

## THE FLINTKOTE ASBESTOS TRUST

Dear Prospective Claimant or Claimant Counsel:

The Flintkote Asbestos Trust (the “Trust”) has been established under Chapter 11 of the Bankruptcy Code to resolve all “Asbestos Personal Injury Claims” as defined in the Amended Joint Plan of Reorganization in Respect of The Flintkote Company and Flintkote Mines Limited (As Modified February 9, 2015) (the “Plan”).

**The Trust is commencing its operations and will begin receiving and processing claims on December 14, 2015 at 10:00 a.m. Eastern Time. The claim form is enclosed. The claim form, as well as this instruction letter, and other relevant documents and reference materials are available on the Trust’s website ([www.FlintkoteAsbestosTrust.com](http://www.FlintkoteAsbestosTrust.com)) and may be downloaded at any time.**

This instruction letter is intended to summarize certain significant issues related to filing a personal injury claim with the Trust. *Nothing in this letter is intended to replace or modify the requirements of the The Flintkote Company and Flintkote Mines Limited Asbestos Personal Injury Settlement Trust Distribution Procedures (TDP)*<sup>1</sup>. *To the extent this instruction letter conflicts with the TDP, the TDP controls. All claimants are encouraged to read thoroughly and understand the TDP before filing a claim with the Trust.*

---

<sup>1</sup> Please refer to the Trust’s website ([www.FlintkoteAsbestosTrust.com](http://www.FlintkoteAsbestosTrust.com)) for the TDP.

## **Ordering of Claims:**

Pursuant to Section 5.1(a)(1) of the TDP, claims received on or before the date that is six months after the date that the Trust first makes available the claims materials required to file a Trust claim (June 14, 2016) (the “Initial Claims Filing Date”) will be ordered for processing as of the earliest of:

i. The date prior to May 1, 2004 (the “Petition Date”) that the specific claim was either filed against Flintkote (as defined in the TDP, “Flintkote”) in the tort system or was actually submitted to Flintkote pursuant to an administrative settlement agreement;

ii. The date prior to the Petition Date that a claim was filed against another defendant in the tort system if, at the time, the claim was subject to a tolling agreement with Flintkote;

iii. The date after the Petition Date, but before the date that the Trust first makes available the claims materials required to file a Trust claim (December 14, 2015), that the asbestos claim was filed against another asbestos defendant in the tort system;

iv. The date after the Petition Date but before September 30, 2015 (the “Effective Date”) that the claimant filed a proof of claim against Flintkote in the Chapter 11 proceeding;

v. The date the claimant submitted a ballot in Flintkote’s Chapter 11 proceeding for purposes of voting on the Plan; or

vi. The date that the claim was filed with the Trust.

Claims received on or after Initial Claims Filing Date will be ordered for processing on a first-in-first-out (FIFO) basis determined by the date of filing with the Trust.

Claims will be paid in the order in which they are approved for payment.

## **Expedited Review (ER) and Individual Review (IR) Claims:**

Pursuant to Sections 5.3(a) and 5.3(b) of the TDP, a claimant may elect to submit a claim for either Expedited Review (ER) or Individual Review (IR).

The ER process is designed primarily to provide an expeditious, efficient and inexpensive method for liquidating all categories of claims submitted to the Trust (except those involving Lung Cancer 2, Foreign Claims, and Secondary Exposure Claims, which must be liquidated pursuant to the IR process). ER is a method of review intended for claims that can be easily verified by the Trust as meeting the presumptive Medical/Exposure criteria for the relevant Disease Level. The ER process provides qualifying claimants a fixed claims payment subject to the then-applicable Payment Percentage (see Scheduled Values set forth below). Accordingly, ER provides claimants with a substantially less burdensome process for pursuing Trust claims than the IR process described below and in Section 5.3(b) of the TDP.

Alternatively, a claimant may elect to have a claim undergo the IR process if the claim does not meet the presumptive Medical/Exposure criteria for any of the Disease Levels set forth in the TDP. In addition or alternatively, a claimant holding a Trust claim involving Disease Levels III, IV, VI,

or VII may elect to have a claim undergo IR for purposes of determining whether the liquidated claims value exceeds the Scheduled Value for the relevant Disease level. The IR Process provides the claimant with an opportunity for individual consideration and evaluation of the Medical/Exposure information submitted as well as the liquidated value of the claim. The IR process is intended to result in payments equal to the liquidated value for each claim multiplied by the Payment Percentage; however, the liquidated value of any Trust claim that undergoes IR may be determined to be less than the claimant would have received under ER. Because the detailed examination and valuation process related to IR requires substantial time and effort, claimants electing to undergo the IR process will ordinarily have a longer waiting period for payment than would have been the case had the claimants elected the ER process.

