MEMO

Re: Manville Trust 2002 TDP
Credibility of Medical Evidence;
Physical Examination Requirement

Date: April 7, 2003

Based upon requests from several law firms, as well as discussions with Counsel for the Selected Counsel for the Beneficiaries (SCB) and the Legal Representative for Future Claimants, the Manville Personal Injury Settlement Trust ("the Trust") has been persuaded to eliminate its requirement that physicians certify the manner in which they have conducted physical examinations. Instead, the Trust will take a broader approach to establishing with "reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical standards," as directed by the 2002 Trust Distribution Process (TDP), Section E.1.(b).

In lieu of the certification requirement, the Claims Resolution Management Corporation ("CRMC") will review the diagnostic processes and elements, including physical examinations, behind the medical reports upon which Trust claims are based. As part of this process, the CRMC will (1) identify the doctors and medical facilities that generate the highest volumes of medical reports; (2) employ medical and demographic data to identify issues and claim filing patterns that suggest a need for further investigation; and (3) review doctor and facility evidence that is brought to our attention by Co-Defendant counsel and others, as we did as a result of the September 4, 2002 TDP hearing and related briefs.

Since most 2002 TDP claims rest upon the credibility of a diagnosis made by a physician who has physically examined the claimant, this will be an initial area of focus. 2002 TDP, Section E.1.(a). Whenever a physical examination is required or relied upon by claimant as part of the supporting evidence for their claim, the CRMC will be looking for the following minimum indicia of reliability and credibility in the examination and resulting report. The more of these elements that are included in the physical examination, the higher its credibility level.

1. The diagnosis and causal link **must** be made by the physician who performs the physical examination. This element is specifically required by the 2002 TDP, Section E.1.(a).

2. The physical examination should satisfy the standard medical dictionary definition: "examination of the body by auscultation, palpation, percussion, inspection and smelling." Taber's Cyclopedic Medical Dictionary, page 1474 (18th Edition, 1997). This definition requires that the person examined be in the physical presence of the examiner. The physician must do more than just speak with the person and order x-rays or pulmonary function tests.

3. The physician must be aware of the occupational and asbestos exposure history of the person being examined and cannot assume that the exposure history is sufficient based solely on the fact that a potential claimant has been forwarded or referred to them for examination.[1]

4. The physician must be aware of family medical history and the individual's medical history, including the smoking and alcohol use history. That information, as well as the claimant's blood pressure, height and weight, must be available and reviewed by the physician before the diagnosis is made and recorded.

5. The examination should include review of the cardiovascular and respiratory systems, using a stethoscope to listen to the heart for such irregularities as murmurs or gallops and to the lungs for wheezes and rales and their location.

6. The physician should observe and comment on the patient's speech, alertness, level of distress and apparent level of breathing difficulty. They should inquire as to the patient's perception of any shortness of breath, wheezing, chest pain or productive cough.

7. The physician should examine the extremities for signs such as cyanosis, clubbing or edema.

8. The physician should consider other likely causes for the symptoms observed before concluding that asbestos exposure was a contributing factor.

When required, B-readings and pulmonary function testing must similarly comply with recognized medical standards, such as those established by NIOSH, ATS, and the AMA. Law firms should ensure that full PFT reports (including graphs and charts), x-rays and x-ray reports are available for review if requested.

On behalf of the Trust, the CRMC will conduct its medical evidence reviews through written questions, phone calls, and, when appropriate, through depositions. It also will rely upon depositions and trial testimony given in litigation among Trust beneficiaries. If the Trust determines that the medical reports prepared by a particular doctor or medical facility are not credible and not consistent with recognized medical standards, it will notify claimants and their counsel that the Trust will no longer accept their reports. An explanation of the Trust's decision will be placed on the CRMC web site, and counsel who have submitted reports prepared by these doctors and facilities will be notified individually by phone and provided lists of their affected claims.

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[1] A reliable history of exposure is such a key diagnostic factor that it was one of two "necessary" elements included in the summary guidelines for *The Diagnosis of Nonmalignant Diseases Related to Asbestos* issued by the American Thoracic Society in 1986. 134 AMER. REV. RESPIR. DIS. 363-368 at 367 (these guidelines currently are undergoing revision, and an update is anticipated in early 2004). While doctors do not personally have to record the history, they cannot blindly rely on exposure information recorded by a law firm or a claim screening intake worker. They must independently verify the duration, proximity, regularity and intensity of the exposure.

In the event the Trust determines that it will no longer accept medical reports from a doctor or medical facility, the CRMC will not retract Trust offers based on such reports that were made before the determination. However, the CRMC will not make any further offers for claims based upon reports from these doctors or facilities. In such cases, claimants may elect to provide additional medical evidence.[2]

Please contact Adam Mercer if you have any questions related to assuring confidence in the credibility of medical evidence. He may be reached by phone at 703-205-0821 or online at amercer@claimsres.com.

[2] In those rare instances where there are deceased claimants for whom no additional evidence is available, the Trust will individually review the claim and determine whether it is appropriate to accept the questioned medical reports.