

## Directives Regarding “Form” Affidavits and Conditional Language

*Implement Directives F1 through F10 as set forth in the Decision Tree attached hereto as EXHIBIT A.*

*These Directives reflect Trust policy until and unless changed in the discretion of the Trustees. All claims (whether newly filed, deferred, or withdrawn and refiled) shall be processed in accordance with whatever policies are in effect as of the date of processing.*

- F1. A “form” affidavit is an affidavit that contains exposure allegations that use identical descriptive language as the language contained in other exposure affidavits submitted to the Trust. Ultimately, it is the Trustees’ decision in an exercise of their discretion, whether an affidavit is a “form” affidavit that lacks sufficient indicia of reliability to be considered by the claims processor. A “form” affidavit is not inherently unreliable just because it was prepared by a lawyer who, like most if not all lawyers, copied the “latest and greatest” version of the affidavit as a starting point for drafting.
- F2. Subject to Directives F7 and F9 below, any “form” affidavit from an occupationally exposed injured party who is deceased or incapacitated will be considered by the claims processor and will not be the sole basis for issuance of a deficiency notice or denial of the Claim.
- F3. Subject to Directives F7 and F9 below, any “form” affidavit from a deceased or incapacitated co-worker of the occupationally exposed injured party who is also deceased or incapacitated will be considered by the claims processor and will not be the sole basis for issuance of a deficiency notice or denial of the Claim. The claims processor shall specifically ask for verifications of the death(s) or incapacity if that information is not readily ascertainable from the current file.
- F4. Any “form” affidavit from the injured party (alive or deceased) who has a medical diagnosis of Mesothelioma (Level VII) that satisfies the TDP’s medical criteria will be considered by the claims processor and will not be the sole basis for issuance of a deficiency notice or denial of the Claim. For the sake of clarity this Directive applies only when the “form” affiant is both the injured party and the person diagnosed with Mesothelioma.
- F5. Directives F2, F3, and F4 do not apply to “form” affidavits executed by living and competent affiants after September 30, 2017. “Form” affidavits submitted on and after October 1, 2017 will not be considered by the claims processor absent exceptional circumstances and Claimants<sup>1</sup> should submit non-“form” affidavits. Absent exceptional circumstances, the claims processor will not consider a “form” affidavit submitted after September 30, 2017 by a living and competent affiant and if a Claimant asserts exceptional circumstances, an Affirmation of Counsel/Claimant (discussed in more detail below) is required.

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<sup>1</sup> For purposes of these Directives, the term “Claimant” means the person who seeks recovery from the Trust.

- F6. As to any living and competent affiant other than an affiant identified in Directive F4 above, the claims processor shall not consider exposure allegations contained in “form” affidavits. In this situation, the claims processor shall issue deficiency notices fairly advising the Claimant of the nature of the deficiency and providing a reasonable opportunity to cure by the submission of a non-form supplemental affidavit.

If submission of a non-form supplemental affidavit is not possible, then an Affirmation of Counsel/Claimant must be submitted.

- F7. As to any deceased or incapacitated affiant other than an affiant identified in Directive F4 above (by way of clarity, this Directive F7 does not apply to Directive F4 affidavits), if the deficiency cannot be cured, the attorney for the Claimant and/or the personal representative of the Claimant<sup>2</sup> must submit an Affirmation of Counsel/Claimant setting forth the efforts made to provide a non-“form” affidavit and must explain why cure is not available/possible. Directives for the claims processor for the review and processing of these claims supported by an Affirmation of Counsel/Claimant will follow separately. The Affirmation of Counsel/Claimant requires a statement prepared by counsel for the Claimant and/or the Claimant’s personal representative that explains in detail why a non-“form” affidavit could not be obtained, what efforts were made to obtain a non-“form” affidavit, and why the “form” affidavit cannot be supplemented. The form Affirmation of Counsel/Claimant is attached hereto as Exhibit B.

