

**UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In Re:	)	Case No. 91-20468-JCM
	)	
H.K. PORTER COMPANY, INC.,	)	Chapter 11
	)	
Debtor.	)	Doc. No. _____
_____	)	
MARK M. GLEASON, as Trustee of the H.K. Porter Company, Inc. Asbestos Settlement Trust,	)	
	)	<u>Hearing Date &amp; Time:</u>
Movant,	)	December 18, 2024 at 1:30 p.m.
	)	
v.	)	<u>Responses Due:</u>
	)	Decembr 11, 2024
NO RESPONDENTS.	)	
	)	

**MOTION FOR DECLARATORY JUDGMENT**

Mark M. Gleason (the “Trustee”), Trustee of the H.K. Porter Company, Inc. Asbestos Settlement Trust (the “Asbestos Trust”), by his undersigned counsel, respectfully submits this Motion for Declaratory Judgment and states as follows:

**I. THE PARTIES**

1. The Asbestos Trust was formed in 1998 to assume liability for and pay *bona fide* Asbestos Personal Injury Claims (“Asbestos PI Claims”) against H.K. Porter Company, Inc. (“Porter”) pursuant to and in accordance with: (a) the *Fourth Amended Creditors’ Committee Plan of Reorganization for H.K. Porter Company, Inc. (with modifications as of April 27, 1998)* (the “Plan”); (b) the *H.K. Porter Company, Inc. Asbestos Trust Agreement* (the “Trust Agreement”); and (c) the *H.K. Porter Company, Inc. Asbestos Claims Resolution Procedures* (the “Asbestos Claims Procedures”). A true and correct copy of the Plan is attached hereto, incorporated herein and labeled **Exhibit A**. A true and correct copy of the Trust Agreement is included in the Plan as

Exhibit 1.1.14, and a true and correct copy of the Asbestos Claims Procedures is attached to the Trust Agreement as Annex A.

2. The Plan was confirmed pursuant to the *Order Confirming Plan* jointly entered on June 25, 1998 (the “Confirmation Order”) by the United States District Court for the Western District of Pennsylvania and the United States Bankruptcy Court for the Western District of Pennsylvania. The Confirmation Order, Plan, Trust Agreement, and Asbestos Claims Procedures are collectively referred to as the “Trust Documents”.

3. Mark M. Gleason was appointed as the initial Trustee for the Asbestos Trust and has continuously served in that capacity through the present day.

4. The Trust Agreement also provides for the creation of a Trust Advisory Committee (“TAC”) and directs the Trustee to consult with the TAC on administration and implementation of the Asbestos Claims Procedures and “any matter materially affecting the Asbestos Trust.” *See* Trust Agreement, §6.1.

5. The TAC attends regularly scheduled meetings with the Trustee and effectively acts as a representative body for the beneficiaries of the Asbestos Trust. *Id.* The Trustee filed this Motion after consulting with the TAC and obtaining the unanimous approval of its members. Currently, the following members comprise the TAC: Philip Pahigian, Brent Rosenthal, and Perry Weitz.

6. By this Motion, the Trustee is requesting a declaratory judgment that Section 4.1 of the Asbestos Claims Procedures can be amended to avoid *de minimis* distributions to claimants at any disease level, even though such amendment may result in termination of the Asbestos Trust before *all* future asbestos claims can be paid.

## **II. JURISDICTION AND STATUTORY PREDICATES**

7. The Asbestos Trust has filed a Motion to Reopen the above-captioned case solely for purposes of adjudicating this Motion for Declaratory Judgment.

8. This matter involves the administration of the Asbestos Trust and the interpretation of the Trust Documents and section 524(g) of the Bankruptcy Code. Pursuant to the confirmed Plan, this Bankruptcy Court retained exclusive jurisdiction over any matters arising in or related to the Asbestos Trust, as well as over any action to “[i]nterpret, enforce, and administer the terms of the Asbestos Trust Agreement ... including all annexes and exhibits to [it].” *See* Plan, § 9.1.

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

## **III. FACTUAL BACKGROUND**

### **A. Formation of the Asbestos Trust**

10. The Asbestos Trust was created pursuant to the Confirmation Order, Plan, and Trust Agreement. *See* Trust Agreement, p. 1. It is governed by the laws of the Commonwealth of Pennsylvania. *See* Plan, § 11.14; *see also* Trust Agreement, § 7.13; *see also* Asbestos Claims Procedures, § 12.3.

11. The Asbestos Trust is a “Qualified Settlement Fund” within the meaning of Section 1.468B-1 of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code. *See* Trust Agreement, p. 1.

12. Based on the foregoing, the Asbestos Trust is an express trust formed pursuant to a

court order governed by the laws of the Commonwealth of Pennsylvania including the PA Uniform Trust Act, 20 Pa.C.S. § 7701, *et seq.* (the “PA UTA”). *See* 20 Pa.C.S. § 7702.<sup>1</sup>

13. At the time the Asbestos Trust was formed, the Creditors’ Committee’s experts projected a total of approximately 560,000 compensable Asbestos Personal Injury Claims (“Asbestos PI Claims”) to be filed with the Asbestos Trust and that holders of such claims would receive approximately 5% of their allowed claim.<sup>2</sup> *See Disclosure Statement to Accompany Fourth Amended Creditors’ Committee Plan of Reorganization for H.K. Porter Company, Inc. Dated February 27, 1998 (Modified as of May 6, 1998)* (the “Disclosure Statement”). A true and correct copy of the Disclosure Statement, without exhibits, is attached hereto as **Exhibit B**.<sup>3</sup>

14. The Asbestos Claims Procedures creates four (4) disease levels for Asbestos PI Claims compensable by the Asbestos Trust. Ranging in severity from the most severe to the least, these four disease levels are: Mesothelioma, Lung Cancer, Other Cancers, and Non-malignancy. *See Declaration of Mark Gleason* (the “Gleason Declaration”) attached hereto, incorporated herein,

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<sup>1</sup> The PA UTA “applies to express trusts, charitable and noncharitable, and trusts created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust.”

<sup>2</sup> Capitalized terms not otherwise defined herein have the meaning provided in the Plan, Trust Agreement, or Asbestos Claims Procedures, as applicable.

<sup>3</sup> The Disclosure Statement reads:

Based upon the Committee’s best estimate ... the Asbestos Trust will receive cash consideration with a present value of approximately \$92 million.

Based upon the estimates of the Committee’s expert finding that present Claims and future Demands constituting Asbestos Personal Injury Claims against the Trust will number approximately 558,892 and the total present value, assuming resolution of those Claims at or near the values set forth in the Expedited Payment Election, will be approximately \$2.02 billion, the Committee estimates that each holder of an Allowed Asbestos Personal Injury Claim should ultimately receive consideration from the Asbestos Trust having a value equal to approximately 5% of its Allowed Claim.

Disclosure Statement, Article V, §A(6), p. 40.

and marked **Exhibit C**. Non-malignancy claims represent approximately 78% of all asbestos claims filed with the Asbestos Trust. *See* Gleason Declaration, ¶ 16.

15. Through August 2024, the Asbestos Trust has received over 792,000 Asbestos PI Claims. *See id.* at ¶ 17.

16. As of August 31, 2024, the Asbestos Trust has disbursed \$160.8 million on account of 547,989 of allowed Asbestos PI Claims. *Id.* at ¶ 18.

### **B. Processing and Payment of Asbestos PI Claims**

17. One of the stated purposes of the Asbestos Trust is “to pay holders of valid Asbestos Claims in such a way that holders of similar Asbestos Claims are paid in substantially the same manner.” Trust Agreement, § 2.2.

18. In order to fulfill this purpose, the Asbestos Trust pays every claimant a set percentage of the full value<sup>4</sup> of his or her claim (the “Payment Percentage”). *See* Asbestos Claims Procedures, § 4.1.<sup>5</sup>

19. The Trustee sets the Payment Percentage from time to time after consultation with (a) financial experts who forecast investment returns and administrative expenses and (b) actuarial experts who forecast the number and value of future claims based on several factors, including

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<sup>4</sup> The “full value” of a claim is set forth in the Trust Agreement, based upon the claimant’s disease level.

<sup>5</sup> Section 4.1 provides, in part:

There is inherent uncertainty regarding the amounts that such Claimants will receive. To ensure substantially equivalent treatment of all present and future Asbestos Personal Injury Claims ... prior to making distributions to Claimants, the Trustee shall determine the percentage of full liquidated value that Asbestos Personal Injury Claims ... would be likely to receive (the “Payment Percentage”). No Claimant shall receive payments that exceed the Trustee’s most recent determination of the Payment Percentage.

*See* Asbestos Claims Procedures, § 4.1.

established epidemiological studies on asbestos diseases and actual claim filings with the Asbestos Trust. Gleason Declaration, ¶ 21.

20. Based upon these historical projections, the Payment Percentage has fluctuated over the years. The table set forth below shows the history of the Payment Percentages applied by the Asbestos Trust since its formation.

<b>Years</b>	<b>Payment Percentage</b>
Formation - 2009	4.6%
2010 - 2011	6.3%
2012 - 2013	4.0%
2014 - Present	3.0%

*Id.* at ¶ 22.

21. The value payable on account of an allowed Asbestos PI Claim depends on whether the claimant opts for an “Expedited Payment Election” that pays a scheduled value for compensable claims at a lower rate but on an expedited basis. *See* Asbestos Claims Procedures, § 5.2(a). Alternatively, a claimant can elect a Non-Expedited Review process that may result in a greater recovery but that requires additional time, expense, and evidence. *See* Asbestos Claims Procedures, § 5.3. Historically, over 95% of the Claimants have opted for the Expedited Payment Election. *Id.* at ¶ 23.

22. Under the current Payment Percentage of 3%, the amounts payable by the Asbestos Trust on account of allowed Asbestos PI Claims utilizing the scheduled values for Expedited Payment Election, are:

<b>Value Received at 3% Payment Percentage</b>	
Non-Malignancy	\$112.50
Other Cancers	\$225.00
Lung Cancer	\$360.00
Mesothelioma	\$600.00

Gleason Declaration, ¶ 24.

**C. The 2024 Asbestos PI Claim Projection.**

23. Following his most recent periodic re-evaluation of the projected number of Asbestos PI Claims to be filed with the Asbestos Trust and the funds available to pay those claims (the “2024 Projection”)<sup>6</sup>, the Trustee commenced a review of the Payment Percentage to determine if it needs to be adjusted below 3% to pay all projected present and future Asbestos PI Claims in substantially the same manner. Gleason Declaration, ¶ 25.

24. Reducing the Payment Percentage by just half of a percent to 2.5%, however, results in (a) less than \$100 payable to holders of non-malignant Asbestos PI Claims and, (b) within in a few years, the projected annual trust administration costs begin to exceed the aggregate annual value paid to claimants. *Id.* at ¶ 26.<sup>7</sup>

25. The Trustee and the TAC have regularly met to review the 2024 Projection and the consequences of reducing the applicable Payment Percentage. Gleason Declaration, ¶ 27.

26. The Trustee, in consultation with the TAC, considered alternatives to amending Section 4.1 of the Asbestos Claims Procedures, including paying only allowed mesothelioma Asbestos PI Claims. This alternative scenario, however, involves a more fundamental restructuring of how the Asbestos Trust operates since this Asbestos Trust has historically compensated holders of claims in any of the four (4) disease levels required to be paid under the Asbestos Claims Procedures. Gleason Declaration, ¶ 28.

27. The Trustee believes it is in the best interest of claimants not to reduce the Payment Percentage below 3% and to amend Section 4.1 of the Asbestos Claims Procedures to give the

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<sup>6</sup> 2024 Projection utilizes actual activity through August 31, 2024.

<sup>7</sup> For historic information regarding the annual operating costs of the Asbestos Trust and the aggregate amounts paid to holders of Asbestos PI Claims, please see the Annual Reports filed with the Bankruptcy Court.

Trustee express authority not to adjust the Payment Percentage downward if it results in *de minimis* payments to a holder of an Asbestos PI Claim at any disease level. *Id.* The TAC joins the Trustee in the relief requested in this Motion.

28. As of August 31, 2024, the Asbestos Trust has paid 547,989 Asbestos PI Claims, which is nearly the same amount as the 560,000 claims projected at the 1998 Plan confirmation. Gleason Declaration, ¶ 30.

29. If the Payment Percentage remains at 3%, the 2024 Projection shows the Asbestos Trust will be in a position to receive and pay an additional \$12.6 million to 66,000 Asbestos PI Claims through February 2029, leaving approximately 47,000 future Asbestos PI Claims valued in the amount of \$8.4 million unpaid when the Asbestos Trust is expected to terminate pursuant to the provisions set forth in Section 7.2 of Trust Agreement. *See id.* at ¶ 31.

30. While leaving any unpaid Asbestos PI Claims is not a desired result, as a practical matter, it is not possible to pay and treat all present and future allowable Asbestos PI Claims substantially the same *and* provide meaningful distributions.

31. The current estimated number of compensable Asbestos PI Claims exceeds the 1998 projection at Plan confirmation by over 100,000 (or approximately 18%), and no Payment Percentage figure will result in the payment of all present and projected future Asbestos PI Claims.

<b>Payment Percentage</b>	<b>Future Number of Estimated Claims to be Paid</b>	<b>Value of Claims to be Paid (Dollars in Millions)</b>	<b>Future Number of Unpaid Claims</b>	<b>Value of Unpaid Claims (Dollars in Millions)</b>	<b>Non-Malignant Asbestos PI Claim Payment per Claim</b>
3.0%	66,000	\$12.6	47,000	\$8.4	\$112.00
2.5%	73,000	\$11.6	40,000	\$6.0	\$93.75
2.0%	82,000	\$10.3	31,000	\$3.7	\$75.00



1.5%	93,000	\$8.7	20,000	\$1.8	\$56.25
1.0%	102,000	\$6.3	11,000	\$0.7	\$37.50
0.5%	108,000	\$3.4	5,000	\$0.1	\$18.75

Gleason Declaration, ¶ 33.

32. By not reducing the Payment Percentage, the Asbestos Trust is maximizing the value paid to claimants. *See* Gleason Declaration, ¶ 34.