**Settlement Offers:**

Valid ER claims will be paid the following Scheduled Values, multiplied by the Payment Percentage that is in effect at the time pursuant to the TDP.

<u>Disease Level</u>	<u>Disease</u>	<u>Scheduled Value</u>
VII	Mesothelioma	\$184,000
VI	Lung Cancer 1	\$20,000
V	Lung Cancer 2	None
IV	Other Cancer	\$4,500
III	Severe Asbestosis	\$15,000
II	Asbestosis/Pleural Disease	\$1,400
I	Asbestosis/Pleural Disease	\$650

**Payment Percentage and Payment:**

The current Payment Percentage will be published on the website. The Payment Percentage is subject to adjustment by the Trustees under the terms of the TDP. Payment will be made as soon as practicable after receipt and review of the completed Claim Form, approval of the claim and receipt by the Trust of a fully and properly executed release. Sequencing adjustment will be calculated as applicable at time of payment pursuant to Section 7.5 of the TDP.

**Proof Required to Qualify for Payment:**

To qualify for payment, a claimant must provide credible medical and exposure evidence pursuant to the TDP and a submission deemed to be complete by the Trust.

**Medical and Exposure Criteria for Qualification:**

The medical criteria that a claim must meet to receive an offer for the Scheduled Value are as follows:

Level VII: Mesothelioma

1. Diagnosis of mesothelioma; and
2. Flintkote Exposure as defined in Section 5.7(b)(3) of the TDP.

#### Level VI: Lung Cancer 1

1. Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease as defined in Footnote 6 of the TDP;
2. Six months of Flintkote Exposure prior to December 31, 1982;
3. Significant Occupational Exposure as defined in Section 5.7(b)(2) of the TDP; and
4. Supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

#### Level V: Lung Cancer 2

1. Diagnosis of a primary lung cancer;
2. Flintkote Exposure prior to December 31, 1982; and
3. Supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

Lung Cancer 2 (Level V) claims are those that do not meet the more stringent medical and/or exposure requirements of Lung Cancer 1 (Level VI) claims. All claims in this Disease Level shall undergo IR. The estimated likely Average Value of the individual evaluation awards for this category of Flintkote claims is \$4,000, with such awards capped at \$10,000 unless the claim qualifies for Extraordinary Claim (as defined below) treatment.

#### Level IV: Other Cancer

1. Diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease;
2. Six months Flintkote Exposure prior to December 31, 1982;
3. Significant Occupational Exposure as defined in Section 5.7(b)(2) of the TDP; and
4. Supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.

#### Level III: Severe Asbestosis

1. Diagnosis of asbestosis with ILO of 2/1 or greater, or asbestosis determined by pathological evidence of asbestos, plus (a) TLC less than 65% or (b) FVC less than 65% and FEV1/FVC ratio greater than 65%;
2. Six months Flintkote Exposure prior to December 31, 1982;
3. Significant Occupational Exposure as defined in Section 5.7(b)(2) of the TDP; and
4. Supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.

Level II: Asbestosis/Pleural Disease

1. Diagnosis of Bilateral Asbestos-Related Nonmalignant Disease, plus (a) TLC less than 80%, or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%;
2. Six months Flintkote Exposure prior to December 31, 1982;
3. Significant Occupational Exposure as defined in Section 5.7(b)(2) of the TDP; and
4. Supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.

Level I: Asbestosis/Pleural Disease

1. Diagnosis of Bilateral Asbestos-Related Nonmalignant Disease;
2. Six months Flintkote Exposure prior to December 31, 1982; and
3. Five years cumulative occupational exposure to asbestos.

**Medical Evidence Required to Establish an Asbestos-Related Disease:** All diagnoses of a Disease Level shall be accompanied by either:

- i. A statement by the physician providing the diagnosis that at least ten years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis; or
- ii. A history of the claimant's exposure sufficient to establish a ten-year latency period.

A finding by a physician dated after the Effective Date (September 30, 2015) that a claimant's disease is "consistent with" or "compatible with" asbestosis shall not alone be treated by the Trust as a diagnosis.

For Disease Levels I-III – Except for asbestos claims filed against Flintkote or another defendant in the tort system prior to the Petition Date, all diagnoses of a non-malignant asbestos-related disease shall be based, in the case of a claimant who was living at the time the claim was filed, upon a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease.