In the event that a Claim supported by a “form” affidavit of a deceased or incapacitated injured party or a co-worker of a deceased or incapacitated injured party is submitted on or before September 30, 2017, no Affirmation of Counsel/Claimant will be required if the claims processor can ascertain from the claim file that the affiant is deceased or incapacitated (i.e., the file contains a death certificate, an order adjudicating the affiant to be incapacitated, or other probative documentation). For the sake of clarity, to the extent a “form” affidavit is submitted after September 30, 2017, then it must be accompanied by an Affirmation of Counsel/Claimant and otherwise satisfy these Directives.

- F8. “Incapacity,” when alleged as the basis for an inability to supplement an existing affidavit, must be determined by reference to applicable state law where the incapacitated person resides.
- F9. After September 30, 2017, with the exception of exceptional circumstances, any new “form” affidavit submitted to the Trust as proof of exposure to a NACP shall not be considered by the claims processor. When a Claimant asserts exceptional circumstances, the Claim must be accompanied by an Affirmation of Counsel/Claimant that provides a detailed explanation of the exceptional circumstances.
- F10. For the sake of clarity, nothing in these Directives is intended to remove from the Trustees their right to exercise their discretion in the face of extraordinary

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<sup>2</sup> The Affirmation may come from either counsel or the claimant.

circumstances on a case by case basis. Please refer claims to the Trustees for review if counsel to the Claimant provides a detailed and individualized request for relief due to exceptional circumstances.

- F11. In accordance with Directive 7(b) of the Directives Related to Exposure posted to the Trust's website on February 3, 2017, the claims reviewer shall not consider conditional language (*i.e.* speculative statements) regarding exposure contained in an affidavit of a family member. On the other hand, conditional language in an affidavit from an occupationally exposed claimant or co-worker should not be automatically disregarded and should be considered by the claims processor. This determination however, is not an endorsement of the use of conditional language affidavits in all circumstances. Even when submitted by an occupationally exposed claimant or co-worker, the claims processor must review the language in the affidavit to evaluate whether it alone, or in conjunction with other information in the claim file, meets the requirements of the TDP. If the claims processor still has questions or concerns about "conditional" language in a particular affidavit, the claims processor should refer the claim to the Trustees for final determination.<sup>3</sup>
- F12. Unless modified by these Directives, the Directives Related to Exposure posted to the Trust's website on February 3, 2017 continue in effect, including any Directive related to check-the-box affidavits.
- F13. If a claim is withdrawn or deemed withdrawn per TDP § 5.3 and subsequently refiled, for purposes of these Directives the affidavit shall be deemed submitted as of the date on which the claim is refiled.

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<sup>3</sup> To provide guidance as to impermissible "conditional language," this Directive distinguishes between use of the past tense where personal knowledge and common use of language is evident (*i.e.*, an occupationally exposed worker stating that other workers "would" bring a NACP to his work area; or a spouse stating that she and her spouse "would sit at the table and talk"). This indicates something that happened in the past and is not used as conditional language. Language such as that in an affidavit from a spouse stating that "my husband was a steelworker, so he would have worked with NACP," on the other hand, still should not be considered in accordance with Directive 7(b) of the Directives Related to Exposure posted to the Trust's website on February 3, 2017.