33. With a 3% Payment Percentage and anticipated termination date in 2029, the Trustee projects the aggregate value to be paid to claimants from September 2024 through February 2029 to be \$12.6 million, and \$6.5 million to pay operating costs and wind down costs. Any decrease in the Payment Percentage would extend the anticipated termination date of the Trust beyond February 2029. However, the total dollars paid to claimants in the aggregate would decrease and the amount necessary to pay operating and wind down costs in future years would increase. *See id.* at ¶ 35.

34. While there are provisions within the Trust Documents that support the Trustee’s authority to amend Section 4.1 of the Asbestos Claims Procedures, there are other provisions within the Trust Documents that, if taken literally and to their logical extreme, provide conflicting direction.

35. Accordingly, on February 1, 2024, the Asbestos Trust suspended making new offers on account of Asbestos PI Claims while the Trustee, in consultation with the TAC, considered its options, including obtaining instruction from this Court through this Motion for Declaratory Judgment. *See* Gleason Declaration, ¶ 37.

#### IV. RELIEF REQUESTED

36. By this Motion, the Trustee is requesting declaratory judgment that Section 4.1 of the Asbestos Claims Procedures can be amended to provide the Trustee with the express authority not to adjust the Payment Percentage if doing so would result in *de minimis* distributions to claimants at any disease level. Specifically, the Trustee seeks to amend Section 4.1 by adding the italicized sentence at the end of the section.

4.1 Determination of Payment Percentage.

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At yearly intervals, the Trustee shall review his determination of the Payment Percentage to assure that it is based on accurate, current information and may, after such review, change the Payment Percentage, if necessary. When making these determinations, the Trustee shall exercise common sense and flexibly evaluate all relevant factors, including the practical limitations imposed by the inability to predict with precision the future assets and liabilities of the Asbestos Trust, the costs involved in preparing such evaluations, and any other factors the Asbestos Trust considers relevant. *The Trustee, however, is under no obligation to adjust the Payment Percentage downward if such reduction will result in payments of less than \$100 to claimants at any disease level. Such decision by the Trustee may result in the Asbestos Trust terminating pursuant to Section 7.2 of the Trust Agreement, or otherwise, without having paid all allowable Asbestos Personal Injury Claims.*

37. Resolution of this Motion requires the Bankruptcy Court to consider the proposed amendment to Section 4.1 of the Asbestos Claims Procedure against the stated purposes of the Asbestos Trust and the requirements of the Bankruptcy Code Section 524(g) injunction to “provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.”

See Trust Agreement, § 3.3(b); see also 524(g)(2)(B)(ii)(V).<sup>8</sup>

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<sup>8</sup> 11 U.S.C. § 524(g)(2)(B)(ii)(V) requires that:

the trust will operate through mechanisms such as structured, periodic, or supplemental payments,

## V. BASIS FOR RELIEF REQUESTED

38. As set forth in Section II, above, the Asbestos Trust and the Trust Documents are governed by Pennsylvania law, including the PA UTA, as supplemented by the common law of trusts and principles of equity. *See* 20 Pa.C.S. § 7706.

39. Under the PA UTA, a “court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.” 20 Pa.C.S. § 7711(a). “Traditionally courts in equity have heard petitions for instructions and have issued declaratory judgments if there is a reasonable doubt as to the extent of the trustee’s powers or duties.” *See* Restatement (Second) of Trusts Section 187, 259 (1959); *see also* 20 Pa.C.S. § 7711(c) (“A judicial proceeding involving a trust may relate to any matter involving the trust’s administration, including a request for declaratory judgment.”).

40. The availability of relief through declaratory judgment is appropriate in any action where the granting of such relief will remove uncertainty. *See* 42 Pa.C.S. § 7536; *see also* 42 Pa.C.S. § 7541(a). The court’s jurisdiction may be invoked even absent an actual dispute. *See* 20

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pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

11 U.S.C. § 524(g)(2)(B)(ii)(V). Section § 3.3(b) of the Trust Agreement incorporates this requirement by providing:

The Trustee shall employ mechanisms such as the review of records and estimates of the numbers and values of Asbestos Personal Injury Claims ... or other comparable mechanisms, that provide reasonable assurance the Asbestos Trust will value, and be in a financial position to pay, similar present Asbestos Personal Injury Claims ... and future asbestos personal injury Demands in substantially the same manner.

Trust Agreement, § 3.3(b).

Pa.C.S. § 7711(c), Uniform Law Comment.

**A. Declaratory Judgment is Appropriate In This Matter As the Trustee Seeks Construction of the Trust Documents And Confirmation Of The Scope of His Authority.**

41. The PA Declaratory Judgement Act is an available remedy to trustees in exercising their fiduciary duties both in obtaining direction in their actions and in the interpretation of the trust documents. *See* 42 Pa.C.S. § 7535. Section 7353 provides, in relevant part, that:

“[a] trustee ... in the administration of a trust ... may have a declaration of rights or legal relations in respect thereto:

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(2) To direct the ... trustees to do or abstain from doing any particular act in their fiduciary capacity.

(3) To determine any questions arising in the administration of the ... trust, including construction of ... writings.”

42 Pa.C.S. § 7535.

42. The issue before the Court is whether the Trustee’s decision to amend Section 4.1 of the Asbestos Claims Procedures for the reasons indicated above is a power exercisable by the Trustee. If it is within his powers, then he cannot commit a breach of trust unless he is personally at fault. *See* Restatement (Second) of Trusts § 201(a) (1959) (Ordinarily, a trustee commits a breach of trust if he is personally at fault.).

43. If, however, the Trustee lacks the authority to exercise his discretion in this manner, he can be held strictly liable for his actions. *See* Restatement (Second) of Trusts § 201(b) (1959).

Section 201(b) of the Restatement (Second) of Trustees provides:

A trustee commits a breach of trust ... where he interprets a trust instrument as authorizing him to do acts which the court determines he is not authorized by instrument to do. In such a case, he is not protected from liability merely because he acts in good faith, nor is he protected merely because he relies

upon the advice of counsel ... If he is in doubt as to the interpretation of the instrument, he can protect himself by obtaining instructions from the court. The extent of his duties and powers is determined by the trust instrument and the rules of law which are applicable, and not by his own interpretation of the instrument or his own belief as to the rules of law.

44. Restatement (Second) of Trusts § 201(b) (1959); *see also Asbestos Settlement Trust v. City of New York (In re Celotex Corp.)*, 487 F.3d 1320, 1328 (11th Cir. 2007) (citing to § 201(b)); *see also Leckey v. Stefano*, 501 F.3d 212, 224 (3d Cir. 2007) (a case involving ERISA and citing to § 201(b) for the proposition that the harsh consequences for a trustee having strict liability for acting outside the scope of his authority is offset by his ability to protect himself by seeking instruction from the court when a “trustee ... is in doubt as to the interpretation of the instrument.”); *see also In re UNR Industries, Inc. et al*, Bankruptcy Case No. 82-09841 (Bankr. N.D. of Ill.) (*Order Granting Motion for Instruction* entered on June 25, 2014 at Docket No. 623 (the “UNR Order Granting Instruction”), permitting early termination of a section 524(g) asbestos trust.). For the convenience of the Court, a copy of the UNR Order Granting Instruction is attached hereto as **Exhibit D**.

45. Based upon the foregoing, this matter is ripe for an instruction by the Court in the form a declaratory judgment concerning the scope of the Trustee’s authority to amend the Asbestos Claims Procedures to avoid *de minimis* payments to claimants at any disease level.

**B. The Trustee, With TAC Consent, Has the Authority To Amend Section 4.1 of the Asbestos Claims Procedures to Avoid Making *De Minimis* Payments.**

46. “A trust instrument may confer upon a trustee or other person a power to modify or terminate the trust.” 20 Pa.C.S. § 7778.

47. In this case, the Trust Agreement permits the Trustee to amend the Asbestos Claims Procedures with the consent of a majority of the members of the TAC. *See Asbestos Claims*

Procedures, § 12.1 (“The Trustee may modify, delete or add to any of these Asbestos Claims Procedures (including, without limitation, amendments to conform these procedures to advances in scientific or medical knowledge or other changes in circumstances provided he first obtains any advice and consent of the TAC required under Article 3.2(d) of the Asbestos Trust Agreement.); *see also* Trust Agreement, § 3.2(d)(i) (“The Trustee shall be required to obtain the consent of a majority of the members of the TAC in order to: (i) amend materially the Asbestos Claims Procedures[.]”)

48. Nothing in the Trust Agreement or in the Asbestos Claims Procedures expressly prohibits an amendment to Section 4.1 of the Asbestos Claims Procedures. *See e.g.* Trust Agreement, § 7.3 (listing sections of the Trust Agreement and Asbestos Claims Procedures that may not be modified, none of which include Section 4.1 of the Asbestos Claims Procedures). And, nothing in the Trust Agreement requires the Asbestos Trust to continue to receive Asbestos PI Claims through a date certain before the Asbestos Trust can terminate. *See e.g.* Trust Agreement, § 7.2 (setting forth various grounds for terminating the Asbestos Trust).

49. Finally, there are several provisions within the Asbestos Claims Procedures that confer discretion on the Trustee to adjust the Payment Percentage and that recognize the equality in the treatment of all Asbestos PI Claims, at times, must give way to the practical realities of trust administration. *See e.g.* Asbestos Claims Procedures, § 4.1(a) (stating the “Trustee *may*, after such review [of the Payment Percentage], change the Payment Percentage, if necessary”) (emphasis added); *see also id.* at § 4.2(a) (covering instances when the Payment Percentage may be adjusted downward and stating that the Trustee “shall not attempt to recover [from prior Claimants] ... the difference between the amount paid to the Claimant and the then prevailing Payment

Percentage.”); *see also id.* at § 4.3 (covering instances when the Payment Percentage may be adjusted upward and stating Trustee “shall not make such additional payment [to prior Claimants] if he concludes that the administrative burden or cost does not justify the additional payment at that time.”)

50. While there is no express prohibition on the amendment of Section 4.1 of the Asbestos Claims Procedure, there is a catchall prohibition against amendments “in any way that would jeopardize the validity or enforceability of the Asbestos Permanent Channeling Injunction.” *See Asbestos Claims Procedures*, § 12.1.

51. As cited above, 11 U.S.C. § 524(g)(2)(B)(ii)(V) mandates that a trust “provide reasonable assurance that [it] will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.”

52. If this requirement is taken literally to mean the Asbestos Trust must make reasonable assurance of its financial ability to pay all projected present and future claims, then based on the 2024 Projection, it is an impossible standard to satisfy. With a Payment Percentage of 0.5%, 5,000 claims having an estimated aggregate value of \$0.1 million still remain unpaid, while a holder of a non-malignant claim recovers only \$18.75.

53. The Trustee asserts that such a literal reading of Section 524(g)(2)(B)(ii)(V) leads to an absurd result. *See Douglass v. Convergent Outsourcing*, 765 F.3d 299, 302 (3d Cir. 2014) (“Where the plain meaning of a statute would lead to an absurd result, we presume ‘the legislature intended exceptions to its language [that] would avoid results of this character.’” (quoting *Gov’t of Virgin Islands v. Berry*, 604 F.2d 221, 225 (3d Cir.1979))).

54. Although this particular issue has not been addressed in the Third Circuit, at least one bankruptcy court has granted a request for instruction providing the trustees with the discretion to terminate a 524(g) asbestos trust early in order to preserve meaningful distributions to claimants even though doing so results in unpaid future asbestos claims. *See* UNR Order Granting Instruction.

55. In the case before this Court, given (a) the Asbestos Trust's operations to pay over \$160.8 million on account of 547,989 Asbestos PI Claims over the last 25 years, (b) its projected ability to pay a 3% on account of another 66,000 compensable present and future Asbestos PI Claims through February 2029, and (c) the impracticability of making meaningful distributions on account of *all* projected future Asbestos PI Claims, the Trustee asserts the proposed amendment to Section 4.1 to preserve meaningful distributions to holders of present and future Asbestos PI Claims does not jeopardize the requirements of the Asbestos Permanent Channeling Injunction.

56. Based upon the foregoing, the Trustee requests a declaratory judgment permitting the Trustee to amend Section 4.1 of the Asbestos Claims Procedures by adding the following sentence to the end of Section 4.1:

The Trustee, however, is under no obligation to adjust the Payment Percentage downward if such reduction will result in payments of less than \$100 to claimants at any disease level. Such decision by the Trustee may result in the Asbestos Trust terminating pursuant to Section 7.2 of the Trust Agreement, or otherwise, without having paid all allowable Asbestos Personal Injury Claims.

57. The proposed amendment maximizes the value paid to claimants by the Asbestos Trust, while projecting to pay approximately 614,000 Asbestos PI Claims during the life of the Asbestos Trust, which exceeds the projected number of Asbestos PI Claims projected at the 1998 Plan confirmation by approximately 54,000 claims.



## **VI. SUFFICIENCY OF NOTICE**

58. Notice of this Motion and the Notice of Hearing have been served on parties in interest (a) through the Courts CM/ECF system; and (b) by U.S. First Class Mail and electronic mail on: (i) the Office of the United States Trustee for the Western District of Pennsylvania, (ii) H.K. Porter Company, Inc., (iii) the TAC; and (iv) any law firm that has filed a claim with the Trust on behalf of a claimant within the past three years.

59. Given that the Trust's Beneficiaries, i.e., holders of Asbestos PI Claims, are numerous and many remain unknown, service on all Beneficiaries individually is not possible.

60. Finally, the Trustee has published a copy of this Motion and Notice of Hearing on its website and has caused its claims processor to serve a copy of the Motion and Notice of Hearing to be served by electronic mail on its distribution list for the Asbestos Trust.

61. Based on the foregoing, the Asbestos Trust asserts that proper and sufficient notice of the Motion for Declaratory Judgment and the hearing on the Motion have been provided.

## **VII. CONCLUSION**

62. The Trustee requests instruction from this Honorable Court in the form of a declaratory judgment to remove any uncertainty regarding the scope of his authority to amend Section 4.1 of the Asbestos Claims Procedures in the manner set forth herein.

