

UNR ASBESTOS-DISEASE CLAIMS TRUST

1771 W. Diehl Road, Suite 220

Naperville, IL 60563

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

I. OVERVIEW

If the Trust rejects a claim, or if the claimant rejects a final evaluation offer and wishes to pursue the claim, the claimant may do so through the UNR Asbestos-Disease Claims Trust ADR procedures. To initiate the procedure the claimant must make a written request to UNR Trust and submit a \$250.00 filing fee per individual claim request for ADR, as described more fully in section IV.E below. The ADR procedures shall not be construed as imparting to any claimant any substantive or procedural rights beyond those conferred by the UNR Plan of Reorganization and the Claims Resolution Procedures approved by the United States Bankruptcy Court for the Northern District of Illinois on March 14, 1989.

The claimant must first proceed through either Non-Binding or Binding Evaluation by Document. An election of Non-Binding Evaluation does not waive rights to seek a jury trial. The claimant need not sign the Election Agreement choosing non-binding evaluation; an attorney's signature is sufficient. If a Non-Binding Evaluation by Document does not result in settlement, a claimant may elect Binding Evaluation by Document or Binding Arbitration or certify for entry into the tort system. By signing the Evaluation Agreement and electing a Binding ADR Procedure the claimant and the Trust waive their respective rights to seek a jury trial as set forth in section F of the Claims Resolution Procedures (CRP).

If an attorney or other agent represents the claimant, both the attorney and the claimant must also sign the Binding Election Agreement. **The attorney or agent may not sign in place of, or for, the claimant unless the claimant is incapacitated, incompetent or deceased and the**

attorney or agent has been designated legally to act on the claimant's behalf. Documentation of this legal designation will be required.

A panel of arbitrators and a pro bono panel comprised of asbestos litigation plaintiff attorneys have been selected to implement the ADR options.

A panel of Independent Medical Experts has been designated to review disputed medical issues and advise arbitrators. Their participation can be requested by the claimant, the Trust or the arbitrator. This panel will also be available to conduct independent medical evaluations.

The time limits included in these procedures are to be strictly enforced.

II. RULES GOVERNING EVALUATION BY DOCUMENT

A. Election

Within 30 days of receipt of claimant's written request to proceed with ADR, the UNR Trust will send the claimant an Election Form of Agreement to Submit to Non-Binding or Binding Evaluation by Document and to choose the type of arbitrator desired. (See Exhibit 1, Evaluation by Document Election Agreement, 1a & 1b). The claimant¹ or his/her attorney shall personally sign the Evaluation Agreement.

- 1) The claimant must use the election form to choose to proceed either through
 - a) **Non-Binding Evaluation by Document:**
 - or*
 - b) **Binding Evaluation by Document:**
- 2) The neutral selected may be

¹Where a claimant is represented by counsel, references in these rules to communication with the claimant shall mean communication with the claimant's attorney. Similarly, where the rules require signature of the claimant, the claimant's attorney may sign for the claimant except in case of Release and with respect to waiver of rights to jury trial as set forth in Section F of the Claims Resolution Procedures (CRP).

- a) a Pro Bono evaluator from a panel of asbestos litigation plaintiff attorneys who volunteered to serve the Trust at the request of the Trustee Advisory Committee pursuant to section H.5 of Claims Resolution Procedures. Pro Bono assignments will be made on a rotating basis within regions.

or

- b) an arbitrator from a panel of 20 arbitrators selected and trained to review disputes. The panel is jointly maintained by

the UNR Trust and the Manville Personal Injury Settlement Trust (MPIST). Arbitrator assignments will be made on a rotating basis within regions by the MPIST ADR Administrator.

