

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 7
	:	
NATIONAL SERVICE INDUSTRIES, INC.,	:	Case No. 12-12057-MFW
	:	
Debtor.	:	Hearing Date: April 21, 2021 at 2:00 p.m. ET
	:	Objection Deadline: April 12, 2021 at 4:00 p.m. ET
	:	

**DECLARATION OF CHARLES M. FORMAN, TRUSTEE, IN SUPPORT
OF MOTION TO EXTEND CERTAIN DEADLINES IN REVISED
NSI ASBESTOS CLAIM PROCEDURES**

I, Charles M. Forman, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I am the chapter 7 Trustee for National Service Industries, Inc. (“NSI” or “Debtor”).
2. On December 14, 2020, the United States Bankruptcy Court for the District of Delaware (“Court”) entered an Order Approving Revised Procedures for Determination of Asbestos Related Claims Pursuant to Fed. R. Bankr. P. 9019 [D.I. 407].
3. A copy of the Revised NSI Asbestos Claim Procedures (“Procedures”) is attached as Exhibit A.
4. Under the Procedures, a Claim Deadline has been set for 120 days after the Effective Date for the filing of certain untimely proofs of claims and an asbestos claim form with supporting documents.
5. The Effective Date was December 14, 2020 and the Claim Deadline is April 13, 2021.

6. Following the entry of the order approving the Procedures, I issued notices to all creditors and published that same notice in various publications in an effort to reach all potential claimants who suffered asbestos personal injuries arising out of activities conducted by North Brothers, a subsidiary of the Debtor.

7. Since the notice of the Claim Deadline was issued, claimants have been filing proofs of claim and have begun to submit asbestos claim forms as provided for in the Procedures.

8. My professionals and I have been contacted by attorneys representing asbestos claimants who have indicated that they believe that they will not be able to file all of the unfiled proofs of claim for the asbestos claim holders they represent and/or be able to complete the submissions of asbestos documents required under the Procedures by the claim deadline.

9. In addition, claimants have advised that they believe that 15 days is insufficient time to provide additional information if they are notified of a deficiency, which is the time period set forth in Section 5.1(a)(1) in the Procedures.

10. I am seeking to extend the Claim Deadline to May 31, 2021 to provide a further opportunity for all claims to be submitted in this case.

11. In addition, I am seeking to have the discretion to grant additional extensions of time to submit the asbestos claim form and related documents on a case by case basis to allow me to, in my discretion, grant up to two extensions of not more than 30 days after the claim deadline for claimants to submit their documentation.

12. Finally, I am seeking to provide claimants with additional time to correct their defects, in my discretion, based on the nature of the deficiency.

13. I believe making these changes to the Procedures is in the best interest of the creditors of the estate and will provide for all creditors to receive equal treatment under the Procedures.

14. I respectfully request that the court grant the relief requested in the motion to extend certain deadlines in the revised NSI asbestos claim procedures.

Dated: March 26, 2021



Charles M. Forman, Trustee

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 7
)	
NATIONAL SERVICE INDUSTRIES, INC.,)	Case No. 12-12057 (MFW)
)	
Debtor.)	

REVISED NSI ASBESTOS CLAIM PROCEDURES

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ASBESTOS CLAIM PROCEDURES

These Asbestos Claim Procedures provide a process for resolving the Asbestos Personal Injury Claims asserted against National Service Industries, Inc., including asbestos-related personal injury and death claims caused by exposure to asbestos-containing products for which National Service Industries, Inc., or any of its predecessors and successors, have been alleged to have legal responsibility. The Chapter 7 Trustee shall implement and administer these Asbestos Claim Procedures as set forth herein.

SECTION I

Definitions

The definitions set forth below will apply to the listed terms wherever those terms appear in these Asbestos Claim Procedures. Unless otherwise specified, each defined term stated in singular form shall include the plural form, and each defined term stated in the plural form shall include the singular form. The terms “includes” and “including” wherever used in these Asbestos Claim Procedures shall mean both includes or including, both without limitation.

1.1 “Allowed Tardily Filed Claim” means a claim filed by an Asbestos Personal Injury Claimant who files a Proof of Claim after the Bar Date but, in accordance with the procedures set forth in Section 4 below, will be paid as if the claim were a Timely Filed Claim.

1.2 “Asbestos Claim Form” means the form required to be submitted, in addition to a Proof of Claim form, for an Asbestos Personal Injury Claim to be considered for allowance as a General Unsecured Claim which will be paid from the Estate. The Asbestos Claim Form is attached as **Exhibit 1**.

1.3 “Asbestos Claim Procedures” means the procedures set forth herein to establish the Total Liquidated Value for Unliquidated Asbestos Claims.