**WHEREFORE**, the Trustee respectfully requests this Court enter an Order substantially in the form attached hereto granting the Trustee's Motion for Declaratory Judgment (I) declaring that the Trustee, with the consent of the TAC, has the authority to amend Section 4.1 of the Asbestos Claims Procedures to provide the Trustee with the express authority not to adjust the Payment Percentage if doing so would result in *de minimis* distributions to claimants at any disease level; (II) finding the notice and service of the Motion to be in a form and manner sufficient to bind all interested parties to the Declaratory Judgment; and (III) granting such other relief as this Honorable Court deems just and proper.

Dated: November 21, 2024

Respectfully submitted,

CAMPBELL & LEVINE, LLC

By: /s/ Jeanne S. Lofgren  
Douglas A. Campbell, Esquire  
PA I.D. 23143  
dcampbell@camlev.com  
Philip E. Milch, Esquire  
PA I.D. 53519  
pmilch@camlev.com  
Jeanne S. Lofgren, Esquire  
PA I.D. 89078  
jlofgren@camlev.com

310 Grant St., Suite 1700  
Pittsburgh, PA 15219  
Tel: 412-261-0310  
Fax: 412-261-5066

*Attorneys for the H.K. Porter Company, Inc.  
Asbestos Settlement Trust*

**EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

COPY

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IN RE:

Case No. 91-468 (PGH) WWB

H.K. PORTER COMPANY, INC.,

Chapter 11

Debtor.

**FOURTH AMENDED CREDITORS' COMMITTEE  
PLAN OF REORGANIZATION FOR H.K. PORTER COMPANY, INC.**

*(With Modifications as of April 27, 1998)*

The Committee of Unsecured Creditors of H.K. Porter Company, Inc. proposes its fourth amended plan of reorganization for H.K. Porter Company, Inc., as follows:

**ARTICLE I**

**DEFINITIONS**

**1.1 Defined Terms.** As used herein, the following terms shall have the respective meanings specified below, unless the context otherwise requires:

**1.1.1 *Administrative Expense:*** Any Claim constituting an expense of administration in the Chapter 11 Case under section 503 of the Bankruptcy Code, including, without express or implied limitation, the fees and expenses of the Futures Representatives and their Bankruptcy Court-approved professionals, and expenses incurred by the members of the Committee of Unsecured Creditors in connection with discovery in the Evans Litigation, and any fees or charges assessed against the estate of the Debtor under chapter 123 of title 28 of the United States Code.

1.1.2 *Administrative Expense Creditor:* Any Creditor entitled to payment of an Administrative Expense.

1.1.3 *Affiliate:* Any Entity that is an "affiliate" of the Debtor within the meaning of section 101(2) of the Bankruptcy Code.

1.1.4 *Allowed:*

1.1.4.1 With respect to any Claim other than an Administrative Expense or Asbestos Claim, proof of which was filed within the applicable period of limitation fixed in accordance with Bankruptcy Rule 3003(c)(3) by the Bankruptcy Court, (i) as to which no objection to the allowance thereof has been interposed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or a Final Order of the Bankruptcy Court, such Claim to the extent asserted in the proof of such Claim, or (ii) as to which an objection has been interposed, such Claim to the extent that it has been allowed in whole or in part by a Final Order of the Bankruptcy Court.

1.1.4.2 With respect to any Claim other than an Administrative Expense or Asbestos Claim, as to which no proof of claim was filed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or a Final Order of the Bankruptcy Court, such Claim to the extent that it has been listed by the Debtor in its Schedules as liquidated in amount and not disputed or contingent.

1.1.4.3 With respect to any Claim that is asserted to constitute an Administrative Expense, other than with respect to the fees and expenses of any of the Futures Representatives or any professional person employed under sections 327 or 1103 of the Bankruptcy Code, (i) any such Claim to the extent the Debtor and the Committee of Unsecured

Creditors determines that it constitutes an Administrative Expense or (ii) any such Claim to the extent it is allowed by a Final Order of the Bankruptcy Court.

1.1.4.4. With respect to any Claim that is asserted to constitute an Administrative Expense with respect to the fees and expenses of any of the Futures Representatives or any professional person employed under sections 327 or 1103 of the Bankruptcy Code, any such Claim to the extent it is allowed by a Final Order of the Bankruptcy Court under section 330 of the Bankruptcy Code.

1.1.4.5 With respect to any Asbestos Claim, such Claim to the extent that it is allowed in accordance with the procedures established pursuant to the Asbestos Trust Agreement and the claims resolution procedures implemented in accordance therewith.

1.1.5 *Allowed Amount:* The lesser of (a) the dollar amount of an Allowed Claim or (b) the Estimated Amount of such Claim. Unless otherwise specified herein or by Final Order of the Bankruptcy Court, the Allowed Amount of an Allowed Claim shall not include interest accruing on such Allowed Claim from and after the Petition Date.

1.1.6 *Amended and Restated Articles of Incorporation:* The Articles of Incorporation, to be amended and restated in accordance with section 7.1 hereof, in substantially the form of Exhibit "1.1.6" to the Plan.

1.1.7 *Articles of Incorporation:* The articles of incorporation of H.K. Porter Company, Inc., as such articles of incorporation may be amended by the Amended and Restated Articles of Incorporation or otherwise.

1.1.8 *Asbestos Claim:* An Asbestos Personal Injury Claim, an Asbestos Co-Defendant Claim, or an Asbestos Property Damage Claim.

1.1.9 *Asbestos Co-Defendant Claim:* Any Claim or Demand against the Debtor under any theory of law, equity, admiralty or otherwise, for contribution, reimbursement, subrogation, guaranty or indemnity on account of liability incurred in an action in which the claimant has been, is or may be a defendant, wherein damages were, are or may be sought for any death, disease, or disability as a result, in whole or in part, of exposure to asbestos product manufactured, distributed or sold by the Debtor or its predecessors.

1.1.10 *Asbestos Permanent Channeling Injunction:* An order or orders of the Bankruptcy Court and the District Court issued pursuant to section 524(g) of the Bankruptcy Code, permanently and forever staying, restraining, and enjoining any Entity from taking any of the following actions for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to any Asbestos Claims (other than actions brought to enforce any right or obligation under the Plan, any Exhibits to the Plan, or any other agreement or instrument between the Debtor and the Asbestos Trust, which actions shall be in conformity and compliance with the provisions hereof):

- a. commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding (including, without express or implied limitation, a judicial, arbitral, administrative, or other proceeding) in any forum against or affecting any Protected Party or any property or interests in property of any Protected Party;

b. enforcing, levying, attaching (including, without express or implied limitation, any prejudgment attachment), collecting, or otherwise recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree, or other order against any Protected Party or any property or interests in property of any Protected Party;

c. creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance against any Protected Party or any property or interests in property of any Protected Party;

d. seeking reimbursement or contribution from, or subrogation against, any Protected Party or otherwise setting off or recouping in any manner, directly or indirectly, any amount against any liability owed to any Protected Party; and

e. proceeding in any manner adverse to any Protected Party or the property of any Protected Party in any place with regard to any matter that is subject to resolution pursuant to the Asbestos Trust, except in conformity and compliance therewith.

Other than a Protected Party, no Entity shall be deemed to be a third party beneficiary of the Channeling Injunction.

1.1.11 *Asbestos Personal Injury Claim:* Other than an Asbestos Co-Defendant Claim, any right to payment, Claim, remedy, liability, or Demand now existing or hereafter arising, whether or not such right, Claim, remedy, liability, or Demand is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, whether or not the facts of or legal bases for such right,

Claim, remedy, liability, or Demand are known or unknown, under any theory of law, equity, admiralty, or otherwise, for death, bodily injury, or other personal damages (whether physical, emotional, or otherwise) to the extent caused or allegedly caused, directly or indirectly, by exposure to asbestos or asbestos-containing products that were manufactured, sold, supplied, produced, distributed, released, or in any way marketed or disposed of by the Debtor or its predecessors in interest or affiliates including, without express or implied limitation, any right, Claim, remedy, liability, or Demand for compensatory damages (such as loss of consortium, wrongful death, survivorship, proximate, consequential, general, and special damages) and including punitive damages.

1.1.12 *Asbestos Property Damage Claim:* Any Claim or Demand against the Debtor, under any theory of law, equity, admiralty, or otherwise, for damages, or contribution or indemnity related thereto, arising from the presence in buildings, ships or other systems or structures or on land of asbestos or asbestos-containing products that was or were manufactured, sold, supplied, produced, distributed, or in any way marketed or disposed of by the Debtor or its predecessors prior to the Petition Date.

1.1.13 *Asbestos Trust:* The trust established by the Asbestos Trust Agreement.

1.1.14 *Asbestos Trust Agreement:* That certain H.K. Porter Company, Inc. Asbestos Trust Agreement, substantially in the form of Exhibit "1.1.14" to the Plan.

1.1.15 *Asbestos Trust Liability:* Two billion, twenty million dollars (\$2,020,000,000) the estimated present value of all Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims.



1.1.16 *Ballot*: The Class 4 Ballot, Class 5 Ballot and Class 6 Ballot approved by the Bankruptcy Court by Order dated January 27, 1998 and the Class 2, 3, and 7 Ballots in the Chapter 11 Case distributed to holders of impaired Claims, on which is to be indicated their acceptance or rejection of the Plan.

1.1.17 *Ballot Date*: The date set by the Bankruptcy Court by which all completed Ballots must be received.

1.1.18 *Bankruptcy Code*: The Bankruptcy Reform Act of 1978, as amended, and as codified in title 11 of the United States Code, as applicable to the Chapter 11 Case.

1.1.19 *Bankruptcy Court*: The United States District Court for the Western District of Pennsylvania, having jurisdiction over the Chapter 11 Case and, to the extent of any reference made pursuant to section 157 of title 28 of the United States Code, the unit of such District Court constituted pursuant to Section 151 of Title 28 of the United States Code.

1.1.20 *Bankruptcy Rules*: The Federal Rules of Bankruptcy Procedure, as amended, as applicable to the Chapter 11 Case, including the local rules of the Bankruptcy Court.

1.1.21 *Board of Directors*: The Board of Directors of H.K. Porter Company, Inc., as it may exist from time to time.

1.1.22 *Business Day*: Means any day other than Saturday, Sunday or "legal holiday", as such term is defined in Rule 9006(a) of the Federal Rules of Bankruptcy Procedure, or a day on which commercial banking institutions in Pennsylvania are authorized by law to be closed.

1.1.23 *Chapter 11 Case:* The case of the Debtor commenced by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on the Petition Date in the Bankruptcy Court at Case No. 91-468(PGH).

1.1.24 *Claim:* (a) A "claim," as defined in section 101(5) of the Bankruptcy Code, against the Debtor or Debtor in Possession, whether or not asserted, whether or not the facts of or legal bases therefor are known or unknown, and specifically including, without express or implied limitation, any rights under sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, any claim of a derivative nature, any potential or unmatured contract claims, and any Contingent Claim, and (b) any Asbestos Claim, whether or not it constitutes a "claim" as defined in section 101(5) of the Bankruptcy Code.

1.1.25 *Co-Defendant Futures Representative:* The legal representative appointed by the Bankruptcy Court to represent all entities who hold, or may in the future hold, "demands" (as defined in § 524(g)(5) of the Bankruptcy Code) against the Debtor for contribution, reimbursement, subrogation, guaranty or indemnity on account of liability incurred in actions for which a claimant has been, is or may be a defendant, wherein damages are sought for an asbestos related disease as a result of exposure to asbestos product manufactured, distributed or sold by Debtor or its predecessors.

1.1.26 *Committee of Unsecured Creditors:* The Official Committee of Unsecured Creditors, consisting of Entities appointed as members in the Chapter 11 Case in accordance with section 1102(a) of the Bankruptcy Code and their duly appointed successors, if any, as the same may have been reconstituted from time to time.

1.1.27 *Confirmation Date:* The date on which the Confirmation Order is entered on the docket by the clerk of the District Court.

1.1.28 *Confirmation Order:* The order or orders of the Bankruptcy Court confirming the Plan as signed by the District Court in accordance with the provisions of chapter 11 of the Bankruptcy Code, which will contain, *inter alia*, the Asbestos Permanent Channeling Injunction and other terms and conditions fully consistent with the terms of the Evans Settlement.

1.1.29 *Connors Disability Retiree Claim:* A Claim for Retiree Benefits by a Creditor who is a retired employee of Connors Steel Company, based upon an agreement between the Debtor and the Creditor to provide such Creditor with disability life insurance coverage.

1.1.30 *Contingent Claim:* Any Claim, the liability for which attaches or is dependent upon the occurrence or happening of, or is triggered by, an event, which event has not yet occurred, happened, or been triggered as of the date on which such Claim is sought to be estimated or an objection to such Claim is filed, whether or not such event is within the actual or presumed contemplation of the holder of such Claim and whether or not a relationship between the holder of such Claim and the Debtor now or hereafter exists or previously existed.

1.1.31 *Creditor:* Any Entity that holds a Claim against the Debtor or the Debtor in Possession.

1.1.32 *Debtor:* H.K. Porter Company, Inc., a Delaware corporation.

1.1.33 *Debtor in Possession:* The Debtor, in its capacity as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

1.1.34 *Declaratory Judgment Action:* The declaratory judgment action commenced by the Debtor against the Personal Injury Futures Representative in the District Court at CA No. 93-1991, and now pending in the Chapter 11 Case at Adversary No. 94-2156.

1.1.35 *Demand:* A demand for payment, present or future, that (i) was not a Claim prior to the Confirmation Date; (ii) arises out of the same or similar conduct or events that gave rise to the Claims addressed by the Asbestos Permanent Channeling Injunction; and (iii) pursuant to the Plan, is to be paid by the Asbestos Trust.

1.1.36 *Disallowed Claim:* A Claim or any portion thereof that is disallowed by a Final Order of the Bankruptcy Court or other court of competent jurisdiction.

1.1.37 *Disputed Claim:* A Claim as to which an unresolved objection is pending.