B. Election Time Limits

- 1) The claimant must sign the election form and the Affidavit of Completeness (Exhibit III) and return them to the UNR Trust within 90 days of the date of correspondence of the UNR Trust enclosing such forms. The claim will not proceed until the UNR Trust has received a completed Election Form and Affidavit of Completeness from the claimant. If the Trust does not receive a Form and Affidavit postmarked within 90 days, it will result in permanent waiver of the claimant's right to seek re-evaluation of the claim. If the UNR Trust has previously made an offer on the claim, the UNR Trust will reissue a release in the amount of the last offer. If the claim has been disallowed, the disallowance will be final and unreviewable.
- 2) After receiving the signed Election Agreement and Affidavit of Completeness, the Trust shall review and sign the Agreement, or notify the claimant that it will not sign, within **15 days of receipt of the Election Agreement**. Within 30

days from the date the Trust notifies the claimant of the Trust's consent to the Election Agreement, the Trust shall send a copy of the signed Election Agreement, the Affidavit of Completeness together with complete copies of all materials submitted to the Trust by the claimant and factual information in the Trust file, if any, gathered by the Trust from other sources and a completed Affidavit of Accuracy (Exhibit IV) to the claimant and either the pro bono evaluator or the MPIST ADR Administrator who will forward the materials to the selected arbitrator.

C. Selection of the Arbitrator or Pro Bono Evaluator

Within 30 days of the date the Trust notifies the claimant of the Trust's consent to the Election Agreement the individual pro bono panelist or arbitrator shall be chosen (See Exhibit VII).

A Pro Bono Evaluation by Document may be done anonymously so that the identity of the claimant's attorney is not known to the Pro Bono evaluator and the identity of the Pro Bono evaluator is not known to the claimant and the claimant's attorney. **We encourage waiver of anonymity as to the alleged injured party so that medical records can be transmitted in their original form.**

D. Disclosure and Challenge Procedure

- 1) **Pro Bono Panelist:** Any person appointed as a pro bono evaluator shall disclose to the UNR Trust ADR Administrator any circumstance likely to affect impartiality including any bias or any financial or personal interest in the result of the outcome or any past or present relationship with the parties or their representatives. Upon receipt of such information from the pro bono evaluator or another source, the UNR Trust ADR Administrator shall communicate the information to the claimant. Upon objection of a party to the continued service of the pro bono evaluator the UNR ADR Administrator shall determine whether the pro bono evaluator should be disqualified and shall inform the parties of its decision, which

shall be final.

- 2) **Arbitrator:** The same procedure as above shall be in effect except that all disclosures shall be made to the MPIST ADR Administrator. Upon objection of a party to the continued service of an arbitrator the MPIST ADR Administrator, after consultation with the UNR ADR Administrator, shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be final.

E. Evaluation by Document Evidence

The documents that the arbitrator or pro bono evaluator may consider for an

Evaluation by Document shall be limited to the following:

- a. The documents in Trust's file forwarded to the pro bono evaluator or to the MPIST ADR Administrator for the arbitrator.
- b. The Evaluation Election Form
- c. The claimant's Affidavit of Completeness and the Trust's Affidavit of Accuracy.
- d. The arbitrator or pro bono evaluator shall be permitted to direct written inquiries to the parties in order to clarify the written submissions. The pro bono/arbitrator may, at his or her discretion, hold a telephone conference with counsel for the parties. For pro bono panelists, any written inquiries or requests for a conference call should be made through the UNR ADR administrator. For arbitrators, the written inquiries should be made or the conference call placed through the MPIST ADR administrator.
- e. The written arguments of the claimant, and the Trust.
 - i. The claimant and the Trust shall submit their written

argument in duplicate to the MPIST ADR administrator within 30 days of the postmark date of the notice that the independent evaluator has been selected.

- ii. The argument shall not exceed 10 double spaced typewritten pages. In order to preserve anonymity in a Pro Bono evaluation, the name of counsel should not be mentioned.
- iii. The argument may not introduce factual matter not contained in the documents in the Trust's file, or address issues not identified in the Evaluation by Document Election Agreement. **The evaluator shall disregard any argument that does not comply with this rule.**
- iv. Upon receipt of the written argument, the MPIST ADR administrator shall mail copies simultaneously to the evaluator and to each party.
- v. Where a party fails to submit the written argument within the 30 days, the party waives the written argument.

III. RULES OF BINDING ARBITRATION

A. Initiation of Arbitration

Arbitration Election Agreement

If the claimant or Trust rejects the non-binding award and wishes to pursue the claim, the rejecting party must notify the other through correspondence postmarked no later than 30 days from the date a non-binding award is issued. The parties may elect Binding Arbitration or certify for entry into the tort system. A claimant elects Binding Arbitration by timely signing and returning the Binding Dispute Resolution Election Agreement, Exhibit I, having

indicated a choice of Binding Arbitration. If either party elects Binding Arbitration and the other party consents to the election by countersigning the form, the election form will constitute the Agreement to Submit to Binding Arbitration.