1.4 “Asbestos Personal Injury Claim” means (a) any claim (excluding any claim based on a Workers Compensation Claim) whenever and wherever arising or asserted against NSI, its predecessors, successors, subsidiaries or affiliates, including North Brothers, Inc., or their present or former officers, directors or employees and (b) any debt, obligation or liability (whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, bonded, secured or unsecured), whenever and wherever arising or asserted, of NSI, its predecessors, successors, subsidiaries or affiliates, including North Brothers, Inc., or their present or former officers, directors or employees (including, all thereof in the nature of or sounding in tort, contract, warranty, or any other theory of law, equity, or admiralty); in either case (a) or (b) for, relating to, or arising by reason of, directly or indirectly, physical, emotional, bodily or other personal injury, death or damages (including any claim or demand for compensatory damages, loss of consortium, proximate, consequential, general, special or punitive damages, reimbursement, indemnity, warranty, contribution or subrogation), (x) caused or allegedly caused, in whole or part, directly or indirectly: (i) by asbestos or asbestos-containing products supplied, distributed, handled, fabricated, stored, sold, or removed by NSI; (ii) by services, actions, or operations provided, completed, or taken by NSI in connection with asbestos or asbestos-containing products or (y) caused or allegedly caused by asbestos for which NSI is otherwise liable under any applicable law, whether or not arising or allegedly arising, directly or indirectly, from acts or omissions of NSI, its predecessors, subsidiaries or affiliates, including North Brothers, Inc., or their present or former officers, directors or employees, or any other entity for or with which NSI or its successors are or may be liable.

1.5 “Asbestos Personal Injury Claimant” means a person who has asserted an Asbestos Personal Injury Claim in this case.

1.6 “Bankruptcy Case” means the bankruptcy proceeding captioned *In re National Service Industries, Inc.*, Case No. 12-12057 (MFW), pending in the United States Bankruptcy Court for the District of Delaware.

1.7 “Bankruptcy Code” means Title 11, United States Code.

1.8 “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware.

1.9 “Bar Date” means the last day for filing claims fixed by the Clerk of the Bankruptcy Court, which is November 23, 2012 in this case.

1.10 “Chapter 7 Trustee” or “Trustee” means Charles M. Forman, the individual appointed to serve as Chapter 7 Trustee in the Bankruptcy Case.

1.11 “Claim Deadline” means one hundred and twenty (120) days after the Effective Date.

1.12 “Disputed Claim” means a claim where the Asbestos Personal Injury Claimant has filed a Notice of Disputed Claim in accordance with the procedures set forth in Section 6.2 below.

1.13 “Disease Level” means the levels of disease, as outlined in Section V of these Asbestos Claim Procedures.

1.14 “Debtor” means National Service Industries, Inc.

1.15 “Effective Date” means the date on which these Revised Asbestos Claim Procedures are approved by the Bankruptcy Court.

1.16 “Estate” means the funds obtained through the liquidation of the Debtor’s assets and recovered by the Trustee in connection with the Bankruptcy Case.

1.17 “Final Report” means the report prepared by the Trustees pursuant to Bankruptcy Code Section 704(9) and submitted to the United States Trustee for review before filing with the

Bankruptcy Court. The Final Report is a final accounting of Estate receipts and disbursements and sets forth a proposed distribution to creditors.

1.18 “General Unsecured Claim” means a claim which was either (1) filed in the Bankruptcy Case on or before the Bar Date or (2) filed after the Bar Date and designated an Allowed Tardily Filed Claim pursuant to the procedures set forth in Section 4 below.

1.19 “Liquidated Claim” means an Asbestos Personal Injury Claim which was determined or established prior to the Petition Date and includes claims which (a) were fully settled, but not paid prior to the Petition Date; (b) are evidenced by a judgment or court order; or (c) are for defense costs related to prepetition asbestos claims against the Debtor.

1.20 “Medical/Exposure Criteria” means the Medical/Exposure Criteria set forth in Section 5.1(c).

1.21 “National Service Industries, Inc.” and “NSI” mean National Service Industries, Inc. or any of its predecessors and successors, including North Brothers, Inc.

1.22 “Petition Date” means the date on which the bankruptcy petition was filed, July 12, 2012.

1.23 “Proof of Claim” is official Bankruptcy Form B410, which is attached hereto as **Exhibit 2**.

1.24 “Review Process” means the process for fixing the Total Liquidated Value for the Unliquidated Asbestos Personal Injury Claims.

1.25 “Scheduled Value” means the value associated with each Disease Level set forth in Section 5.1(c).

1.26 “Tardily Filed Claim” means a claim for which a Proof of Claim was filed after the Bar Date.

1.27 “Timely Filed Claim” means a claim for which a Proof of Claim was filed on or before the Bar Date.

1.28 “Total Liquidated Value” means the value assigned to an Asbestos Personal Injury Claim in accordance with these Asbestos Claim Procedures.

1.29 “Unliquidated Asbestos Claim” means an Asbestos Personal Injury Claim which was not determined or established prior to the Petition Date.

1.30 “Workers Compensation Claim” means a claim for occupational disease or accidental bodily injury arising out of and in the course of employment governed by state workers’ compensation law.