In the case of a claimant who was deceased at the time the claim was filed, the diagnosis of a nonmalignant asbestos-related disease (Levels I-III) shall be based upon either:

- i. A physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease; or
- ii. Pathological evidence of the asbestos-related disease; or

iii. In the case of Disease Levels I-II, evidence of Bilateral Asbestos-Related Nonmalignant Disease and for Disease Level III, either an ILO reading of 2/1 or greater or pathological evidence of asbestosis; or

iv. In the case of Disease Levels II or III, pulmonary function testing.

For Disease Levels IV-VII – All diagnoses of asbestos-related malignancy shall be based upon either (a) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease, (b) a diagnosis of such disease by a board-certified pathologist or (c) a pathology report prepared at or on behalf of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations.

For a detailed description of the medical evidence requirements by Disease Level see TDP Section 5.7(a). You should review this section of the TDP before filing a claim.

#### **Doctors and Medical Facilities:**

Section 5.7(a)(2) of the TDP requires that before making any payment to a claimant, the Trust must have reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical standards. The Trust has determined, based on currently available information, that medical reports from certain doctors and medical facilities or screening facilities will not be accepted. *Accordingly, until further notice, the Trust will not accept medical reports from, and will not process claims relying upon medical information from, any of the following doctors and medical facilities: Dr. Gregory Nayden, Dr. James Ballard, Dr. Kevin Cooper (of Pascagoula, Mississippi), Dr. Todd Coulter, Dr. Andrew Harron, Dr. Ray Harron, Dr. Glynn Hilbun, Dr. Barry Levy, Dr. George Martindale, Dr. W. Allen Oaks, Netherland & Mason, Inc., Respiratory Testing Services, Inc. and Occupational Diagnostics.*

## **Exposure Criteria for Flintkote Qualification:**

### Site/Plant Where Exposure Occurred

Questions 1 through 4 in Part 3 of the claim form ask about the sites where the claimant was exposed to asbestos. In response to these questions, a claimant must list all sites where he/she was exposed to asbestos-containing to prove both (1) Flintkote Exposure, and (2) SOE (as defined below), if applicable.

There are two ways to demonstrate that Flintkote asbestos-containing products were at a work site:

1. The claimant worked at a site which is listed on the Trust's approved site list, found on the website at **www.FlintkoteAsbestosTrust.com**; or
2. The claimant can establish, through affidavit, invoices, deposition testimony, or other means as described below in the section "Documentation to Support Exposure" that Flintkote's asbestos-containing products were used at a particular work site. A certification of counsel alone is not sufficient to establish Flintkote product at a particular site.

Exposure to Flintkote Products - *To qualify for any Disease Level, a claimant must demonstrate:* meaningful and credible exposure, which occurred prior to December 31, 1982, to asbestos or asbestos-containing products supplied, specified, manufactured, installed, maintained, or repaired by Flintkote and/or any entity, including a Flintkote contracting unit, for which Flintkote has legal responsibility.

## **Claimant Exposure to Flintkote Asbestos-Containing Products:**

Question 7 in Part 3 of the Proof of Claim Form relates to the evidence that is necessary to demonstrate exposure to Flintkote asbestos-containing products. All claimants must answer question 7(a), unless the site is being offered only for the purpose of demonstrating SOE. Question 7(a) provides instructions as to which claimants must answer 7(b).

Where instructed to answer question 7(b), the claimant must state how the injured party was exposed to the type of Flintkote asbestos-containing products or activities. It is necessary that the description provides detail on how the claimant interacted with the Flintkote asbestos-containing product. The Flintkote product description must include the type of Flintkote asbestos-containing products but does not require the specific brand name of the Flintkote product.

If you are required to answer question 7(b) and this information is already set forth in the documents submitted with the Proof of Claim Form, it is suggested that you reference the applicable document (by document number or document name) in question 7(b).

## **Significant Occupational Exposure (“SOE”)**

Questions 5 and 6 in Part 3 of the Proof of Claim Form relate to SOE. Pursuant to TDP Section 5.7(b)(2), SOE means employment for a cumulative period of at least five years with a minimum of two years prior to December 31, 1982, in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b) and/or (c).