1.1.38 *Disputed Claim Amount:* The Estimated Amount of a Disputed Claim or, if no Estimated Amount exists, the amount set forth in the proof of claim relating to such Claim as the liquidated amount of such Disputed Claim.

1.1.39 *Distribution Value:* All cash shown on the balance sheet of the Debtor as of the last day of the month in which the Effective Date occurs, prepared in accordance with generally accepted accounting principles, including the amount in the Qualified Settlement Fund and the principal amount to be paid pursuant to the Evans Settlement, less the sum of the following as of such date: (i) Five Million and 00/100 Dollars in working capital, (ii) the Allowed Amount of Allowed Administrative Expenses, (iii) a reasonable estimate by the Debtor of additional Administrative Expenses (such as professional fees and expenses) that may become Allowed thereafter, and (iv) the amount reasonably estimated by the Debtor to be the cost of funding all other payments under the Plan, other than Class 5 and Class 7.

1.1.40 *District Court*: The United States District Court for the Western District of Pennsylvania, having jurisdiction over the Chapter 11 Case.

1.1.41 *Effective Date*: The first business day after the date on which all of the conditions precedent to the effectiveness of the Plan specified in section 7.5 have been satisfied or waived or, if a stay of the Confirmation Order is in effect on such date, the first Business Day after the expiration, dissolution, or lifting of such stay.

1.1.42 *Entity*: An individual, corporation, partnership, limited liability company, association, joint stock company, joint venture, estate, trust, unincorporated organization, or government or any political subdivision thereof, or other person or entity.

1.1.43 *Equity Interest*: Any interest in Porter represented by shares of Existing Porter Common Stock.

1.1.44 *Estimated Amount*: The estimated dollar value of an Unliquidated Claim, Disputed Claim, or Contingent Claim pursuant to section 502(c) of the Bankruptcy Code.

1.1.45 *Evans Defendants*: The Estate of Thomas M. Evans, Thomas M. Evans, Jr., Robert S. Evans, Edward P. Evans, Charles J. Queenan, Jr., Kirkpatrick and Lockhart LLP, Tania G. Evans, Betty B. Evans, the Trusts, HBD Industries, Inc., Peerless-Winsmith Holdings, Inc., and any affiliates or predecessors of HBD Industries, Inc., or Peerless-Winsmith Holdings, Inc., any present or former shareholders, directors, officers and employees of HBD Industries, Inc., Peerless-Winsmith Holdings, Inc. and the Debtor or any of their respective predecessors or affiliates and any agents, representatives, successors and assigns of any of these parties.

1.1.46 *Evans Litigation*: The adversary proceeding brought by the Committee of Unsecured Creditors against Thomas Mellon Evans, et al. now pending in the Chapter 11 Case at Adversary No. 93-2581 (WWB).

1.1.47 *Evans Settlement*: The settlement agreement by and between the parties to the Evans Litigation, a copy of which is attached hereto as Exhibit 1.1.47.

1.1.48 *Existing Porter Common Stock*: The issued common stock of Porter, authorized pursuant to the Articles of Incorporation as in effect immediately prior to the Effective Date.

1.1.49 *Final Distribution Date*: A date on or after the Initial Distribution Date and after all Disputed Claims (other than Asbestos Claims) have become either Allowed Claims or Disallowed Claims that is selected by the Reorganized Debtor in its discretion but, in any event, is no later than thirty (30) days thereafter, or such later date as the Bankruptcy Court may establish, upon request by the Reorganized Debtor, for cause shown.

1.1.50 *Final Order*: An order as to which the time to appeal, petition for *certiorari*, or move for reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Debtor or the Reorganized Debtor, as the case may be, and their counsel or, in the event that an appeal, writ of *certiorari*, or reargument or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or *certiorari* has been denied or from which reargument or rehearing was sought, and the time to take any further appeal, petition for *certiorari* has been

denied or from which reargument or rehearing was sought, and the time to take any further appeal, petition for *certiorari* or move for reargument or rehearing shall have expired.

1.1.51 *Futures Representatives*: The Co-Defendant Futures Representative, the Personal Injury Futures Representative, and the Property Damage Futures Representative.

1.1.52 *Initial Distribution Date*: A date on or after the Effective Date that is selected by the Reorganized Debtor in its discretion but, in any event, is within ninety (90) days after the Effective Date, or such later date as the Bankruptcy Court may establish, upon request by the Reorganized Debtor for cause shown.

1.1.53 *Internal Revenue Code*: The Internal Revenue Code of 1986, as amended, and any applicable rulings, regulations (including temporary and proposed regulations) promulgated thereunder, judicial decisions, and notices, announcements, and other releases of the United States Treasury Department or the IRS.

1.1.54 *IRS*: The United States Internal Revenue Service.

1.1.55 *New Porter Common Stock*: Voting common stock, with no par value, of the Reorganized Debtor from and after the Effective Date after giving effect to the Amended and Restated Articles of Incorporation.

1.1.56 *Non-Asbestos Lung Disease Claim*: A Claim for personal injury on account of lung disease (other than an asbestos-related disease) resulting from exposure to products, materials or ingredients sold or supplied or produced or manufactured or used in processes controlled by or employed by the Debtor, or its predecessors.

1.1.57 *Non-Asbestos Lung Disease Insurance Policies*: Those policies of insurance listed or identified on Exhibit 1.1.57.

1.1.58 *Penalty Claim:* Any Claim (i) for any fine, penalty, collection fee, or forfeiture, or for multiple, exemplary, or punitive damages to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such Claim, or (ii) that is, pursuant to an order of the Bankruptcy Court, subordinated for purposes of distribution to all Allowed Unsecured Claims.

1.1.59 *Pension Plan Settlement:* The agreement by and among the Debtor, the Pension Benefit Guaranty Corporation, and HBD Industries, Inc. providing for, inter alia, the merger of the Porter Pension Plans, the assumption by HBD Industries, Inc. of sponsorship and control of the merged Porter Pension Plans, and the withdrawal by the Pension benefit Guaranty Corporation of any Claim in the Chapter 11 Case.

1.1.60 *Personal Injury Futures Representative:* The legal representative appointed by the Bankruptcy Court to represent all entities who hold or may in the future hold, "demands" (as defined in § 524(g)(5) of the Bankruptcy Code) against the Debtor wherein damages are sought for an asbestos related disease as a result of exposure to asbestos product manufactured, distributed or sold by the Debtor or its predecessors.

1.1.61 *Petition Date:* February 15, 1991.

1.1.62 *Plan:* This plan of reorganization, either in its present form or as it may be amended, supplemented, or otherwise modified from time to time, and the exhibits and schedules to the foregoing, as the same may be in effect at the time such reference becomes operative.

1.1.63 *Porter:* The Debtor.



1.1.64 *Porter Pension Plans:* (a) the Amended and Restated Pension Plan for Salaried Employees of H.K. Porter Company, Inc. and (b) the Connors Steel Company Pension Plan for Hourly Paid Employees.

1.1.65 *Porter-Retained Insurance Policies:* Those policies of insurance other than the Property Damage Insurance Policies and the Non-Asbestos Lung Disease Insurance Policies.

1.1.66 *Priority Claim:* Any Claim to the extent such claim is entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, other than an Administrative Expense Claim.

1.1.67 *Property Damage Futures Representative:* The legal representative appointed by the Bankruptcy Court to represent all entities who hold, or may in the future hold "demands" (as defined in § 524(g)(5) of the Bankruptcy Code) against the Debtor for property damage, or contribution or indemnity related thereto, arising from asbestos products manufactured, distributed or sold by the Debtor or its predecessors.

1.1.68 *Property Damage Insurance Policies:* Those policies of insurance listed or identified on Exhibit 1.1.68.

1.1.69 *Pro Rata Share:* Amount obtained by dividing the Allowed Amount of an Allowed Claim, or, in the case of the distribution to the Asbestos Trust, the Asbestos Trust Liability, by the sum of (a) the Asbestos Trust Liability, and (b) the Allowed Amount of the Class 7 Claims, and (c) the aggregate Disputed Claim Amount of the Class 7 Claims.

1.1.70 *Protected Party:* Any of the following parties:

1.1.70.1 the Debtor;

1.1.70.2 the Reorganized Debtor;

1.1.70.3 an Affiliate;

1.1.70.4 any Entity that, pursuant to the Plan or after the Effective Date, becomes a direct or indirect transferee of, or successor to, any assets of the Debtor, the Reorganized Debtor, or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason of it becoming such a transferee or successor);

1.1.70.5 any Entity that, pursuant to the Plan or after the Effective Date, makes a loan to the Reorganized Debtor or the Asbestos Trust or to a successor to, or transferee of, any assets of the Debtor, the Reorganized Debtor, or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason of such Entity becoming such a lender or to the extent any pledge of assets made in connection with such a loan is sought to be upset or impaired);

1.1.70.6 any Entity to the extent he, she, or it is alleged to be directly or indirectly liable for the conduct of, Claims against, or Demands on the Debtor, the Reorganized Debtor, or the Asbestos Trust on account of Asbestos Claims by reason of any one or more of the following:

1.1.70.6.1 such Entity's ownership of a financial interest in the Debtor, a past or present Affiliate, or predecessor in interest of the Debtor;

1.1.70.6.2 such Entity's involvement in the management of the Debtor or any predecessor in interest of the Debtor;

1.1.70.6.3 such Entity's service as an officer, director, or employee of the Debtor or an Affiliate; or

1.1.70.6.4 such Entity's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the Debtor; or

1.1.70.7 the Evans Defendants.

1.1.71 *Qualified Settlement Fund:* The fund established by the Debtor to pay Asbestos Claims, pursuant to authorization of the Bankruptcy Court in an Order dated December 20, 1996 at SCBS-153.

1.1.72 *Reorganized Debtor:* The Debtor, or any successors in interest thereto, from and after the Effective Date.

1.1.73 *Retiree Benefits:* Payments to any entity for the purpose of providing or reimbursing payment for retired employees and their spouses and dependents for medical, surgical, or hospital care benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established prior to the Petition Date and for which the Debtor is liable.

1.1.74 *Retiree Claim:* A Claim for Retiree Benefits, other than a Connors Disability Retiree Claim.

1.1.75 *Retiree's Committee:* The Committee of Retirees appointed in the Chapter 11 Case by an Order of the Bankruptcy Court dated November 8, 1991, to serve as the representative of all retiree beneficiaries of the Retiree Benefits.

1.1.76 *Schedules*: The schedules of assets and liabilities and the statements of financial affairs filed by the Debtor in Possession with the Bankruptcy Court, as required by Section 521 of the Bankruptcy Code and the official bankruptcy forms of the Bankruptcy Rules, as such schedules and statements may be amended by the Debtor in Possession from time to time in accordance with Bankruptcy Rule 1009.

1.1.77 *Section 105(a) Injunction*: An order or orders of the Bankruptcy Court and District Court issued pursuant to Section 105(a) of the Bankruptcy Code, permanently and forever staying, restraining and enjoining any Entity from taking any legal action or instituting any other proceeding of any kind for the purpose of collecting, recovering or receiving payment or any other form of relief or recovery from an Evans' Defendant with respect to any Settlement Claim.

1.1.78 *Settlement Claims*: Any and all claims (including Claims), obligations rights, causes of action, demands (including Demands) and/or liabilities, of whatever nature, present or future, foreseen or unforeseen, now existing or hereafter arising, including but not limited to any Asbestos Claim and any Non-Asbestos Lung Disease Claim, which any Person or Entity may assert or be entitled to assert, directly or indirectly arising out of, relating to, in connection with, or based upon: (a) the subject matter of the Evans Litigation, (b) the acts, omissions, operations, products or business activities of the Debtor or any of its predecessors, (c) any of the Evans Defendants' alleged status or liability as a successor to or affiliate of the Debtor, and (d) this Chapter 11 case. Also, any and all claims (including Claims) or demands (including Demands) against any of the Evans Defendants alleged to be directly or indirectly liable for the conduct of, claims (including Claims) against, or demands (including Demands)

on the Debtor to the extent such alleged liability of such Evans Defendant arises by reason of (i) such Evans Defendant's ownership of a financial interest in the Debtor, a past or present Affiliate of the Debtor, or a predecessor in interest of the Debtor, (ii) such Evans Defendant's involvement in the management of the Debtor or a predecessor in interest of the Debtor, or service as an officer, director or employee of the Debtor or a "Related Party," as defined in Section 524(g)(4)(A)(iii) of the Bankruptcy Code, of the Debtor, (iii) such Evans Defendant's provision of insurance to the Debtor, or (iv) such Evans Defendant's involvement in a transaction changing the corporate structure, or in a loan, dividend, spin-off, acquisition, disposition or other financial transaction affecting the financial condition, of the Debtor or of a "Related Party," as defined in Section 524(g)(4)(A)(iii) of the Bankruptcy Code, of the Debtor, including but not limited to involvement in providing financing (debt or equity) or advice to an entity involved in such a transaction, or acquiring or selling a financial interest in an entity as part of such a transaction. Settlement Claims shall not include either (i) obligations of any Evans Defendant under the Evans Settlement or (ii) any environmental claims relating to properties directly or indirectly acquired by any of the Evans Defendants from the Debtor or one of its subsidiaries.

1.1.79 *Settling Parties:* The Evans Defendants, the Debtor, the Committee, and the Personal Injury Futures Representative.

1.1.80 *Subordinated Shareholder Claims:* An Allowed Claim of any Entity that failed to tender its shares of stock or elected to pursue rights as dissenting shareholders arising out of the merger transaction by which Debtor became privately held in August 27, 1987, which claims were equitably subordinated pursuant to §510(c) of the Bankruptcy Code by Orders

entered in the Chapter 11 case at Adversary No. 2264 WWB and Adversary No. 97-2265 WWB, issued on July 21, 1997.

1.1.81 *Test Objections*: The Debtor's objections to the Claims asserted by Josephine Crawford and Anthony Tamburrino pending at Motion Nos. SCBS-78 and SCBS-79, respectively, in the Chapter 11 Case.