SECTION II

Introduction

2.1 **Purpose.** These Asbestos Claim Procedures are designed to provide fair, equitable, and substantially similar treatment for all Asbestos Personal Injury Claims. These Asbestos Claim Procedures set forth procedures for determining the allowed amount for Asbestos Personal Injury Claims on an impartial basis, with the intention of establishing the allowed amount for each claim based on historical values for substantially similar claims resolved by NSI in the tort system. To this end, these Asbestos Claim Procedures establish a schedule of four asbestos-related diseases (“Disease Levels”) each of which have medical and exposure requirements (“Medical/Exposure Criteria”) and specific liquidated values (“Scheduled Values”). The Disease Levels, Medical/Exposure Criteria, and Scheduled Values, which are set forth in Sections 5.1 (a) (2) and 5.1 (c) below, have all been selected and derived with the intention of determining a fair value of each Asbestos Personal Injury Claim in light of the best available information taking into account NSI’s historical settlement values and the rights claimants would have had in the tort system absent

the Bankruptcy Case. All payments made to holders of Asbestos Personal Injury Claims are intended to compensate claimants for damages related to personal injuries, including bodily injury and related mental consequences.

2.2 **Administration.** These Asbestos Claim Procedures shall be administered by the Chapter 7 Trustee and his professionals. The Chapter 7 Trustee has obtained the approval of the Bankruptcy Court for these Asbestos Claim Procedures and will seek approval of the Bankruptcy Court for any amendments to them.

2.3 **Interpretation.** Except as may otherwise be provided below, nothing in these Asbestos Claim Procedures shall be deemed to create a substantive right for any claimant. The rights and benefits provided herein to holders of Asbestos Personal Injury Claims shall vest in such holders as of the Effective Date.

SECTION III

Procedures

3.1 **Asbestos Claim Procedures.** All claimants holding Asbestos Personal Injury Claims must have (a) filed a Proof of Claim with the Bankruptcy Court on or before the Bar Date or (b) must follow the process for Tardily Filed Claims set forth in Section 4 below. **In addition to filing a Proof of Claim or following the procedure to file a Tardily Filed Claim, all Asbestos Personal Injury Claim holders must file an Asbestos Claim Form in accordance with the procedures set forth herein in order to have their claim considered for payment.** Claims will be processed and liquidated following the procedures set forth herein. The Chapter 7 Trustee shall take all reasonable steps to resolve the Asbestos Personal Injury Claims as efficiently and expeditiously as possible.

3.2 **Treatment of Liquidated Claims.** The Total Liquidated Value of Unliquidated Asbestos Claims will be determined pursuant to the procedures set forth herein. Holders of Liquidated Asbestos Claims shall be deemed to hold a General Unsecured Claim in the amount of the value fixed for the Asbestos Personal Injury Claim and do not have to file an Asbestos Claim Form.

SECTION IV

Tardily Filed Claims

4.1 **Tardily Filed Claims.** Tardily Filed Claims may be allowed to be treated on equal footing with creditors that hold Timely Filed Claims under Bankruptcy Code Section 726 (a)(2)(C), if the creditor that holds the Tardily Filed Claim asserts that they did not have notice or actual knowledge of the Bankruptcy Case in time to file a Proof of Claim under section 501(1) of the Bankruptcy Code on or before the Bar Date and the Proof of Claim is filed in time to permit payment of such claim.

4.2 **Consideration of Tardily Filed Claims.** The Trustee will consider requests from holders of Asbestos Personal Injury Claims to have a Tardily Filed Claim allowed as an Allowed Tardily Filed Claim in accordance with the procedures set forth herein. Holders of Allowed Tardily Filed Claims are required to file an Asbestos Claim Form in accordance with the Asbestos Claim Procedures.

4.3 **Procedure.** Any holder of an Asbestos Personal Injury Claim seeking to have their Tardily Filed Claim treated as an Allowed Tardily Filed Claim shall:

(1) File with the United States Bankruptcy Court for the District of Delaware a Proof of Claim using Bankruptcy Form B410, attached as **Exhibit 2**, on or before the Claim Deadline. The Proof of Claim shall include a certification or declaration setting forth facts to establish that the

holder of the Tardily Filed Claim did not have notice or actual knowledge of the Bankruptcy Case in time to file a timely Proof of Claim. Instructions on how to file a Proof of Claim can be found on the Bankruptcy Court's website: <http://www.deb.uscourts.gov/claims-information>.

(2) In addition, claimants also shall file an Asbestos Claim Form and supporting documentation with PACE Claims Services, LLC no later than the Claim Deadline. Instructions on how to submit the Asbestos Claim Forms and supporting documentation can be found at: nsi.ch7trusteeservices.com. The Trustee will determine whether he finds the claim to qualify as an Allowed Tardily Filed Claim and will notify the claim holder in writing in accordance with Section 6.2. Any holder of a Tardily Filed Claim who is denied their request to be permitted to hold an Allowed Tardily Filed Claim may dispute the determination following the objection procedures set forth below.