## Exhibit A Decision Tree for Processing Directives Regarding "Form" Affidavits

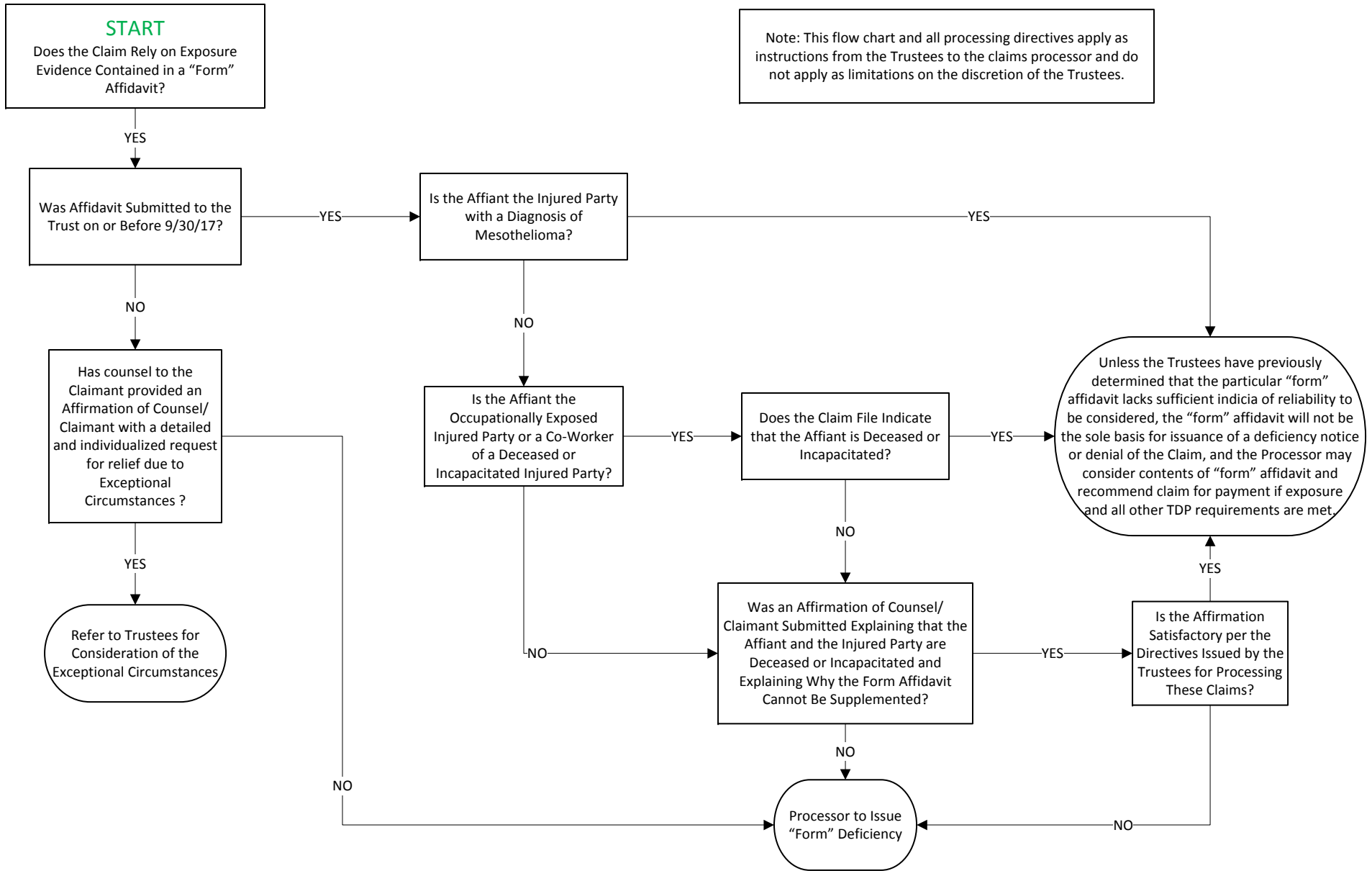


EXHIBIT B

North American Refractories Company Asbestos Personal Injury Settlement Trust  
(the "NARCO Trust")

Affirmation of [Counsel/Personal Representative]

With respect to the claim filed by \_\_\_\_\_ with the NARCO Trust on behalf of \_\_\_\_\_, I, \_\_\_\_\_, affirm that:

The injured party, \_\_\_\_\_, is (choose one):

- deceased
- incapacitated

and, after an inquiry reasonable in the circumstances, I am not aware of any family member, co-worker, or other potential affiant who is available and has sufficient knowledge to supplement the claim, and

Exposure evidence (choose one):

- was not submitted by any party other than the injured party
- was submitted by the following party or parties other than the injured party, each of whom is now deceased or incapacitated: \_\_\_\_\_

Attached to this Affirmation is my statement explaining in detail why a non-"form" affidavit could not be obtained, what efforts were made to obtain a non-"form" affidavit, and why the "form" affidavit cannot be supplemented.

By signing below, I submit this Affirmation and any and all attachments pursuant to the [provisions of Rule 11 of the Federal Rules of Civil Procedure/penalties of perjury].

\_\_\_\_\_  
Signature of [attorney/personal representative] for claimant identified above

Date: \_\_\_\_\_  
MM DD YYYY

This affirmation must be signed by the [attorney/personal representative] representing the claimant identified above.