1.1.82 *Tobacco Contribution Action*: Any claim or demand of the Debtor or the Asbestos Trust under any theory of law, equity, admiralty or otherwise, for contribution, reimbursement, subrogation, guaranty or indemnity on account of liability incurred by the Debtor or the Asbestos Trust, wherein damages were, are or may be sought against the Debtor or the Asbestos Trust for an asbestos related disease as a result of exposure to a tobacco product distributed or sold to the holder of an Asbestos Personal Injury Claim.

1.1.83 *Trustee*: The person serving as trustee of the Asbestos Trust, pursuant to the terms of the Asbestos Trust Agreement.

1.1.84 *Unliquidated Claim*: Any Claim, the amount of liability for which has not been fixed, whether pursuant to agreement, applicable law, or otherwise, as of the date on which such Claim is sought to be estimated.

1.1.85 *Unsecured Claim*: Any Claim that is not an Administrative Expense, Priority Claim, Asbestos Claim, Retiree Claim, Connors Disability Retiree Claim or a Non-Asbestos Lung Disease Claim.

1.1.86 *Voting Procedures Order*: The Order of the Bankruptcy Court dated January 27, 1998 approving procedures relating to the solicitation and tabulation of votes with respect to the Plan, attached hereto as Exhibit 1.1.86.

**1.2 Other Terms.** Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, the feminine, and the neuter. The words "herein," "hereof," "hereto," "hereunder," and others of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. An initially capitalized term used herein that is not defined herein shall have the meaning ascribed to such term, if any, in the Bankruptcy Code, unless the context shall otherwise require.

## **ARTICLE 2**

### **PROVISIONS FOR PAYMENT OF ADMINISTRATIVE EXPENSES**

**2.1 Payment of Allowed Administrative Expenses.** The Allowed Amount of each claim for an Administrative Expense shall be paid in full, in cash, on the Effective Date; provided, however, that (i) Administrative Expenses representing (a) liabilities incurred in the ordinary course of business by the Debtor in Possession or (b) liabilities arising under loans or advances to the Debtor in Possession, whether or not incurred in the ordinary course of business, shall be assumed and paid by the Reorganized Debtor in accordance with the terms and conditions of the particular transactions and any agreements relating thereto, (ii) the Bankruptcy Court shall fix in the Confirmation Order a date for the filing of and a date to hear and determine all applications for final allowances of compensation or reimbursement of expenses

under section 330 of the Bankruptcy Code and for the Futures Representatives, and (iii) if an Administrative Expense, other than a trade payable incurred in the ordinary course of business by the Debtor in Possession, is a Contingent Claim or Unliquidated Claim as of the Effective Date, the Debtor may request the Bankruptcy Court to estimate such Administrative Expense pursuant to section 502(c) of the Bankruptcy Code, in which case the Allowed Amount of such Administrative Expense shall be paid in full, in cash, on the date that an order estimating such Administrative Expense becomes a Final Order.

**2.2 Compensation and Reimbursement.** The Allowed Amount of all Administrative Expenses arising under section 503(b)(2), 503(b)(3), 503(b)4, or 503(b)(5) of the Bankruptcy Code shall be paid in full, in cash, (a) upon the later of (i) the Effective Date and (ii) the date upon which the order with respect to the allowance or disallowance of any such Administrative Expense becomes a Final Order, or (b) upon such other terms as may be mutually agreed upon between each Administrative Expense Creditor and the Reorganized Debtor.

### ARTICLE 3

#### CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

**3.1 Summary.** Claims and Equity Interests are classified for all purposes, including, without express or implied limitation, voting, confirmation, and distribution pursuant to the Plan,



as follows:

<u>CLASS</u>	<u>NATURE</u>	<u>STATUS</u>	<u>VOTING RIGHTS</u>
Class 1:	Priority Claims	Unimpaired	Not Entitled to Vote
Class 2:	Retiree Claims	Impaired	Entitled to Vote
Class 3:	Connors Disability Retiree Claims	Impaired	Entitled to Vote
Class 4:	Asbestos Property Damage Claims	Impaired	Entitled to Vote
Class 5:	Asbestos Personal Injury claims and Asbestos Co-Defendant Claims	Impaired	Entitled to Vote
Class 6:	Non-Asbestos Lung Disease Claims	Impaired	Entitled to Vote
Class 7:	Unsecured Claims	Impaired	Entitled to Vote
Class 8:	Subordinated Shareholder Claims	Impaired	Deemed to reject the Plan
Class 9:	Equity Interests	Impaired	Deemed to reject the Plan

### **3.2 Classification and Treatment.**

#### **3.2.1 Class 1. Priority Claims.**

1. *Classification:* Class 1 consists of all Priority Claims.

2. *Treatment:* Each holder of an Allowed Priority Claim shall be paid

the Allowed Amount of its Allowed Priority Claim, in full, in cash, on the Effective Date.

3. *Status:* Class 1 is not impaired. The holders of the Claims in Class 1 are deemed to accept the Plan and, accordingly, are not entitled to vote to accept or reject the Plan.

**3.2.2 Class 2. Retiree Claims.**

1. *Classification:* Class 2 consists of the Retiree Claims.

2. *Treatment:* Pursuant to an order of the Bankruptcy Court, Two Million Dollars (\$2,000,000) was paid on account of Retiree Benefits to the Retirees' Committee as the representative of the holders of Class 2 Claims. Such payment was used to fund a benefit plan established by the Retirees' Committee for such holders. No further payments shall be made on account of Class 2 Claims.

3. *Status:* Class 2 is impaired.

**3.2.3 Class 3. Connors Disability Retiree Claims.**

1. *Classification:* Class 3 consists of the Connors Disability Retiree Claims.

2. *Treatment:* After the Effective Date, payment on account of the Class 3 Claims shall continue at the level and for the duration established pursuant to 11 U.S.C. §§ 1114(e)(1)(B) or 1114(g) before the entry of the Confirmation Order.

3. *Status:* Class 3 is impaired.

### 3.2.4 Class 4. Asbestos Property Damage Claims.

1. *Classification:* Class 4 consists of all Asbestos Property Damage Claims.

2. *Treatment:* The Debtor's liability for all Asbestos Property Damage Claims shall be assumed, determined and paid pursuant to the terms, provisions, and procedures of the Asbestos Trust and the Asbestos Trust Agreement. On the Effective Date, Asbestos Property Damage Claims shall be fully satisfied and discharged as against the Debtor by virtue of the establishment and funding of the Asbestos Trust for the benefit of, among others, all holders of Asbestos Property Damage Claims and Demands pursuant to the terms of the Asbestos Trust Agreement and related documents. The sole recourse of the holder of an Asbestos Property Damage Claim shall be a recovery under the coverage provided by the Property Damage Insurance Policies, and such holder shall have no right whatsoever to collect its Asbestos Property Damage Claim against any other assets or property of the Asbestos Trust or to assert its Asbestos Property Damage Claim against any Protected Party.

Without limiting the foregoing, on the Effective Date, all Entities shall be permanently and forever stayed, restrained, and enjoined pursuant to the Asbestos Permanent Channeling Injunction and/or the Section 105(a) Injunction from taking any of the following actions for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to any Asbestos Property Damage Claim (other than actions brought to enforce any right or obligation under the Plan, any Exhibits to the Plan or any other agreement or instrument between the Debtor or the Reorganized Debtor and the Asbestos Trust, which actions shall be in conformity and compliance with the provisions hereof):

a. commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding (including, without express or implied limitation, a judicial, arbitral, administrative, or other proceeding) in any forum against or affecting any Protected Party or any property or interest in property of any Protected Party;

b. enforcing, levying, attaching (including, without express or implied limitation, any prejudgment attachment), collecting, or otherwise recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree, or other order against any Protected Party or any property or interests in property of any Protected Party;

c. creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Encumbrance against any Protected Party or any property or interests in property of any Protected Party;

d. seeking reimbursement or contribution from, or subrogation against, any Protected Party or otherwise setting off or recouping in any manner, directly or indirectly, any amount against any liability owed to any Protected Party or any property or interests in property of any Protected Party; and

e. proceeding in any manner in any place with regard to any matter that is subject to resolution pursuant to the Asbestos Trust, except in conformity and compliance therewith.

Nothing contained herein shall constitute or be deemed a waiver of any claim, right, or cause of action that the Debtor, the Reorganized Debtor, or the Asbestos Trust may have against any

Entity other than an Evans Defendant in connection with or arising out of an Asbestos Property Damage Claim.

The Property Damage Futures Representative and the Trustee, jointly, are authorized at any time to compromise, settle or effect a buy-out of any or all of the Property Damage Insurance Policies, and any monetary amounts, net of taxes, derived or recovered from such settlement, compromise or buy-out will inure to the benefit of the holders of Class 4 and Class 5 Claims. The Property Damage Futures Representative and the Trustee, jointly, shall determine the manner in which any recoveries from such policies will be allocated between such classes and such determination shall be subject to Court approval.

The Trustee is authorized at any time to institute suit or commence litigation against any of the insurers which have issued any of the Property Damage Insurance Policies to assert a claim under such policies for insurance coverage for the benefit of the holders of Class 5 Claims. Any monetary amounts derived or recovered from such litigation, net of taxes, via settlement or judgment, shall inure to the benefit of the holders of Class 4 and Class 5 Claims. The Property Damage Futures Representative and the Trustee, jointly, shall determine the manner in which any recoveries from such policies will be allocated between such classes and such determination shall be subject to Court approval.

3. *Status:* Class 4 is impaired.

**3.2.5 Class 5. Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims.**

1. *Classification:* Class 5 consists of all Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims.

2. *Treatment:* The Debtor's liability for all Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims shall be assumed, determined and paid pursuant to the terms, provisions, and procedures of the Asbestos Trust and the Asbestos Trust Agreement. On the Effective Date, Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims shall be fully satisfied and discharged as against the Debtor by virtue of the establishment and funding of the Asbestos Trust for the benefit of, among others, all holders of Asbestos Personal Injury Claims and Demands and Asbestos Co-Defendant Claims and Demands pursuant to the terms of the Asbestos Trust Agreement and related documents. The sole recourse of the holder of an Asbestos Personal Injury Claim or Asbestos Co-Defendant Claim shall be the Asbestos Trust, and such holder shall have no right whatsoever at any time to assert its Asbestos Personal Injury Claim or Asbestos Co-Defendant Claim against any Protected Party. Without limiting the foregoing, on the Effective Date, all Entities shall be permanently and forever stayed, restrained, and enjoined pursuant to the Asbestos Permanent Channeling Injunction and/or the Section 105(a) Injunction from taking any of the following actions for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to any Asbestos Personal Injury Claim or Asbestos Co-Defendant Claim (other than actions brought to enforce any right or obligation under the Plan, any Exhibits to the Plan or any other agreement or

instrument between the Debtor or the Reorganized Debtor and the Asbestos Trust, which actions shall be in conformity and compliance with the provisions hereof):

a. commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding (including, without express or implied limitation, a judicial, arbitral, administrative, or other proceeding) in any forum against or affecting any Protected Party or any property or interest in property of any Protected Party;

b. enforcing, levying, attaching (including, without express or implied limitation, any prejudgment attachment), collecting, or otherwise recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree, or other order against any Protected Party or any property or interests in property of any Protected Party;

c. creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Encumbrance against any Protected Party or any property or interests in property of any Protected Party;

d. setting off, seeking reimbursement or contribution from, or subrogation against any Protected Party, or otherwise recouping in any manner, directly or indirectly, any amount against any liability owed to any Protected Party or any property or interests in property of any Protected Party; and

e. proceeding in any manner in any place with regard to any matter that is subject to resolution pursuant to the Asbestos Trust, except in conformity and compliance therewith.

Nothing contained herein shall constitute or be deemed a waiver of any claim, right, or cause of action that the Debtor, the Reorganized Debtor, or the Asbestos Trust may have against any Entity other than an Evans Defendant in connection with or arising out of an Asbestos Personal Injury Claim or an Asbestos Co-Defendant Claim.

3. *Status:* Class 5 is impaired.

### **3.2.6 Class 6. Non-Asbestos Lung Disease Claims.**

1. *Classification:* Class 6 consists of all Non-Asbestos Lung Disease Claims.

2. *Treatment:* The holders of Class 6 Claims shall, by virtue of the confirmation of the Plan, be granted relief from the automatic stay imposed by Section 362 of the Bankruptcy Code on the Effective Date to pursue their Claims against the Debtor, but only to the extent necessary to assert a right of recovery under or from its interests in the Non-Asbestos Lung Disease Insurance Policies, and the Reorganized Debtor shall not have any liability to the holders of Class 6 Claims for any amount by which their Claims exceed any amount which they are able to recover under the Non-Asbestos Lung Disease Insurance Policies.

The holders of the Class 6 Claims shall not be entitled to seek any other recourse or receive any other distribution in the Chapter 11 Case.

3. *Status:* Class 6 is impaired.

### **3.2.7 Class 7. Unsecured Claims.**

1. *Classification:* Class 7 consists of Unsecured Claims.



2. *Treatment:* Each holder of an Allowed Claim in Class 7 shall receive on the Initial Distribution Date its Pro Rata Share of the Distribution Value. In addition, each holder of an Allowed Claim in Class 7 shall receive its Pro Rata Share of any cash proceeds or other recovery from (i) the Porter-Retained Insurance Policies and (ii) the Tobacco Contribution Action.

3. *Status:* Class 7 is impaired.

### **3.2.8 Class 8. Subordinated Shareholder Claims.**

1. *Classification:* Class 8 consists of Subordinated Shareholder Claims.

2. *Treatment:* Pursuant to the Orders of Court entered in the Chapter 11 Case on July 21, 1997 at Adversary Proceeding Nos. 97-2264 WWB and 97-2265 WWB, the Allowed Amounts of any Subordinated Shareholder Claims shall be subordinated to all unsecured non-priority claims (Class 5 and Class 7) pursuant to Section 510(c) with distribution on account of such claims to be made only after all class 5 and Class 7 claims have been paid in full.

3. *Status:* Class 8 is impaired.

### **3.2.9 Class 9. Equity Interests.**

1. *Classification:* Class 9 consists of Equity Interests.