SECTION V

Determination of Asbestos Personal Injury Claims

5.1. **Criteria for Determining the Amount and Allowance of Asbestos Claims.**

5.1 (a) **Asbestos Claim Form.** In addition to filing a Proof of Claim, all holders of Asbestos Personal Injury Claims must submit an Asbestos Claim Form and the required supporting documentation by the Claim Deadline. Asbestos Personal Injury Claims that are not evidenced by a properly completed Asbestos Claim Form and all required supporting documentation as of the Claim Deadline will not be entitled to be considered to be a General Unsecured Claim in the Bankruptcy Case. A copy of the required Asbestos Claim Form is attached as **Exhibit 1**.

5.1 (a) (1) **Amending Claims.** Notwithstanding the above, the Chapter 7 Trustee may, in his discretion, permit holders of timely-filed Asbestos Claim Forms the opportunity to correct or modify their claim submissions to correct defects. In the event that a claimant submits a timely-

filed Asbestos Claim Form without properly completing the form or without all necessary supporting documentation, the claimant may, within fifteen (15) days of notice of the deficient submission by the Chapter 7 Trustee, correct the noted deficiency and re-submit the Asbestos Claim Form, and the Asbestos Personal Injury Claim shall be considered to have been timely filed.

5.1 (a) (2) **Disease Level Classification.** The Asbestos Claim Form shall require the claimant to assert his or her claim for the highest Disease Level for which the claim qualifies as of the Claim Deadline. Irrespective of the Disease Level alleged on the Asbestos Claim Form, all claims shall be deemed to be a claim for the highest Disease Level for which the claim qualifies as of the Claim Deadline, and all lower Disease Levels for which the claim may also qualify at the time of filing or in the future shall be treated as subsumed into the highest Disease Level for which the claim qualified at the time of filing for both processing and payment purposes.

5.1 (a) (3) **Effect of Statutes of Limitations and Repose.** All unliquidated Asbestos Personal Injury Claims must satisfy one of the following: (i) for claims first filed in the tort system against NSI prior to the Petition Date, the applicable federal, state and foreign statute of limitations and repose that was in effect at the time of the filing of the claim in the tort system; or (ii) for claims not filed against NSI in the tort system prior to the Petition Date, the applicable federal, state or foreign statute of limitations that was in effect on the Petition Date. However, the running of the relevant statute of limitations shall be tolled as of the earliest of: (A) the actual filing of the claim against NSI prior to the Petition Date, whether in the tort system or by submission of the claim to NSI pursuant to an administrative settlement agreement; (B) the tolling of the claim against NSI prior to the Petition Date by an agreement or otherwise, provided such tolling was still in effect on the Petition Date; or (C) the Petition Date.

5.1 (b) **Processing of Asbestos Personal Injury Claims.** The Chapter 7 Trustee, with assistance of outside professionals as he deems appropriate, will review and process all Asbestos Personal Injury Claims for which an Asbestos Claim Form has been filed by the Claim Deadline. The Chapter 7 Trustee shall assign each claim an identifying number, which identifier will be used on all subsequent correspondence between the Chapter 7 Trustee and the claimant.

5.1 (b) (1) **Review Process.** The Review Process is designed to provide an expeditious, efficient and inexpensive method for liquidating Asbestos Personal Injury Claims. The Review Process provides claimants and the estate with a non-burdensome process for resolving and liquidating Asbestos Personal Injury Claims. Claims that meet the presumptive Medical/Exposure Criteria for the relevant Disease Level shall be allowed General Unsecured Claims at the Scheduled Value for such Disease Level set forth in Section 5.1 (c) below. Once the Claim Deadline has passed, the Chapter 7 Trustee shall determine whether the claims submitted are timely, qualify as Allowed Tardily Filed Claims, and if they meet the Medical/Exposure Criteria for one of the Disease Levels, and shall advise the claimant of his determination.

5.1 (c) **Disease Levels, Scheduled Values and Medical/Exposure Criteria.** The Disease Levels covered by these Asbestos Claim Procedures, together with the Medical/Exposure Criteria for each, and the Scheduled Values for the Disease Levels, are set forth below. They shall apply to all Asbestos Personal Injury Claims filed on or before the Claim Deadline and to all Allowed Tardily Filed Claims. For purposes of administering the Asbestos Personal Injury Claims, the Chapter 7 Trustee may: add to, change or eliminate the Disease Levels; develop subcategories of Disease Levels, Scheduled Values or Medical/Exposure Criteria; or determine that a novel or exceptional Asbestos Personal Injury Claim is compensable even though it does not meet the Medical/Exposure Criteria for any of the then current Disease Levels.

5.1(c)(1) **Disease Levels and Scheduled Values.**

Disease Level	Scheduled Values	Medical/Exposure Criteria
Mesothelioma (Level IV)	\$160,000	(1) Diagnosis ¹ of mesothelioma; and (2) NSI Exposure as defined in Section 5.1 (e) below.