If a claimant worked in an occupation/industry pairing listed on the SOE Occupations Rating list, found on the website at [www.FlintkoteAsbestosTrust.com](http://www.FlintkoteAsbestosTrust.com) for at least five years with a minimum of two years prior to December 31, 1982, and if any box other than “None of the above” is checked in Proof of Claim Form Part 3 question 5, no further evidence of SOE is required. If the claimant’s occupation/industry pairing is not set forth on the SOE Occupations Rating list, or if the box labeled “None of the above” is checked in Proof of Claim Form question 5, then evidence of the claimant’s SOE must be submitted. Evidence of SOE can be demonstrated by certification of counsel or as set forth below under “Documentation to Support Exposure.

It is only necessary for a claimant to demonstrate SOE to qualify for Disease Levels II, III, IV and VI.

## **Documentation to Support Exposure**

Where a claimant must demonstrate that Flintkote asbestos products were at a site/plant, or where a claimant seeks to demonstrate SOE or company exposure other than by certification of counsel, such evidence may be established by:

- An affidavit or sworn statement of the injured party
- An affidavit or sworn statement of a co-worker
- An affidavit or sworn statement of a family member (in the case of a deceased injured party)
- Invoices
- Employment, construction or similar records
- Interrogatory answers, sworn work history, or deposition/trial testimony
- Other credible evidence (this may include documents uploaded to the claim form to further explain exposure information as indicated on the claim form)

## **Litigation/Claims History:**

In Section 5 of the Proof of Claim Form, for all claims, Question 1 and 1(a) must be answered. If Question 1 is answered “yes”, but 1(a) is answered “no” for Flintkote, then you must answer

Question 5.3 indicating where you would have sued Flintkote. When answering Question 5.3, you must select jurisdiction based on one of the following:

1. Jurisdiction where the claimant was exposed to the Flintkote asbestos product;
2. Jurisdiction where the claimant lived when he filed his claim with the Trust; or
3. Jurisdiction where the claimant lived when he was diagnosed.

### **Extraordinary Claim**

“Extraordinary Claim” means a Trust Claim that otherwise satisfied the Medical Criteria for Disease Levels III-VII, and that is held by a claimant whose exposure to asbestos (i) occurred predominately as the result of working in a manufacturing facility of Flintkote during a period in which Flintkote was manufacturing asbestos-containing products at that facility, or (ii) was at least 75% the result of exposure to an asbestos-containing product for which Flintkote has legal responsibility, and in either case there is little likelihood of a substantial recovery elsewhere.

If the claimant is filing an Extraordinary Claim, a clear and concise declaration as to how the claimant satisfies section 5.4(a) of the TDP must be provided.

### **Foreign Claim**

A Foreign Claim alleges exposure to an asbestos-containing product or conduct for which Flintkote has legal responsibility that occurred outside of the United States and its Territories and Possessions and outside the Provinces and Territories of Canada. The claimant must provide the name of the Country and County, Province and/or City where the exposure occurred. A description of how the alleged exposure occurred must also be provided.

The Trust may require additional information regarding the Foreign Claim and will take into account all relevant procedural and substantive legal rules to which the claim would be subject in the Claimant’s Jurisdiction, as defined in Section 5.3(b)(2) of the TDP.

### **Where to Submit Claim Forms:**

Electronic claim submissions, including document images, can be filed directly through the Trust Online system. There is no need to submit paper claims for Trust Online submissions.

However, if paper claims and documents need to be sent to the Trust, they should be addressed to:

**The Flintkote Asbestos Trust  
P.O. Box 1033  
Wilmington, Delaware 19899-1033**

## Questions and Assistance:

If you have questions concerning the claim filing procedures, instructions or forms, you may reach the DCPF in a variety of ways. For assistance with the bulk upload tool, converting and linking claims or web services, please contact the DCPF websupport at (866)665-5790 or email websupport at [websupport@flintkoteasbestostrust.com](mailto:websupport@flintkoteasbestostrust.com). In addition, the websupport department can provide web-based training for all Trust Online users. A detailed user manual is also available on the Trusts' website at **[www.FlintkoteAsbestosTrust.com](http://www.FlintkoteAsbestosTrust.com)**.

For assistance with specific claim form questions, the status of your claims, or how to resolve a claim deficiency, please contact the Claimant Relations department at (800)709-8925 or by email at [claimantrelations@delcpf.com](mailto:claimantrelations@delcpf.com). In addition to these resources, the Claimant Relations department offers in-person training sessions at either our Wilmington claims processing facility or at your firm. If you or your staff is interested in participating in a training session, please contact our law firm coordinator at [claimantrelations@delcpf.com](mailto:claimantrelations@delcpf.com) or at (800)709-8925.

Sincerely,

The Trustees of The Flintkote Asbestos Trust

6447462.2