2. *Treatment:* The holders of Equity Interests will not receive or retain any interest or property under the Plan. On the Effective Date, the certificates that previously evidenced ownership of Existing Porter Common Stock shall be cancelled and shall be null and void, and the holders thereof shall have no rights, and such certificates shall evidence no rights.

3. *Status:* Class 9 is impaired. The holders of Equity Interests are deemed to reject the Plan and, accordingly, are not entitled to vote to accept or reject the Plan.

## ARTICLE 4

### MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

**4.1 Modification of the Plan.** The Committee of Unsecured Creditors may alter, amend, or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date so long as the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code and remains consistent with the terms of the Evans Settlement. After the Confirmation Date and prior to the Effective Date, the Committee of Unsecured Creditors may alter, amend, or modify the Plan in accordance with section 1127(b) of the Bankruptcy Code, but only so that its terms remain consistent with the terms of the Evans Settlement.

#### **4.2 Revocation or Withdrawal.**

**4.2.1 Right to Revoke.** The Plan may be revoked or withdrawn prior to the Confirmation Date by the Committee of Unsecured Creditors, subject to the terms of the Evans Settlement.

**4.2.2 Effect of Withdrawal or Revocation.** If the Plan is revoked or withdrawn prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by the

Debtor or any other Entity or to prejudice in any manner the rights of the Debtor or any Entity in any further proceedings involving the Debtor, but subject to the terms of the Evans Settlement.

**4.3 Amendment of Plan Documents.** From and after the Effective Date, the authority to amend, modify, or supplement the exhibits to the Plan and any documents attached to such exhibits shall be as provided in such exhibits and their respective attachments, subject to the terms of the Evans Settlement.

## **ARTICLE 5**

### **PROVISIONS FOR TREATMENT OF DISPUTED CLAIMS**

**5.1 Objection to Claims; Prosecution of Disputed Claims.** The Reorganized Debtor shall object to the allowance of Unsecured Claims filed with the Bankruptcy Court with respect to which the Reorganized Debtor disputes liability in whole or in part. Unless otherwise provided herein or ordered by the Bankruptcy Court, all objections by the Reorganized Debtor to such Claims shall be served and filed no later than ninety (90) days after the Effective Date.

**5.2 Distributions on Account of Disputed Claims.** Notwithstanding Section 3.2 hereof, a distribution shall only be made by the Reorganized Debtor to the holder of a Disputed Claim when, and to the extent that, such Disputed Claim becomes Allowed. No interest shall be paid on account of a Disputed Claim that later becomes Allowed. No distribution shall be

made with respect to all or any portion of any Disputed Claim pending the entire resolution thereof.

## ARTICLE 6

### CRAM DOWN

**6.1 Nonconsensual Confirmation.** Because Classes 8 and 9 are deemed to have rejected the Plan, the Committee of Unsecured Creditors intends to request that the District Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code with respect to Classes 8 and 9. In the event that any impaired class of Claims or Interests shall fail to accept the Plan in accordance with section 1129(a) of the Bankruptcy Code, the Committee of Unsecured Creditors reserves the right to (a) request that the District Court confirm the Plan in accordance with Section 1129(b) of the Bankruptcy Code with respect to such non-accepting class, in which case the Plan shall constitute a motion for such relief, or (b) amend the Plan in accordance with section 4.1 hereof.

## ARTICLE 7

### IMPLEMENTATION OF THE PLAN

**7.1 Amendment of Articles of Incorporation.** The Articles of Incorporation shall be amended and restated as of the Effective Date in substantially the form of the Amended and Restated Articles of Incorporation, *inter alia*, (a) to prohibit the issuance of nonvoting equity

securities as required by section 1123(a)(6) of the Bankruptcy Code, subject to further amendment of such Amended and Restated Articles of Incorporation as permitted by applicable law, (b) to authorize the cancellation of the Existing Porter Common Stock and the creation of shares of New Porter Common Stock, which shares shall be issued to the Asbestos Trust and shall not be transferable for a period of twenty-five months after the Effective Date, and (c) to otherwise effectuate the provisions of the Plan. The terms of Exhibit 1.1.6 are incorporated herewith and set forth the complete description of the restrictions on transfer of the New Porter Common Stock, procedures for recovery of such stock in the event of a Prohibited Transfer, as defined therein, and the legends to be printed on the New Porter Common Stock certificates.

**7.2 Timing of Distributions under the Plan.** Any distribution to be made by the Reorganized Debtor pursuant to the Plan shall be deemed to have been timely made if made within ten (10) days after the time therefor specified in the Plan.

**7.3 Manner of Payment under Plan.** Unless the Entity receiving a payment agrees otherwise, any payment in cash to be made by the Reorganized Debtor shall be made, at the election of the Reorganized Debtor, by check drawn on a domestic bank or by wire transfer from a domestic bank.

**7.4 Conditions Precedent to Plan Confirmation.** The following shall constitute conditions precedent to confirmation of the Plan and shall be consistent with the terms of the Evans Settlement:

7.4.1 The following findings, will be contained in the Confirmation Order to be signed by the District Court:

7.4.1.1 The Asbestos Permanent Channeling Injunction is to be implemented in connection with the Asbestos Trust.

7.4.1.2 At the time of the order for relief with respect to the Debtor, the Debtor had been named as a defendant in personal injury, wrongful death, and property damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products.

7.4.1.3 The Asbestos Trust, as of the Effective Date, will assume the liabilities of the Debtor with respect to asbestos-related Claims and Demands within the meaning of the Bankruptcy Code, including, without limitation, Section 524(g).

7.4.1.4 The Asbestos Trust is to be funded in whole or in part by securities of the Debtor and by the obligation of the Debtor to make future payments.

7.4.1.5 The Asbestos Trust is to own a majority of the voting shares of the Reorganized Debtor.

7.4.1.6 The Debtor is likely to be subject to substantial future Demands for payment arising out of the same or similar conduct or events that gave rise to the Asbestos Claims and Demands that are addressed by the Asbestos Permanent Channeling Injunction.

7.4.1.7 The actual amounts, numbers, and timing of the future Demands referenced in section 7.4.1.6 cannot be determined.

7.4.1.8 Pursuit of the Demands referenced in section 7.4.1.6 outside the procedures prescribed by the Plan is likely to threaten the Plan's purpose to deal equitably with Claims and future Demands.

7.4.1.9 The terms of the Asbestos Permanent Channeling Injunction, including any provisions barring actions against the Protected Parties pursuant to Section 524(g)(4)(A) of the Bankruptcy Code, are set out in the Plan and in the disclosure statement supporting the Plan.

7.4.1.10 The Plan establishes, in Class 4 and Class 5, separate classes of claimants whose Claims are to be addressed by the Asbestos Trust.

7.4.1.11 Class 4 and Class 5 have each voted by at least seventy-five (75%) percent of those voting, in favor of the Plan and in favor of releasing the Evans Defendants.

7.4.1.12 Pursuant to court orders or otherwise, the Asbestos Trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present Claims and future Demands, or other comparable mechanisms, that provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, present Claims and future Demands that involve similar Claims in the same manner.

7.4.1.13 The Futures Representatives were appointed as part of the proceedings leading to issuance of the Asbestos Permanent Channeling Injunction for the purpose of protecting the rights of Entities that might subsequently assert Demands that are addressed in the Asbestos Permanent Channeling Injunction and transferred to the Asbestos Trust.

7.4.1.14 Identifying each Protected Party in the Asbestos Permanent Channeling Injunction is fair and equitable with respect to Entities that might subsequently assert Demands against each such Protected Party, in light of the benefits provided, or to be provided, to the Asbestos Trust by or on behalf of any such Protected Party.

7.4.1.15 The terms of the Evans Settlement are in the best interests of the Debtor's bankruptcy estate, and the Evans Defendants have demonstrated their present ability to timely perform all their obligations arising out of the Evans Settlement.

7.4.1.16 The Asbestos Trust is to use its assets or income to pay asbestos-related Claims and Demands.

7.4.2 The Voting Procedures Order shall have been signed by the Bankruptcy Court and duly entered on its docket.

7.4.3 The Confirmation Order shall have been signed by the District Court, be duly entered on its docket, and be in a form reasonably acceptable to the Evans Defendants and consistent with the Evans Settlement.



7.4.4 The Evans Settlement shall have been approved by the District Court as part of the Confirmation Order.

7.4.5 The District Court shall have entered an order establishing the Asbestos Permanent Channeling Injunction, which shall have been entered on the docket.

7.4.6 The Confirmation Order shall be, in form and substance, acceptable to the Committee of Unsecured Creditors.

**7.5 Conditions Precedent to the Effective Date.** The "effective date of the plan," as used in Section 1129 of the Bankruptcy Code, shall not occur, and the Plan shall be of no force and effect, until the Effective Date. The occurrence of the Effective Date is subject to satisfaction of the following conditions precedent:

7.5.1 The Confirmation Order shall have become a Final Order.

7.5.2 There is no stay in effect with respect to the Confirmation Order.

7.5.3 The Confirmation Order shall establish the Asbestos Permanent Channeling Injunction and, to the extent permitted by law, the Section 105(a) Injunction.

7.5.4 The Confirmation Order, the Asbestos Permanent Channeling Injunction and the Section 105(a) Injunction shall be in full force and effect.

7.5.5 The Trustee of the Asbestos Trust shall have accepted his appointment as Trustee and shall have executed the Asbestos Trust Agreement.

7.5.6 The Evans Defendants shall have performed all of their current obligations under the Evans Settlement that are due on the Effective Date.

7.5.7 There is no judicial decision issued by any Court which, if applied to the Asbestos Permanent Channeling Injunction, would deprive any of the Evans Defendants (other than Kirkpatrick & Lockhart, LLP) of its protections.

7.5.8 Payment of the Cash and delivery of the Note, the Allonge and the Letter of Credit, all as defined in the Settlement Agreement, to the Debtor on behalf of the Evans Defendants.

7.5.9 The Evans Litigation shall have been dismissed with prejudice.

No waiver of the occurrence of any of the foregoing conditions precedent to the Effective Date or modification of any of such conditions precedent may occur other than jointly by the Evans Defendants and the Committee of Unsecured Creditors. Any such waiver of a condition precedent hereof may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan. Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If any one of the foregoing conditions cannot be satisfied and the occurrence of such condition is not waived, then the Committee of Unsecured Creditors shall file a notice of the failure of the Effective Date with the District Court, at which time the Plan and the Confirmation Order shall be deemed null and void.

**7.6 Distribution of Unclaimed Property.** Any distribution by the Debtor under the Plan that is unclaimed after one hundred eighty (180) days following the date such property is

distributed shall be deemed not to have been made and shall be transferred to the Reorganized Debtor, free and clear of any Claims or interests of any Entities, including, without express or implied limitation, any Claims or interests of any governmental unit under escheat principles. Nothing contained herein shall affect the discharge of the Claim with respect to which such distribution was made, and the holder of such Claim shall be forever barred from enforcing such Claim against the Reorganized Debtor or the Reorganized Debtor's assets, estates, properties, or interests in property. Unclaimed distributions from the Asbestos Trust shall remain the property of the Asbestos Trust and shall not revert to or be returned to the Debtor.

**7.7 Management of the Reorganized Debtors.** On the Effective Date, the Board of Directors shall consist of the same individuals who sit on the Board of Directors on the day immediately preceding the Effective Date. Each of the members of such Board of Directors shall serve until the first annual meeting of stockholders of the Reorganized Debtor or his or her earlier resignation or removal in accordance with the Amended and Restated Articles of Incorporation or the Bylaws of the Debtor. The officers of the Debtor immediately prior to the Effective Date shall serve as the officers of the Reorganized Debtor on and after the Effective Date in accordance with any employment agreement with the Reorganized Debtor and applicable nonbankruptcy law.

**7.8 Corporate Action.** On the Effective Date, the adoption of the Amended and Restated Articles of Incorporation and the filing by the Reorganized Debtor of the Amended and Restated Articles of Incorporation, shall be authorized and approved in all respects, in each case

without further action under applicable law, regulation, order, or rule, including, without express or implied limitation, any action by the stockholders or directors of the Debtor, the Debtor in Possession, or the Reorganized Debtor. On the Effective Date or as soon thereafter as is practicable, the Debtor shall file with the Secretary of State of the State of Delaware, the Amended and Restated Articles of Incorporation. On the Effective Date, the cancellation of the Existing Porter Common Stock, the issuance of the New Porter Common Stock, the approval and effectiveness of the employment agreements, and other matters provided under the Plan involving the corporate structure of the Reorganized Debtor or corporate action by the Reorganized Debtor shall be deemed to have occurred, be authorized, and shall be in effect from and after the Effective Date without requiring further action under applicable law, regulation, order, or rule, including, without express or implied limitation, any action by the stockholders or directors of the Debtor, the Debtor in Possession, or the Reorganized Debtor.

**7.9 Effectuating Documents and Further Transactions.** Each of the officers of the Debtor and Reorganized Debtor is authorized, in accordance with his or her authority under the resolutions of the Board of Directors, to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any notes or securities issued pursuant to the Plan.

## ARTICLE 8

### EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### **8.1 Assumption or Rejection of Executory Contracts and Unexpired Leases.**

Pursuant to the authorization set forth in Section 1123(b)(2) of the Bankruptcy Code, to the extent any of the Property Damage Insurance Policies, Non-Asbestos Lung Disease Insurance Policies, or Porter-Retained Insurance Policies are executory, such policies will be deemed assumed on the Effective Date, and the entry of the Confirmation Order shall constitute approval of such assumption. All other executory contracts and unexpired leases of the Debtor, which have not already been rejected, shall be deemed rejected on the Effective Date, unless a motion for the assumption of such contracts and/or leases has been filed prior to the Effective Date.

**8.2 Rejection Claims.** Any Claim arising from the rejection of an executory contract or unexpired lease must be filed by the later of (i) thirty (30) days after the Effective Date or (ii) ten (10) days after a Final Order has been entered authorizing such rejection, or, be forever barred as a Claim against the Reorganized Debtor.

**8.3 Reservation of Rights.** Nothing contained in this Plan shall constitute a waiver of any right, Claim or cause of action that the Debtor, the Reorganized Debtor, or the Asbestos Trust, as the case may be, may hold against the insurer under any policy of insurance.