¹ The requirements for a diagnosis of an asbestos-related disease that may be compensated under the provisions of these Claim Distribution Procedures are set forth in Section 5.1 (d) below

Cancer (Level III)	\$25,000	(1) Diagnosis of a cancer plus evidence of an underlying Bilateral Asbestos Related Nonmalignant Disease ² , (2) six months of NSI Exposure ³ ; (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos Exposure as a contributing factor in causing cancer in question.
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² Evidence of “Bilateral Asbestos-Related Nonmalignant Disease” for purposes of meeting the criteria for establishing Disease Level III means either (i) a chest x-ray read by a qualified B reader of 1/0 or higher on the ILO scale or (ii)(x) a chest x-ray read by a qualified B reader or other Qualified Physician, (y) a CT scan read by a Qualified Physician, or (z) pathology, in each case showing either bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification. Evidence submitted to demonstrate (i) or (ii) above must be in the form of a written report stating the results (e.g., an ILO report, a written radiology report or a pathology report). Solely for asbestos claims filed against NSI in the tort system prior to the Commencement Date, an ILO reading is not available, either (i) a chest x-ray or a CT scan read by a Qualified Physician, or (ii) pathology, in each case showing bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification consistent with or compatible with a diagnosis of asbestos-related disease, shall be evidence of a Bilateral Asbestos-Related Nonmalignant Disease for purposes of meeting the presumptive medical requirements of Disease Level III. Pathological proof of asbestosis may be based on the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, “Asbestos-associated Disease,” Vol. 106, No. 11, App. 3 (October 8, 1982). For all purposes of these Asbestos Claim Procedures, a “Qualified Physician” is a physician who is board certified (or in the case of foreign claims, a physician who is certified or qualified under comparable medical standards or criteria of the jurisdiction in question) in one or more relevant specialized fields of medicine such as pulmonology, radiology, internal medicine, or occupational medicine; provided however, subject to the provisions of Section 5.1(d)(1), that the requirement for board certification in this provision shall not apply to otherwise qualified physicians whose x-rays and/or CT scan readings are submitted for deceased holders of Asbestos Personal Injury Claims.

³ “Significant Occupational Exposure” is defined in Section 5.1(e)(1) below.

Asbestosis/Pleural Disease (Level II)	\$3,500	(1) Diagnosis of Bilateral Asbestos-Related Nonmalignant Disease plus (a) TLC less than 80% or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%, and (2) six months NSI Exposure, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary impairment in question.
Other Asbestos Disease (Level I)	\$500	(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease or an asbestos-related malignancy other than mesothelioma and (2) NSI Exposure.

5.1 (d) **Medical Evidence.** All diagnoses of a Disease Level shall be accompanied by either (i) a statement by the physician providing the diagnosis asserting that at least 10 years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis, or (ii) a history of the claimant's exposure that establishes a 10-year latency period.⁴

⁴ All diagnoses of Asbestosis/Pleural Disease (Disease Level II) not based on pathology shall be presumed to be based on findings of bilateral asbestosis or pleural disease, and all diagnoses of Mesothelioma (Disease Level IV) shall be presumed to be based on findings that the disease involves a malignancy. However, the Chapter 7 Trustee may refute such presumptions.

5.1 (d) (1) **Disease Levels I–II.** Except for asbestos claims filed against NSI or any other defendant in the tort system prior to the Petition Date, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I–II) shall be based in the case of a claimant who was living at the time the Asbestos Personal Injury Claim was filed on a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease. All living claimants must also provide: (i) for Disease Levels I-II, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 3 above); or (ii) for Disease Level II, an ILO reading of 2/1 or greater or pathological evidence of asbestosis and pulmonary function testing.⁵ A finding by a physician after the Effective Date that a claimant’s disease is “consistent with” or “compatible with” asbestosis alone will not be treated by the Chapter 7 Trustee as a diagnosis.

In the case of a claimant who was deceased at the time the Asbestos Personal Injury Claim was filed, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I–II) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease; (ii) pathological evidence of the non-malignant asbestos-related disease; (iii) evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 3 above), and for Disease Level II, either an ILO reading of 2/1 or greater or pathological evidence of asbestosis; or (iv) for either Disease Level I or II, pulmonary function testing.

⁵ “Pulmonary function testing” or “PFT” shall mean testing that is in material compliance with the quality criteria established by the American Thoracic Society (“ATS”) and is performed on equipment which is in material compliance with ATS standards for technical quality and calibration. PFT performed in a hospital accredited by the JCAHO (as defined in Section 5.1(d)(2) below), or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician shall be presumed to comply with ATS standards, and the claimant may submit a summary report of the testing. If the PFT was not performed in a JCAHO- accredited hospital, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician, the claimant must submit the full report of the testing (as opposed to a summary report); provided, however, that if the PFT was conducted prior to the Effective Date of the Plan and the full PFT report is not available, the claimant must submit a declaration signed by a Qualified Physician or other party who is qualified to make a certification regarding the PFT, certifying that the PFT was conducted in material compliance with ATS standards.

5.1 (d) (2) **Disease Levels III-IV.** All diagnoses of an asbestos-related malignancy (Disease Levels III-IV) shall be based upon either: (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease; or (ii) a diagnosis of such a malignant Disease Level by a board-certified pathologist or by a pathology report prepared at or on behalf of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (“JCAHO”).