After signing the Binding Arbitration Agreement, the claimant shall send it to the Trust. The Trust shall review and sign it, or notify the claimant that it will not sign, within 15 days of receipt of the Agreement. The Trust shall send a copy of the fully-executed Binding Arbitration Agreement to the claimant and to the MPIST ADR Administrator together with complete copies of all materials submitted to the Trust by claimant and factual information in the Trust file, if any, gathered by the Trust from other sources.

If the Trust elects not to sign the Binding Arbitration Agreement, the claimant or the Trust may sign the Notice of Certification to enter the tort system.

B. Selection of the Arbitrator

- 1) **Arbitration Panel:** Arbitrator's assignments will be made on a rotating basis within regions by the MPIST ADR Administrator. The arbitrator selected shall be notified as soon as reasonably possible by the MPIST ADR administrator. If the arbitrator is unable or unwilling to serve, a replacement selection will be made prior to notifying the UNR Trust and the claimant of the arbitrator selected.
- 2) Any appointed arbitrator shall disclose to the MPIST ADR Administrator any circumstances likely to affect impartiality including any bias or any financial or personal interest in the result of the arbitrator or any past or present relationship with the parties or representatives. Upon receipt of such information from the arbitrator or another source, the MPIST ADR Administrator shall communicate the information to the parties and, if the administrator deems necessary, to the arbitrator and others. Upon objection of a party to the continued service, the MPIST ADR Administrator, after

consent with the UNR ADR Administrator, shall determine whether the arbitrator should be disqualified and shall inform the parties of the decision, which shall be final.

C. Pre-hearing Duties and Powers of Arbitrator

Initial Pre-Hearing Conference

Within 20 days of the appointment of an arbitrator each party shall submit to the MPIST ADR Administrator a brief (not to exceed 10 double spaced pages) containing that party's positions and arguments. The MPIST ADR Administrator shall transmit the brief to the other party and to the arbitrator. If the arbitrator so orders, each party may submit a supplement to its position paper (not to exceed 5 double-spaced pages) following the initial pre-hearing conference. Supplements must be received by the MPIST ADR administrator within 10 days of the date of the pre-hearing conference.

Within 15 calendar days of the receipt of each party's brief, the MPIST ADR administrator shall contact the claimant, the arbitrator, and the Trust to schedule the initial pre-hearing conference. The pre-hearing conference shall be presided over by the arbitrator and held by telephone conference call.

During the initial pre-hearing conference, the arbitrator shall schedule the hearing date and select the location of the hearing with due regard to the convenience of the parties. The hearing should be scheduled not less than 45 days, and not more than 60 days, from the date of the initial pre-hearing conference. The MPIST ADR Administrator will mail a confirmation notice of this date to the claimant and the Trust.

During the initial pre-trial conference, the arbitrator shall seek to achieve agreement between the parties on:

1. narrowing the issues, (through methods including but

not limited to stipulation of facts)

2. whether the claimant will appear at the hearing
3. any legal issues
4. and any other matters that will expedite the arbitration proceedings.

If appropriate or if the parties do not agree on these issues, the arbitrator must issue orders governing the process.

D. Record of Proceedings

Either party may request that the hearing be recorded by an official court reporter. The requesting party shall bear the cost of the court reporter, unless the parties otherwise agree.

E. Postponement of Hearing

The arbitrator for good cause may postpone any hearing upon the request of a party or upon the arbitrator's own initiative, and shall also grant such postponement when all of the parties agree.

F. Duration of Hearings

The arbitrator shall complete the hearing in one day except for good cause shown. The arbitrator shall set time limits on the respective presentations, and shall enforce those set limits. The parties shall request no more than three hours apiece for presentation of their cases.

G. Arbitration Procedure

1) **Testimony Under Oath or Affirmation**

If the claimant testifies such testimony shall be under oath or affirmation administered by the arbitrator.

2) **Conduct of Hearing**

At the opening of the arbitration hearing, the arbitrator shall make a written record of the time, place, and date of the hearing, and the presence of the parties and counsel.