## ARTICLE 9

### RETENTION OF JURISDICTION

Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court and the District Court shall retain and shall have exclusive jurisdiction over (a) any matter arising under the Bankruptcy Code, (b) any matter arising in or related to the Chapter 11 Case, the Plan, the Evans Settlement or the Asbestos Trust and its assets and the Co-Defendant qualified settlement fund, or (c) any action to:

**9.1** Interpret, enforce, and administer the terms of the Asbestos Trust Agreement, the terms of the Evans Settlement, the Asbestos Permanent Channeling Injunction or the Section 105(a) Injunction (including all annexes and exhibits to any of the foregoing) ;

**9.2** Hear and determine any and all motions or applications pending on the Confirmation Date for the assumption and/or assignment or rejection of executory contracts or unexpired leases to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear and determine any and all Claims resulting therefrom or from the expiration or termination of any executory contract or unexpired lease prior to the Confirmation Date;

**9.3** Determine any and all adversary proceedings, applications, motions, and contested or litigated matters that may be pending on the Effective Date or that, pursuant to the Plan, may be instituted by the Reorganized Debtor after the Effective Date, including, without express or

implied limitation, any claims to avoid any preferences, fraudulent transfers, or other voidable transfers, or otherwise to recover assets for the benefit of the Debtor's estate;

**9.4** Hear and determine any objections to the allowance of Claims arising prior to the Effective Date, whether filed, asserted, or made before or after the Effective Date, including, without express or implied limitation, to hear and determine any objections to the classification of any Claim and to allow or disallow any Disputed Claim in whole or in part;

**9.5** Issue such orders in aid of execution of the Plan to the extent authorized or contemplated by section 1142 of the Bankruptcy Code.

**9.6** Consider any modifications of the Plan, remedy any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court or District Court, including, without express or implied limitation, the Confirmation Order;

**9.7** Hear and determine all applications for allowances of compensation and reimbursement of expenses or professionals under sections 330 and 331 of the Bankruptcy Code and any other fees and expenses authorized to be paid or reimbursed under the Plan;

**9.8** Hear and determine all controversies, suits, and disputes that may relate to, impact upon, or arise in connection with the Plan (and all exhibits to the Plan) or its interpretation, implementation, enforcement, or consummation;

**9.9** Consider and act on the compromise and settlement of any Claim or cause of action by or against the Debtor's estate;

**9.10** Determine such other matters that may be set forth in the Plan, the Confirmation Order, or the Asbestos Permanent Channeling Injunction, or that may arise in connection with the Plan, the Confirmation Order, or the Asbestos Permanent Channeling Injunction, the Section 105(a) Injunction and the Evans Settlement;

**9.11** Hear and determine any proceeding that involves the validity, application, construction, enforceability, or modification of the Asbestos Permanent Channeling Injunction or the application of section 524(g) of the Bankruptcy Code to the Asbestos Permanent Channeling Injunction, and the Section 105(a) Injunction.

**9.12** Hear and determine matters concerning state, local, and federal taxes, fines, penalties, or additions to taxes for which the Debtor or Debtor in Possession may be liable, directly or indirectly, in accordance with sections 346, 505, and 1146 of the Bankruptcy Code; and

**9.13** Enter an order or final decree closing the Chapter 11 Case.

To the extent that the Bankruptcy Court is not permitted under applicable law to preside over any of the foregoing matters, the reference to the "Bankruptcy Court" in this Article 9 shall be deemed to be replaced by the "District Court." Notwithstanding anything in this Article 9 to



the contrary, the allowance of Asbestos Claims and the forum in which such allowance will be determined will be governed by and in accordance with the procedures established by the Asbestos Trust Agreement and the Trustee.

## ARTICLE 10

### TRANSFERS OF PROPERTY TO AND ASSUMPTION OF CERTAIN LIABILITIES BY THE ASBESTOS TRUST

**10.1 Creation of the Asbestos Trust.** The Asbestos Trust Agreement, and thus the creation of the Asbestos Trust, shall become effective on the Effective Date. The Confirmation Order shall be deemed to strike paragraphs 3, 7-12, and 14 of the Bankruptcy Court Order dated December 20, 1996 establishing the Qualified Settlement Fund and to replace those paragraphs with the terms of the Asbestos Trust Agreement. The Asbestos Trust will be deemed to be a continuation of the Qualified Settlement Fund and will, itself, constitute a qualified settlement fund pursuant to the regulations under §468B of the Internal Revenue Code.

#### **10.2 Transfer of Certain Property to the Asbestos Trust.**

**10.2.1 *Transfer of Books and Records.*** On the Effective Date or as soon thereafter as is practicable, the Reorganized Debtor will arrange for the Asbestos Trust to have access to the books and records of the Debtor that pertain to Asbestos Claims that have been asserted against the Debtor.

10.2.2 *Transfer of Certain Insurance Rights.* The Reorganized Debtor will transfer the Property Damage Insurance Policies to the Asbestos Trust on the Effective Date.

10.2.3 *Obligation to Transfer Debtor's Assets to Asbestos Trust*

10.2.3.1 On or after the Initial Distribution Date, the Reorganized Debtor shall be obligated to pay to the Asbestos Trust, the Asbestos Trust's Pro Rata Share of the Distribution Value, less the amount of the Qualified Settlement Fund as of the last day of the month in which the Effective Date occurs. In addition, the Reorganized Debtor shall be obligated to pay or transfer to the Asbestos Trust its Pro Rata Share of (i) any cash proceeds realized from the Porter-Retained Insurance Policies, and (ii) any cash proceeds or other recovery realized from the Tobacco Contribution Action.

In the event that the Reorganized Debtor determines, in its sole discretion, that any Porter-Retained Insurance Policy is of no value to the Reorganized Debtor, the Reorganized Debtor may elect not to receive the benefit of the Channeling Injunction to allow the holders of Allowed Asbestos Personal Injury Claims to sue Porter solely for the purpose of recovery from a Porter-Retained Insurance Policy, provided that any recovery against Porter shall be limited to a recovery from the proceeds of the subject policy.

10.2.3.2 Notwithstanding 10.2.3.1, the Debtor shall not be obligated to make payments to the Asbestos Trust required under 10.2.3.1 if such payment for a period of five years from the Effective Date will either (i) leave the Debtor with less than a net worth of Five Million (\$5,000,000.00) Dollars or (ii) if the Debtor lacks sufficient cash to make such payments.

10.2.3.3 All payments by the Reorganized Debtor to the Asbestos Trust are made to resolve or satisfy contested and uncontested claims that have resulted from the exposure to or presence of asbestos products produced and sold by the Debtor. Therefore, all such payments will be deductible by the Reorganized Debtor and are excludable from the gross income of the Asbestos Trust. No payment by the Reorganized Debtor to the Asbestos Trust is a dividend unless the Board of Directors of the Reorganized Debtor passes a resolution specifically declaring such a dividend.

10.2.4 *Transfer of Porter Common Stock.* On the Effective Date, all authorized shares of the New Porter Common Stock shall be issued to the Asbestos Trust.

**10.3 Assumption of Certain Liabilities by the Asbestos Trust.** In consideration for the property to be transferred to the Asbestos Trust pursuant to section 10.1 hereof and in furtherance of the purposes of the Asbestos Trust and the Plan, the Asbestos Trust shall assume liability pursuant to the Plan for all Asbestos Claims, and the Reorganized Debtor shall have no further liability therefor.

**10.4 Authority of the Debtor.** On the Confirmation Date, the Debtor shall be empowered and authorized to take or cause to be taken, prior to the Effective Date, all actions necessary to enable it to implement effectively the provisions of the Plan and the Asbestos Trust Agreement.

## ARTICLE 11

### MISCELLANEOUS PROVISIONS

**11.1 Payment of Statutory Fees.** All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the District Court at the hearing on confirmation of the Plan, shall be paid by the Debtor on or before the Effective Date.

**11.2 Discharge of the Debtor.** The rights afforded in the Plan and the treatment of all Claims and Equity Interests herein shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued thereon from and after the Petition Date, against the Debtor and the Debtor in Possession, or any of their estates, assets, properties, or interests in property. Except as otherwise provided herein, on the Effective Date, all Claims against and Equity Interests in the Debtor and the Debtor in Possession shall be satisfied, discharged, and released in full. The Reorganized Debtor shall not be responsible for any obligations of the Debtor or the Debtor in Possession except those expressly assumed by the Reorganized Debtor in the Plan. All Entities shall be precluded and forever barred from asserting against the Debtor, the Reorganized Debtor, their respective successors or assigns, or their assets, properties, or interests in property any other or further Claims based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not the facts of or legal bases therefor were known or existed prior to the Effective Date.

**11.3 Rights of Action.** Any rights, claims, or causes of action accruing to the Debtor or Debtor in Possession pursuant to the Bankruptcy Code or pursuant to any statute or legal theory, including, without express or implied limitation, any avoidance or recovery actions under sections 544, 545, 547, 549, 550, 551, and 553 of the Bankruptcy Code and any rights to, claims, or causes of action for recovery under any policies of insurance issued to or on behalf of any of the Debtor or Debtor in Possession (other than the Property Damage Insurance Policies) shall remain assets of the Debtor's estate and, on the Effective Date, shall be deemed transferred to the Reorganized Debtor. The Reorganized Debtor may pursue, litigate, and compromise and settle or assign any such rights, claims, or causes of action, as appropriate, in accordance with what is in the best interests of and for the benefit of the Reorganized Debtor or the Asbestos Trust.

**11.4 Futures Representatives and the Committee of Unsecured Creditors and their Professionals.** The existence of the Futures Representatives and the Committee of Unsecured Creditors and their professionals, the rights of the Futures Representatives and the Committee of Unsecured Creditors to ongoing reimbursement of expenses and the right of their professionals to ongoing compensation and reimbursement of expenses shall continue after the Effective Date only for the limited purposes set forth in the Trust Agreement and annexes thereto, and shall otherwise terminate on the Effective Date.

**11.5 Retirees' Committee and its Professionals.** The existence of the Retirees' Committee and its professionals, the right of the Retirees' Committee members to ongoing

reimbursement of expenses and the right of its professionals to ongoing compensation and reimbursement of expenses shall continue after the Effective Date only for the limited purposes set forth in the Retiree Settlement, and shall otherwise terminate on the Effective Date.

**11.6 Dismissal of Declaratory Judgment Action and Test Objections.** The treatment of Class 5 Claims provided for by this Plan constitutes a complete and final settlement and compromise of the Declaratory Judgment Action and the Test Objections, and therefore, on the Effective Date, the Declaratory Judgment Action and the Test Objections shall be deemed dismissed as moot.

**11.7 Substantial Contribution.** The Debtor had filed Test Objections to the allowance of claims of Josephine Crawford and Anthony Tamburrino, one of whom manifested an asbestos disease after the Petition Date and who filed a timely proof of claim and one of whom manifested an asbestos disease after the Petition Date and filed an untimely proof of claim. This Plan settles these objections. Since the litigation and resolution of such issues played a substantial role in the formulation of this Fourth Amended Plan of Reorganization, the fees and expenses of the attorneys representing these two particular Claimants in the objection process shall, upon appropriate application and subject to Bankruptcy Court approval, be paid by the Reorganized Debtor by virtue of the fact that counsel for holders of those Claims will have made a "substantial contribution" in the Case within the meaning of 11 U.S.C. §503(b)(3)(D), and in conformance with that certain order of Bankruptcy Court dated January 24, 1994 at Motion No. SCBS-82.

**11.8 Exculpation.** None of the Debtor, the Reorganized Debtor, the Committee of Unsecured Creditors, the Futures Representatives, the Retiree Committee, or any of their officers, directors, employees, members, professionals, or agents shall have or incur any liability to any Entity for any act or omission in connection with or arising out of the Chapter 11 case, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for gross negligence or willful misconduct, and in all respects shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**11.9 Release and Indemnification Re: Pre-Confirmation Matters.** The Confirmation Order shall, on the Effective Date, act as a full and complete release and discharge by the Debtor and its Estate, and by any and all third parties including, without limitation, Creditors, the Debtor's Stockholder, and any other party in interest, of the Futures Representatives, the members of the Committee of Unsecured Creditors or the Retirees' Committee, and all professionals whose engagement was approved by the Bankruptcy Court during the Case, from any further obligation and from any and all manner of action and actions, causes of action, claims, obligations, suits, debts, sums of money, accounts, reckonings, covenants, contracts, controversies, agreements, promises, damages, judgments and demands whatsoever, whether in law or in equity, which the Debtor, its estate or any such third parties had, may in the future have, or now has, whether known or unknown, contingent or absolute arising from any actions taken or not taken in such capacity, including any merely negligent action or inaction, in connection with the Case, except for willful misconduct or gross negligence. Notwithstanding

this release, and in addition thereto, the beneficiaries hereof shall be defended, indemnified, and held harmless by the Reorganized Debtor if such beneficiary was or is a party or is threatened to be made a party to any pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such beneficiary is or was one of the Futures Representatives, a member of the Creditors' Committee, or a member of the Retirees' Committee, or a professional engaged by any of them or by the Debtor during the Case, against all costs and expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such beneficiary in connection with such action, suit or proceeding or the defense or settlement thereof of any claim, issue or matter therein, to the fullest extent.

**11.10 General Indemnification.** The Reorganized Debtor shall indemnify and hold harmless any Entity who was or is a party or is threatened to be made a party to any pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such Entity is or was the Trustee, a member of the Committee of Unsecured Creditors, one of the Futures Representatives or an agent (professional or otherwise) of the Trustee, the TAC (as defined in the Asbestos Trust Agreement), or after the Confirmation Date, the Debtor, against all costs, expenses, judgments, fines and amounts paid in settlement actually and reasonable incurred by such Entity in connection with such action, suit or proceeding or the defense or settlement thereof of any claim, issue or matter therein, to the fullest extent except to the extent attributable to willful misconduct or gross negligence. Costs or expenses incurred by any such Entity in defending any such action, suit or proceeding may be paid by the Reorganized Debtor in advance of the institution or final



disposition of such action, suit or proceeding, if authorized by the Trustee and the TAC (as defined in Asbestos Trust Agreement). The Trustee may in his discretion purchase and maintain insurance on behalf of any Entity who is or was a beneficiary of this provision.