5.1 (d) (3) **Credibility of Medical Evidence.** Before making any payment to a claimant, the Chapter 7 Trustee must have reasonable confidence that the medical evidence provided in support of the Asbestos Personal Injury Claim is credible and consistent with recognized medical standards. The Chapter 7 Trustee may require the submission of X-rays, CT scans, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examination or reviews of other medical evidence, and may require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods and procedures to assure that such evidence is reliable. Medical evidence (i) that is of a kind shown to have been received in evidence by a state or federal judge at trial, (ii) that is consistent with evidence submitted to NSI to settle cases alleging similar diseases prior to the Petition Date, or (iii) that is a diagnosis by a physician shown to have previously qualified as a medical expert with respect to the asbestos-related disease in question before a state or federal judge using the same methodology and standard, is presumptively reliable, although the Chapter 7 Trustee may seek to rebut the presumption. Notwithstanding the foregoing or any other provision of these Asbestos Claim Procedures, any medical evidence submitted by a physician or entity that the Chapter 7 Trustee has determined to be unreliable shall not be acceptable as medical evidence in support of any Asbestos Personal Injury Claim.

5.1 (e) **Exposure Evidence.** As set forth above in Section 5.1 (c), to qualify for any Disease Level, the claimant must demonstrate a minimum exposure to asbestos-containing products, or to conduct that exposed the claimant to an asbestos-containing product, for which NSI has legal responsibility.

5.1 (e)(1) **Significant Occupational Exposure.** “Significant Occupational Exposure” means employment for a cumulative period of at least five (5) years, with a minimum of two (2) years, in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b) and/or (c).

5.1 (e)(2) **NSI Exposure.** The claimant must demonstrate meaningful and credible exposure (a) to an asbestos-containing product sold, distributed, marketed, handled, or processed by NSI or for which NSI otherwise has legal responsibility or (b) to conduct for which NSI has legal responsibility that exposed the claimant to an asbestos-containing product (“NSI Exposure”).

That meaningful and credible exposure evidence may be established by an affidavit or sworn statement of the claimant, by an affidavit or sworn statement of a co-worker, or the affidavit or sworn statement of a family member in the case of a deceased claimant (providing the Chapter 7 Trustee finds such evidence reasonably reliable), by invoices, employment, construction or similar records, or by other credible evidence. The Chapter 7 Trustee can also require submission

of other or additional evidence of exposure when he deems such additional evidence to be necessary.

Evidence submitted to establish proof of NSI Exposure is for the sole benefit of the Chapter 7 Trustee, not third parties or defendants in the tort system. The Chapter 7 Trustee has no need for, and therefore claimants are not required to furnish the Chapter 7 Trustee with, evidence of exposure to specific asbestos products other than those for which NSI has legal responsibility, except to the extent such evidence is required elsewhere in these Asbestos Claim Distribution Procedures.

5.1 (f) **Secondary Exposure Claims.** If a claimant alleges an asbestos-related disease resulting solely from exposure to an occupationally exposed person, such as a family member, the claimant must establish that the occupationally exposed person would have met the Exposure Criteria under these Asbestos Claim Procedures that would have been applicable had that person filed a direct claim in the Bankruptcy Case.

The claimant with secondary exposure must establish that he or she is suffering from one of the four Disease Levels described in Section 5.1 (c) above or an asbestos-related disease otherwise compensable under these Asbestos Claim Procedures, that his or her own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person was exposed to asbestos-containing products or conduct for which NSI has legal responsibility, and that such secondary exposure was a cause of the claimed disease. All other liquidation and payment rights and limitations under these Asbestos Claim Procedures shall be applicable to such claims.

SECTION VI

Process for Review and Determination of Asbestos Personal Injury Claims

6.1 **Claims Materials.** The Asbestos Claim Form requires the claimant to assert the highest Disease Level for which the Asbestos Personal Injury Claim qualifies at the time of filing. The Asbestos Claim Form shall also include a certification by the claimant or his or her attorney sufficient to meet the requirements of Rule 11(b) of the Federal Rules of Civil Procedure. The Asbestos Claim Form attached hereto may be modified by the Chapter 7 Trustee as necessary.

6.2 **Fixing Unliquidated Asbestos Claim Amounts.** Claimants with Unliquidated Asbestos Claims, including those who have previously filed a Proof of Claim, must file an Asbestos Claim Form in accordance with the Asbestos Claim Procedures and deadlines set forth herein. The Trustee, with the assistance of an asbestos claim resolution organization or other professionals at his discretion, will review the Asbestos Claim Forms to determine: (a) if the claim was filed in compliance with the required deadlines; (b) if the claim provides sufficient documentation; (c) whether the claim meets the Medical/Exposure Criteria for one of the Disease Levels; and (d) whether the claim is objectionable for any other reason under Section 502 of the Bankruptcy Code, including but not limited to whether the claim is duplicative of or amends a prior claim. When the Trustee has made his determination, he will advise the claimant in writing whether the Asbestos Personal Injury Claim is allowed and the Total Liquidated Value assigned to it, including whether the claimant has submitted sufficient Medical/Exposure Criteria for one of the Disease Levels; and the Disease Level assigned to the claim. If the claimant does not accept the Trustee's determination of the Asbestos Personal Injury Claim, the claimant shall, within thirty (30) days of claimant's receipt of the Trustee's determination, serve on the Trustee and his professionals a Notice of Disputed Claim which sets forth the basis for the claimant's dispute with

the Trustee's determination in accordance with the provisions set forth in Section X. If the claimant does not dispute the Trustee's determination by filing a Notice of Disputed Claim within the thirty (30) day period, the Trustee's determination shall become final.