3) **Evidence**

a. **Rules of Evidence:** The arbitrator is not required to apply the rules of evidence used in judicial proceedings, provided, however that the arbitrator shall apply the lawyer-client privilege and the work product privilege. The arbitrator shall determine the applicability of any privilege or immunity and the admissibility, relevance, materiality and weight of the evidence offered.

b. **Admission of Evidence:** The evidence that the arbitrator may consider shall be limited to the following:

1. The documents supplied to the MPIST ADR Administrator as set forth in Section IV.A;
2. Binding Arbitration Election Agreement;
3. **Testimony of the claimant.** The claimant may offer evidence only regarding the nature and extent of physical injuries and/or market share, if applicable. The Trust may cross-examine on these issues. A physically incapacitated claimant may have his deposition read into evidence in lieu of live testimony on due notice. In order to do so the physical incapacitation must be documented by the claimant's attending physician and the arbitrator must agree to the deposition prior to or at the initial pre-hearing

conference.

4. **Arguments of the claimant and the Trust.**
The Arguments shall be limited to the evidence contained and the issues raised in the documents or testimony referred to in sections II.E. above and shall be limited to 1/2 hour. The arbitrator shall disregard any effort to introduce further evidence or issues in argument.

4) **Arbitration in the Absence of a Party or Representative**

The arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made against a party solely for the failing to appear. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

5) **Conclusion of Hearing**

When the parties state that they have no further evidence or witnesses to offer, and after the parties have made their closing arguments, if any, the arbitrator shall declare the hearing closed. Post-hearing briefs will be permitted only upon order of the arbitrator and shall be served upon the arbitrator no later than 10 ten days after the hearing is closed. Such briefs shall be no longer than 5 double spaced pages. The time limit within which the arbitrator is required to make the award shall commence to run upon the closing of the hearing.

6) **Waiver of Oral Hearings**

The parties may request a waiver of oral hearings.

IV. GENERAL ADR PROCEDURES FOR NON-BINDING OR BINDING EVALUATION BY DOCUMENT AND BINDING ARBITRATION

A. ADR Submissions

The claimant's submissions (with the exception of the Binding Arbitration's written argument) will be reviewed by the UNR ADR administrator before they are submitted to the arbitrator or pro bono evaluator. If they contain materials not previously submitted in support of the claim, the UNR Trust Claims Department will review the additional information and determine the impact, if any, it would have on the Trust's evaluation of the claim. In appropriate situations, a new offer may be made to the injured party.

To the extent possible the parties will stipulate to the facts and narrowly identify the issues in dispute.

- 1) **No Discovery:** There shall be no discovery. The purpose of the arbitration is to resolve differences between the Trust and the claimant based only on the documents that have been previously submitted to the Trust by the claimant and upon the documents relied upon by the Trust to make a settlement offer to the claimant or to disallow the claim.
- 2) **Affidavit of Completeness:** The claimant must also sign and return with the election form the Affidavit of Completeness (Exhibit III) verifying that all information to be considered by the arbitrator or pro bono evaluator in evaluation of the claim has been provided to the Trust.

B. ADR Awards

1) Issuance of Decision

a. Time Limits

The arbitrator or pro bono evaluator shall issue a decision no later than 15 calendar days after the date of receiving the evidence (see II.E.) of the parties for an Evaluation by Document or 15 calendar days after the date of the closing of the binding arbitration hearing. The decision shall state the amount of the award, if any, only. The decision shall not state reasons for the award.

b. Method For Receiving Arbitrator/Pro Bono Evaluator Decision

1. **Pro Bono Evaluator:** The pro bono evaluator shall send the decision together with the claim file to the UNR Trust ADR Administrator. The decision will be distributed to the claimant promptly.

2. **Arbitrator:** The arbitrator shall send the decision together with the claim file to the MPIST ADR Administrator. The decision will be distributed promptly to the parties and the claim file will be returned to the UNR Trust.

