposure.** An Injured Person exposed to Western products solely from exposure to an occupationally exposed person, such as a family member, will have their claims valued by the trust as follows:

a) The Injured Person must establish that the occupationally exposed person would have met the exposure requirements under the Matrix that would have been applicable had that person filed a direct claim with the Trust.

b) The Injured Person must establish that he or she is suffering from one of the Compensable Diseases and that his or her own exposure to the occupationally exposed



person occurred within the same time frame as the occupationally exposed person experienced Western exposure as defined herein and that such exposure was the cause of the claimed disease. All other liquidation and payment rights and limitations under this Matrix shall be applicable to such claims.

3. **Longshore Exposure.** A Longshoreman working in Northern California ports with Western exposure will be treated as a Standard exposure.

b. **Site List.** The Trust in consultation with the TAC will compile a list of the ships, facilities and other locations where Western asbestos-containing materials were present. The Trust may use this list to establish and to characterize exposure and to create a list of sites where exposure is accepted. The Trust with consent of the TAC and Futures Representative may modify the list in light of additional evidence or experience with claims processing. Any Injured Person may submit additional evidence to establish Western presence at a site, or in support of a higher exposure categorization in a particular case.

c. **Minimum Exposure Criteria.**

1. To meet the minimum exposure requirements, an Injured Person filing a claim as a Mesothelioma case must establish that the Injured Person's asbestos exposure at approved Western sites totals at least three months or at least 10% of the Injured Person's total asbestos exposure. Notwithstanding the foregoing, an Injured Person filing a claim as a Mesothelioma case who can establish that the Injured Person's exposure at approved Western sites totals at least one month (but less than three months) exposure shall be entitled to a reduced liquidated claim value.

2. An Injured person filing in any other Compensable Disease category must establish that the Injured Person's asbestos exposure at approved Western sites totals at least one year or at least 25% of the Injured Person's total asbestos exposure. Notwithstanding the foregoing, an Injured Person filing in any other Compensable Disease category who can establish that the Injured Person's exposure at approved Western sites totals at least three months (but less than one year) exposure shall be entitled to a reduced liquidated claim value.

3. If no one site is sufficient to establish the duration necessary, an Injured Person may aggregate exposure at multiple sites to meet the minimum exposure requirements. The Trust will use a blending formula to give credit for exposure time beginning with the highest rated site.

4. If the Injured Person has exposure at multiple sites, but there is no evidence supporting actual length of time at any of the sites, for purposes of applying the provisions 3, above, the Trust will allocate exposure based upon an even distribution of the total length of exposure among all sites claimed. The Injured Person's attorney and the Injured Person or Personal Representative must provide declarations stating that the work sites listed include all work sites where the Injured Person worked, and that there is no other information available to demonstrate actual work time at each site. In addition, the interrogatories accompanying the claim must contain the Injured Person's entire work history.

Nothing in sub-paragraphs 3 and 4, above, shall diminish the obligation of a claimant to offer evidence of exposure that meets the minimum required exposure at approved Western Sites set forth in paragraph c. above to qualify for a Matrix Claim.

d. **Exposure Site Rating.**

1. **Standard Exposure Sites.** Standard Sites include typical exposures to asbestos at shipyards, refineries, power plants and other industrial and commercial sites where Western was determined by the Trust to be responsible for a significant portion of asbestos exposure at the worksite.

2. **High Exposure Sites.** High Exposure Sites include the same type of exposure settings as Standard Sites; except that in High Exposure Sites, Western has been identified as a primary supplier such that Western was responsible for a large portion of asbestos exposure at the work site.

3. **Very High Exposure Sites.** Very High Exposure Sites include the same type of exposure settings as High Exposure Sites; except that in Very High Exposure Sites, Western has been identified as being responsible for the overwhelming majority of asbestos exposure at the work site.

4. **Low Exposure Sites.** Low Exposure Sites include exposures occurring at shipyards, refineries, power plants and other industrial and commercial sites settings where Western was not a major source of exposure but has been identified as having some responsibility for the asbestos exposure at the site.

5. **Very Low Exposure Sites.** Very Low Exposure Sites include work sites with occupational asbestos exposure outside the typical exposures occurring at shipyards, refineries, power plants and other industrial and commercial sites. Very Low Exposure Sites include construction settings and other such settings where exposure was not primarily to products supplied and/or installed by Western.

## **VIII. INDIVIDUAL REVIEW**

Any Claimant or Injured Person whose claim does not meet the medical or exposure criteria for any Compensable Disease shall have the opportunity for individual consideration and evaluation of their claim. In such a case, the Trust shall either deny the claim or, if the Trust is satisfied that the Injured Person has presented a claim that would be cognizable and valid in the tort system in a jurisdiction where Western had been or was, on the Petition Date, amenable to suit, the Trust can offer the Injured Person a liquidated value amount up to the average settlement value for that Compensable Disease in the appropriate jurisdiction, unless the claim qualifies as an Extraordinary Claim as defined in IX below, in which case its liquidated value cannot exceed the maximum value specified for such a claim.

In special circumstances where it would be unjust to enforce the Individual Review cap, the cap may be relaxed if the Executive Director makes a recommendation to a panel, which shall consist of one Trustee, the Futures Representative and the Chair of the TAC. In the case of

a claim submitted by the Chair of the TAC's firm, another member of the TAC will substitute. The Individual Review cap will be relaxed only if the entire panel is in agreement.

## **IX. EXTRAORDINARY CLAIMS PROVISION**

a. **Extraordinary Claims.** In extraordinary situations such as where an Injured Person was exposed only to Western, or where Western exposure constituted over 80% of the Injured Person's asbestos exposure, where extraordinary present or future medical expenses are incurred, or where special damages are exceptionally large, the Trust may individually evaluate and liquidate a claim for an amount that exceeds the Maximum Value for the particular Compensable Disease asserted by the Injured Person. Any dispute as to Extraordinary Claim status shall be submitted to arbitration by a special Extraordinary Claims panel established by the Trust. Under no circumstances shall an Extraordinary Claim be valued at more than 8 times the Average Value for the particular Compensable Disease.