6.3 Disputed Claim Procedure. Once a claimant files a Notice of Disputed Claim, the amount of the Asbestos Personal Injury Claim shall be subject to mediation which will be conducted in accordance with the Mediation Procedures set forth below. If the mediation does not result in an agreement as to the allowed amount of the Asbestos Personal Injury Claim, the claim shall be subject to binding or non-binding arbitration in accordance with the Arbitration Procedures set forth below.

6.4 Confidentiality of Claimants' Submissions. All submissions to the Chapter 7 Trustee by holders of Asbestos Personal Injury Claims, including the Asbestos Claim Form and materials related thereto, shall be treated as made in the course of settlement discussions between the holder and the Chapter 7 Trustee and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including those applicable to settlement discussions. The Chapter 7 Trustee shall preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only with the permission of the holder, to a trust established for the benefit of asbestos personal injury claimants, to such other persons as authorized by the holder, in response to a valid subpoena, or by court order.

6.5 Withdrawal of Claims. A claimant can withdraw an Asbestos Personal Injury Claim at any time prior to the time the Chapter 7 Trustee files the Final Report, upon written notice to the Chapter 7 Trustee. However, subsequent filings after withdrawal shall not be permitted.

SECTION VII

Mediation Procedures

7.1 **Selection of Mediator.** The Trustee and the claimant will agree on a mediator and a time and location for mediation of the claim, such agreement not to be unreasonably withheld. Mediation may involve groups of claimants at a central location as the parties agree, in the Trustee's discretion.

7.2 **Provision of Information by Claimant.** It shall be the responsibility of the claimant to provide the Trustee all information necessary to evaluate a Disputed Claim at least thirty (30) days prior to any mediation.

7.3 **Mediation Resulting in a Final Settlement.** Should mediation result in a final settlement of the Disputed Claim, the settling claimant and the Trustee shall enter into a Settlement Agreement that fixes the Total Liquidated Value of the claim. Except as otherwise provided herein, any Disputed Claim that is resolved through this process shall be confidential with respect to the identity of the claimant and settlement discussions. The Trustee or his agent shall disclose information on settlements to the Bankruptcy Court, and to parties in interest, upon their request. The Trustee or his agent shall prepare a chart identifying the settling claimants by claim number, age and sex, the nature of the injuries sustained, the settlement amount of such claim, and such other information as the Trustee determines. Such chart shall be made available to claimants and their counsel upon written request to the Trustee after the Bar Date. Any person requesting a copy of the chart showing the settlement amounts shall agree to keep all such information confidential and execute a confidentiality agreement prepared by the Trustee.

7.4 **Payment of Mediator Fees.** The Trustee's share of mediator's fees and expenses shall be paid by the Trustee out of the Estate. The mediator shall not be liable to any party for any act or omission in connection with any evaluation concluded under these Mediation Procedures.

7.5 **Mediation Not Resulting in a Final Settlement.** If mediation is unsuccessful, the Trustee and the claimant shall engage in binding or non-binding arbitration to be conducted in accordance with the Arbitration Procedures set forth below.

SECTION VIII

Arbitration

8.1 **Claims Subject to Arbitration.** All disputes over a claimant's medical condition, exposure history and/or liquidated value of the claim which are not resolved by mediation shall be subject to binding or non-binding arbitration, at the election of the claimant, under the NSI Asbestos Personal Injury Claim Alternative Dispute Resolution Procedures ("ADR Procedures"). The ADR Procedures are attached as **Exhibit 3**.

8.2 **Establishment of Arbitration Procedures.** The Trustee has established ADR Procedures for resolving Disputed Claims. In all arbitrations, the arbitrator shall consider the same medical and exposure criteria requirements that are set forth in the NSI Asbestos Claim Procedures. In the case of an arbitration involving the liquidated value of a claim, the arbitrator shall consider the same valuation factors that are set forth in the NSI Asbestos Claim Procedures. With respect to all claims eligible for arbitration, the claimant, but not the Trustee, may elect either non-binding or binding arbitration. If the claimant elects to proceed with arbitration, the claimant will be responsible for one-half of arbitrator's fees and costs. The ADR Procedures may be modified by the Trustee.