2) Procedure for Accepted Award

a. Content of Decision or Award

The decision of the arbitrator or pro bono evaluator will be rendered on the standardized award form (See Exhibit V & VI). Awards shall be for compensatory damages only pursuant to baseball arbitration

procedures. Thus, an arbitrator will be told the amount, if any, of the Trust's final offer and the amount of the claimant's final demand. The arbitrator's award, if any, will be one of these two amounts. An arbitrator will not be permitted to make any other award. Punitive, exemplary, trebled or other like damages or attorneys' fees, prejudgment and post judgment interest and costs shall not be sought or allowed. The award shall dispose of all monetary claims presented to the arbitrator or pro bono evaluator and shall determine fully the only issue to be decided pursuant to the ADR Agreement: the amount, if any, at which the UNR value should be fixed, (Exhibit V). In the event the UNR liability share is claimed to be greater or less than 6.5% the award shall be rendered on the form attached as Exhibit VI.

b. **Binding Award**

If the arbitrator or the pro bono issues a **binding** award in favor of the claimant, the Trust will promptly send to the claimant the appropriate Release. The UNR Trust will then pay the claim in accordance with the procedures in effect at that time.

c. **Non-Binding Award**

If a party wishes to reject the award they must notify the other party within **30 days from the date a non-binding award is issued**. If no rejection is received or sent by the UNR Trust the decision will stand and the award will be deemed accepted by both parties and the claim will be processed according to paragraph IV.B.2b above.

3) Procedure for Rejected Award

a. Rejection by Claimant

1. If claimant rejects the non-binding award and wishes to pursue the claim, the claimant must notify the Trust through correspondence postmarked no later than 30 days from the date of the non-binding award. **If the claimant does not respond within the 30 day deadline, it will be conclusively presumed that the claimant does NOT wish to pursue the claim further.**

If notification is received within the 30 day deadline and claimant wishes to pursue the claim, the Trust will within 120 days of receipt of this notification send the claimant a packet containing the following (See Exhibit VIIIa & VIIIb):

- i) Rules Governing Binding Arbitration and Binding Evaluation by Document
 - ii) Election Form for selecting either Binding Evaluation By Document or Binding Arbitration to be completed in the event the claimant wishes to pursue one of these options rather than to request Certification to enter to the tort system,
 - iii) explanation of the Certification Process.
2. Upon receipt of the packet the claimant must within 90 days either (1) complete and sign an election form and send it to the Trust (Exhibit I) or (2) sign and return to the Trust a request for certification to enter the tort system (Exhibit II). The above must be received by the Trust in an envelope postmarked within 90 days of the date of the cover letter of the packet sent to the

claimant by the Trust. **Failure to return within 90 days of the postmark date of the packet a signed election form or request for certification shall constitute a waiver of the right to seek re-evaluation of the claim in any forum.**

b. Rejection by UNR Trust

1. If the Trust rejects the non-binding award and the claimant wishes to pursue the claim, the procedures in preceding paragraphs B.3.a. shall be followed.
2. If the Trust rejects a non-binding award and the Trust wishes to pursue the claim, the procedures in paragraphs B.3.a. shall be followed.

C. No Ex Parte Communication

There shall be no ex parte communication between the arbitrator or pro bono evaluator and any counsel or party in any matter. All correspondence between the arbitrator and the parties will be facilitated by the MPIST ADR Administrator. All correspondence between the parties and the Pro Bono Evaluator will be through the UNR ADR Administrator.

D. Claims and Defenses

All available claims and defenses which exist under the law subject to the claimant's election under Section F of the Claims Resolution Procedures shall be available to both sides.

E. Costs of ADR

- 1) The UNR Trust will pay the arbitrator's fee for Non-Binding or Binding Evaluation by Document up to \$200.00 per claim. In the event of a Binding Arbitration the arbitrator will

receive up to \$1500.00 depending on the length of the hearing. The pro bono evaluator is a volunteer and thus no fee will be incurred. The UNR Trust will assume costs of meeting and hearing facilities for Binding Arbitration. Claimants will pay their costs and attorney fees including any expenses incurred should the claimant testify.

2) **Filing Fee**

Concurrently with the written request to pursue a claim through the Trust's ADR program, the claimant shall submit a one time filing fee of \$250.00, made payable to the UNR Asbestos-Disease Claims Trust. If a written request for ADR fails to include the \$250.00 filing fee, the Trust will not move forward with the initiation of ADR for the claim. If the Trust does not receive the \$250.00 filing fee postmarked within 90 days of the written request for ADR, it will result in permanent waiver of the claimant's right to seek re-evaluation of the claim. If the UNR Trust has previously made an offer on the claim, the UNR Trust will reissue a release in the amount of the last offer. If the claim has been disallowed, the disallowance will be final and unreviewable.

If a binding award in favor of the claimant is issued, or if a non-binding award is accepted and not appealed by the Trust, the Trust shall issue a refund for the \$250.00 filing fee, in addition to any settlement payment made by the Trust.

F. Waiver of Objection to Rules Infraction

Either party who continues with the Evaluation By Document or Binding Arbitration proceeding after knowing that any provision or requirement of the applicable Rules has not been complied with, and who fails to state a timely objection in writing to the arbitrator or pro bono evaluator shall be deemed to have waived the right to object. A timely objection by a claimant must be stated in writing and mailed to the Trust with instructions to forward the objection to the pro bono evaluator or to the MPIST ADR

Administrator with instructions to forward the objection to the arbitrator. A timely objection by the Trust will be mailed to the claimant and to the pro bono evaluator or to the MPIST ADR administrator with instructions to forward to the arbitrator.

G. Serving of Notices

Each party to the ADR Agreement(s) shall be deemed to have consented that any papers, notices, or processes necessary or proper for the initiation or continuation of ADR proceedings under these Rules may be served upon such party as follows:

1. by regular U.S. mail or overnight courier addressed to such party or their attorneys at their last known address;
2. by facsimile transmission, if a copy of the transmitted papers is mailed addressed to the party or their attorney at their last known address within 24 hours of the facsimile transmission; or,
3. By personal service, within or without the state where the Evaluation by Document or Binding Arbitration is to be held, whether the party is within or without the United States of America.

H. Exclusion of Liability

Neither the MPIST ADR Administrator, nor the arbitrator or pro bono evaluator shall be liable to any party for any act or omission in connection with any neutral evaluation conducted under these rules.

I. Relationship of Rules to Evaluation by Document Agreement or Binding Arbitration Agreement

These Rules shall be deemed a part of, and incorporated by reference in, every duly executed ADR Evaluation by Document Agreement and Binding Arbitration Agreement and shall be binding

on all parties.

J. Arbitrator/Pro Bono Evaluator Immunity

Arbitrators or pro bono evaluators who serve pursuant to these Rules shall have the same immunity as judges for their official acts.

K. Jurisdiction

Any dispute under these Rules shall be subject to the jurisdiction of the United States Bankruptcy Court for the Northern District of Illinois.

L. Statement of Confidentiality

- 1) All ADR proceedings and information relating to the proceeding will be confidential. Neither information, evidence or admission of either party, nor the valuation placed on the case by an arbitrator may be disclosed to anyone or used in any further proceeding except as necessary to maintain the Trust's obligation to report to the Bankruptcy Court and to provide ongoing evaluation by the Trust and the Trust Advisory Committee (TAC).
- 2) Except for documents prepared by a non-party which are introduced as evidence before an arbitrator or pro bono evaluator, any document prepared by another party, attorney or other participant in anticipation of the ADR is privileged and shall not be disclosed to any court or arbitrator/pro bono or construed for any purpose as an admission against interest.
- 3) All ADR proceedings shall be deemed a settlement conference pursuant to Rule 408 of the Federal Rules of Evidence. Except by agreement of the parties, the parties will not introduce into evidence in any other proceedings the fact that there was an arbitration, the nature or amount of the award, and written submissions, may be used for purposes of

showing accord and satisfaction or res judicata. In Binding ADR Procedure, the decision of the arbitrator or pro bono evaluator may be admissible in the event the claimant improperly seeks to litigate the claim. The Binding ADR decision shall be admissible in support of a motion to enjoin such litigation. No arbitrator or pro bono evaluator will ever be subpoenaed or otherwise required by any party or any third party, to testify or produce records, notes or work product in any future proceedings.

M. Amendments

Except as otherwise ruled by the Bankruptcy Court, these Rules, as they may from time to time be amended by the Trustees, will be binding on all parties in the form in which they are in force on the date the claimant signs the Election Agreement.