8.3 **Disputed Claims Eligible for Arbitration.** A Disputed Claim is eligible for arbitration if it has been rejected by the Trustee, or the Trustee has made an offer which was rejected by the claimant, and the Disputed Claim has been mediated without resolution in accordance with the mediation provisions set forth herein.

8.4 **Litigation.** A claimant who elects non-binding arbitration and then rejects the arbitrator's award retains the right to have their claim determined in accordance with the Bankruptcy Code and Rules.

SECTION IX

General Guidelines for Liquidating and Paying Claims

9.1 **Payment of Liquidated Asbestos Claim.** Asbestos Personal Injury Claims approved by the Trustee in accordance with these Asbestos Claim Procedures and accepted by the claimholder will be considered "Liquidated Asbestos Claims" and allowed as General Unsecured Claims, which will be paid from the Estate in the priority set forth by the Bankruptcy Code. General Unsecured Claims are paid pro rata after the payment of Priority Claims, based on the allowed claim amount, the funds available for distribution and the total claims filed. It is not possible to determine the percentage of the pro rata distribution at this time.

9.2 **Timing of Payment.** After the Trustee completes the Review Process and all claims are fixed, the Trustee will file a Final Report in accordance with Bankruptcy Code Section 704(9). After the Final Report is filed, the Bankruptcy Court will schedule a hearing date to consider the report and any objections to it. Once the Final Report is approved, the Trustee will make a distribution to creditors. The Final Report will set forth the anticipated payment amount for each claimholder.

9.3 **Unclaimed Funds.** If, after a period of ninety (90) days, the Chapter 7 Trustee has attempted to but is unable to deliver payment to the claimant address on file, the Chapter 7 Trustee shall pay the unclaimed funds to the United States Bankruptcy Court pursuant to Fed. R. Bankr. P. 3011 and Del. Bankr. L.R. 3011-1.

SECTION X

Miscellaneous

10.1 **Filing and Service.** Claimants shall file a Tardily Filed Claim with the United States Bankruptcy Court for the District of Delaware by following the instructions on the Bankruptcy Court's website: <http://www.deb.uscourts.gov/claims-information> or by mailing the Proof of Claim by First Class Mail to:

**United States Bankruptcy Court
Attn: Claims
824 Market Street, 3rd Floor
Wilmington, DE 19801**

Claimants that have filed a Timely Filed Claim or a Tardily Filed Claim must also file the Asbestos Claim Form and any supporting documentation with PACE Claims Services, LLC as follows:

Via Electronic Submission (preferred):

nsi.ch7trusteeservices.com

Or via First Class Mail, Overnight Mail or Certified Mail:

**PACE Claims Services, LLC
[Address to be supplied]**

Claimants who wish to dispute the Trustee's determination of the allowed Asbestos Personal Injury Claim must file a Notice of Disputed Claim form within thirty (30) days of receiving the determination from the Trustee as follows:

Via Electronic Submission (preferred):

nsi.ch7trusteeservices.com

Or via First Class Mail, Overnight Mail or Certified Mail:

PACE Claims Services, LLC
[Address to be supplied]

10.2 **Claimant Change of Address.** Following the submission of an Asbestos Claim Form, the Trustee will communicate with the claimant using the address on the Asbestos Claim Form. If the address associated with a claim changes, such claimant shall submit notice of the change of address to PACE Claims Services, LLC in writing:

Via Electronic Submission (preferred):

nsi.ch7trusteeservices.com

Or via First Class Mail, Overnight Mail or Certified Mail:

PACE Claims Services, LLC
[Address to be supplied]

Until the Chapter 7 Trustee and/or PACE Claims Services, LLC receives such change of address notice, the Chapter 7 Trustee is entitled to use the Asbestos Claim Form address on file for the claimant for all purposes.

10.4 **Third-Party Services.** Pursuant to the Order Authorizing the Retention of PACE Claims Services, LLC, entered on October 30, 2020 [Doc. No 398], PACE Claims Services, LLC is authorized to assist the Trustee in processing, managing and reviewing the Asbestos Personal Injury Claims and providing noticing services on behalf of the Trustee as may be required.

10.5 **Severability.** Should any provision contained in these Claim Distribution Procedures be determined to be unenforceable, such determination shall in no way limit or affect

the enforceability and operative effect of any and all other provisions of these Claim Distribution Procedures.

10.6 **Governing Law.** Except for purposes of determining the liquidated value of any Asbestos Personal Injury Claim, administration of these Claim Distribution Procedures shall be governed by and construed in accordance with the laws of the State of Delaware.

10.7 **Amendments.** The Trustee may amend, modify, delete, or add provisions to this Procedure, provided the Trustee obtains the approval of the Bankruptcy Court. Notice of any proposed change shall be provided to any party who has filed with the Trustee a written request for such notice no later than the Effective Date, who will have an opportunity to file an objection with the Bankruptcy Court before it makes a determination on the proposed amendment, modification or additional provision. Electronic Notice shall be sufficient.

10.8 **Heirs and Assigns.** These Asbestos Claims Procedures shall be binding upon the heirs, executors, successors, and assigns of any claimant seeking recovery from the Estate.