**11.11 Title to Assets; Discharge of Liabilities.** Except as otherwise provided in the Plan, on the Effective Date title to all assets and properties and interests in property dealt with by the Plan shall vest in the Reorganized Debtor free and clear of all Claims and Equity Interests, and the Confirmation Order shall be a judicial determination of discharge of the liabilities of the Debtor, except as provided in the Plan.

**11.12 Headings.** The headings used in the Plan are inserted for convenience only and neither constitute a portion of the Plan nor in any manner affect the construction of the provisions of the Plan.

**11.13 Adjudication of Claim.** The Liquidated Claim recognized by the Asbestos Trust with Respect to any Asbestos Claim shall constitute and be considered an adjudication of that Asbestos Claim.

**11.14 Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of the Commonwealth of Pennsylvania, without giving effect to the conflicts of laws principles thereof, shall govern the construction of the Plan and any agreements, documents, and instruments executed in connection

with the Plan, except as otherwise expressly provided in such instruments, agreements or documents.

Dated: Pittsburgh, PA  
April 29, 1998

Respectfully submitted,

THE COMMITTEE OF UNSECURED CREDITORS  
OF H.K. PORTER COMPANY, INC.

By: Philip E. Milch  
Douglas A. Campbell, Esquire  
PA I.D. No. 23143  
Philip E. Milch, Esquire  
PA I.D. No. 53519  
Campbell & Levine, LLC  
1700 Grant Building  
Pittsburgh, PA 15219  
(412) 261-0310

Counsel to the Committee of Unsecured Creditors

# Exhibit 1.1.6

**CERTIFICATE OF AMENDED AND RESTATED ARTICLES OF  
INCORPORATION OF H.K. PORTER COMPANY, INC.**

The undersigned, Kenneth B. McCarthy, Chairman of the Board and President, and Janet M. McQuillan, Secretary of H.K. Porter Company, Inc. (the "Corporation"), do hereby certify that the Articles of Incorporation of the Corporation were amended and restated pursuant to its confirmed Chapter 11 Plan of Reorganization ("Plan") and the General Corporation Law of the State of Delaware to read as follows:<sup>1</sup>

**FIRST:** The name of the Corporation is H.K. Porter Company, Inc.

**SECOND:** The address of the Corporation's registered office in the State of Delaware is 1013 Centre Road, Wilmington, Delaware 19805, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which Corporation may be organized under the General Corporation Law of Delaware.

**FOURTH:** Authorized Stock

- (a) All shares of the Corporation that are authorized for issuance immediately prior to the filing of these Amended Articles are hereby canceled. Once these Amended and Restated Articles of Incorporation ("Amended Articles") become effective, the number of shares that the Corporation is authorized to have outstanding is 1000 shares of common stock with a par value of \$0.01 ("New Porter Common Stock").
- (b) Pursuant to §1123(a)(6) of the Bankruptcy Code, the Corporation shall not issue non-voting equity securities, subject, however, to further amendment of these Amended Articles to the extent permitted by applicable law.

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<sup>1</sup> The Plan of Reorganization of the Corporation was confirmed by the United States District Court of the Western District of Pennsylvania and the United States Bankruptcy Court for the Western District of Pennsylvania on \_\_\_\_\_, 1998 at Case No. 91-468.

**FIFTH: Restriction on Transfer of Stock**

The shares of stock of the Corporation are subject to the following restrictions:

During the twenty-five (25) month period after the Effective Date, any attempted sale, purchase, transfer, assignment, conveyance, pledge or other disposition (collectively referred to as, "Transfer") of any share or shares of New Porter Common Stock shall be void *ab initio* and shall not be effective to Transfer any of such shares. Any Transfer at any time by a transferor who directly or indirectly owns (or is treated as owning within meaning of the attribution rules under section 382 of the Internal Revenue Code) five percent (5%) or more of the outstanding shares of any class of New Porter Common Stock shall be void *ab initio* and shall not be effective to Transfer any of such shares to the purported Transferee. Similarly, any attempt to Transfer at any time New Porter Common Stock to a holder of an Asbestos Claim<sup>2</sup> shall be void *ab initio* and shall not be effective to Transfer any of such shares to the purported Transferee.

**(i) Recovery of Prohibited Transfers**

If the Board of Directors of the Corporation determines that a Transfer of New Porter Common Stock constitutes a Transfer prohibited by the foregoing rules ("Prohibited Transfer") then, upon written demand by the Corporation, the purported Transferee shall transfer or cause to be transferred any certificate or other evidence of ownership of New Porter Common Stock that are the subject of the Prohibited Transfer ("Prohibited Securities"), together with any dividends or other distributions that were received by the Transferee from the Corporation with respect to such Prohibited Securities ("Prohibited Distributions"), to an agent designated by the Board of Directors (the "Agent"). The Agent shall thereupon sell, but not before 25 months after the Effective Date, to an appropriate buyer or buyers the Prohibited Securities transferred to it. If the purported Transferee has resold the Prohibited Securities before receiving the Corporation's demand to surrender the Prohibited Securities to the Agent, the purported Transferee shall be deemed to have sold the Prohibited Securities for the Agent and shall be required to

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<sup>2</sup> The term "Asbestos Claim" shall have the same meaning as set forth in the Plan and includes, by way of illustration and not by limitation, any present or future right, claim, remedy or liability, whether or not such present or future right, claim, remedy or liability is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured that is or was caused or allegedly caused, directly or indirectly, by the exposure to or presence of asbestos or asbestos containing products manufactured, sold, supplied, produced, or distributed by the H.K. Porter Co., Inc. or its predecessors or affiliates.

transfer to the Agent any Prohibited Distributions and the proceeds of such sale. If the purported Transferee fails to surrender the Prohibited Securities, or the proceeds of a sale thereof, and any Prohibited Distributions to the Agent within thirty (30) business days from the date on which the Corporation makes a demand for such surrender, then the Corporation shall institute legal proceedings to compel surrender.

**(ii) Treatment of Prohibited Transfers**

No employee or agent of the Corporation shall record any Prohibited Transfer, and the purported Transferee shall not be recognized as a shareholder of the Corporation for any purpose whatsoever in respect of the Prohibited Securities. Until the Prohibited Securities are acquired by another person in a Transfer that is not a Prohibited Transfer, the purported Transferee shall not be entitled with respect to such Prohibited Securities to any rights of a shareholder of the Corporation, including, without limitation, the right to vote such Prohibited Securities and to receive dividend distributions, whether liquidating or otherwise, in respect thereof, if any. Once the Prohibited Securities have been acquired in a Transfer that is not a Prohibited Transfer, the New Porter Common Stock shall cease to be Prohibited Securities.

**(iii) Proceeds of Sale of Prohibited Securities**

The Agent shall apply any proceeds of a sale by it of Prohibited Securities and, if the purported Transferee had previously resold the Prohibited Securities, any amounts received by it from a purported Transferee, as follows: (i) first, such amount shall be paid to the Agent to the extent necessary to cover its costs and expenses incurred in connection with its duties hereunder; (ii) second, any remaining amounts shall be paid to the purported Transferee, up to the amount paid by the purported Transferee for the Prohibited Securities, which amount shall be determined in the discretion of the Board of Directors; and (iii) third, any remaining amounts shall be paid to one or more organizations selected by the Board of Directors qualifying under section 501(c)(3) of the Internal Revenue Code.

**SIXTH: Legend on Certificates**

All certificates of New Porter Common Stock issued by the Corporation on or after the Effective Date shall bear a conspicuous legend in substantially the following form:

THE TRANSFER OF THE SECURITIES  
REPRESENTED HEREBY IS SUBJECT TO  
RESTRICTIONS PURSUANT TO THE AMENDED  
AND RESTATED ARTICLES OF INCORPORATION  
OF, H. K. PORTER COMPANY, INC., A COPY OF

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WHICH IS ON FILE WITH THE SECRETARY OF THE CORPORATION AND IS AVAILABLE UPON WRITTEN REQUEST.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE SOLD, OFFERED FOR SALE, OR OTHERWISE TRANSFERRED UNLESS REGISTERED OR QUALIFIED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAWS OR UNLESS THE CORPORATION RECEIVES AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH REGISTRATION OR QUALIFICATION IS NOT REQUIRED.

SEVENTH: These Amended and Restated Articles of Incorporation supersede and take the place of all prior Articles of Incorporation of the Corporation.

EIGHTH: The Amended Articles are to be effective upon filing.

IN WITNESS WHEREOF, the undersigned have executed this Certificate this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Kenneth McCarthy, Chairman of the Board and President

\_\_\_\_\_  
Janet McQuillan, Secretary

# Exhibit 1.1.14



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:

Case No. 91-468 (PGH) WWB

H.K. PORTER COMPANY, INC.,

Chapter 11

Debtor.

H.K. PORTER COMPANY, INC.

ASBESTOS TRUST AGREEMENT

Douglas A. Campbell, Esquire  
PA I.D. No. 23143  
Philip E. Milch, Esquire  
PA I.D. No. 53519  
Campbell & Levine, LLC  
1700 Grant Building  
Pittsburgh, PA 15219  
(412) 261-0310

H.K. PORTER COMPANY, INC.  
ASBESTOS TRUST AGREEMENT

This Asbestos Trust Agreement is between H.K. Porter Company, Inc., a Delaware corporation and debtor in possession ("Porter" "Debtor" or "Settlor"), and Mark E. Gleason, as Trustee ("Trustee"), pursuant to the Fourth Amended Creditors' Committee Plan of Reorganization for the H.K. Porter Company, Inc. (the "Plan").

WHEREAS, Porter has reorganized under the provisions of Chapter 11 of the Bankruptcy Code in the case pending in the United States Bankruptcy Court for the Western District of Pennsylvania known as In re H.K. Porter Company, Inc., Case No. 91-468 (PGH) ("Chapter 11 Case"); and

WHEREAS, at the time of the entry of the order for relief in the Chapter 11 Case, Porter was named as a defendant in personal injury, wrongful death, and property damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products; and

WHEREAS, the Plan has been confirmed by the District Court; and

WHEREAS, the Plan provides, *inter alia* for the creation of the H.K. Porter Company, Inc. Asbestos Settlement Trust ("Asbestos Trust"); and

WHEREAS, pursuant to the Plan, the Asbestos Trust is to be funded in whole or in part by the stock of Porter and its obligation to make future payments; and

WHEREAS, pursuant to the Plan, the Asbestos Trust is to own all of the voting shares of Porter; and

WHEREAS, pursuant to the Plan, the Asbestos Trust is to use its assets or income to pay Asbestos Claims and Demands as against the Debtor; and

WHEREAS, the Plan provides, among other things, for the complete settlement and satisfaction of all liabilities and obligations of the Debtor with respect to Asbestos Claims; and

WHEREAS, the Asbestos Trust is intended to qualify as a "Qualified Settlement Fund" within the meaning of Section 1.468B-1 of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code; and

WHEREAS, the Bankruptcy Court and the District Court have determined that the Asbestos Trust and the Plan satisfy all the prerequisites for a supplemental injunction pursuant to Section 524(g) of the Bankruptcy Code, which has been entered in connection with the Confirmation Order as the Asbestos Permanent Channeling Injunction;

NOW, THEREFORE, it is hereby agreed as follows:

## ARTICLE I

### DEFINITIONS

All capitalized terms used herein and not defined in another provision of this Asbestos Trust Agreement shall have the meanings assigned to them in the Plan and/or the Bankruptcy Code and/or the Asbestos Claims Resolution Procedures, which definitions are incorporated by reference herein.

## ARTICLE 2

### AGREEMENT OF TRUST

2.1 *Creation and Name.* The Settlor creates a trust known as the "H.K. Porter Company, Inc. Asbestos Trust", which is the Asbestos Trust provided for and referred to in the Plan. The Trustee of the Asbestos Trust may transact the business and affairs of the Asbestos Trust in the names, "H.K. Porter Asbestos Trust," and/or "Porter Asbestos Trust."

2.2 *Purpose.* The purpose of the Asbestos Trust is to assume liability pursuant to the Plan for all Asbestos Claims; to use the Asbestos Trust's assets and income to pay holders of valid Asbestos Claims in such a way that holders of similar Asbestos Claims are paid in substantially the same manner; and to otherwise comply in all respects with the requirements of a trust set forth in Section 524(g)(2)(B)(i) of the Bankruptcy Code. This purpose shall be fulfilled through the provisions of this Trust Agreement and the H.K. Porter Asbestos Claims Resolution Procedures attached hereto as Annex A ("Asbestos Claims Procedures").

2.3 *Transfer of Assets:* The Settlor is obligated to transfer and assign to the Asbestos Trust the property set forth in Article 10 of the Plan and acknowledges the obligation to pay set forth therein (herein the "Assets").

2.4 *Acceptance Of Assets and Assumption of Liabilities:*

(a) In furtherance of the purposes of the Asbestos Trust, the Trustee, on behalf of the Asbestos Trust, hereby expressly accepts the transfer and assignment to the Asbestos Trust of the Assets.

(b) In furtherance of the purposes of the Asbestos Trust and subject to Article 5.3, the Trustee, on behalf of the Asbestos Trust, expressly assumes liability pursuant to the Plan for all Asbestos Claims. Except as otherwise provided in the Asbestos Claims Procedures, the Asbestos Trust shall have all defenses, cross-claims, offsets, and recoupments regarding Asbestos Claims that Porter has or would have had under applicable law.

(c) Neither the Debtor nor its successors in interest or its affiliates shall be entitled to any indemnification from the Asbestos Trust for any expenses, costs, or fees, judgments, settlements, or other liabilities arising from or incurred in connection with, any action related to an Asbestos Claim. Nothing in this section or any other section of this Asbestos Trust Agreement shall be construed in any way to limit the scope, enforceability, or effectiveness of the Asbestos Permanent Channeling Injunction issued in connection with the Plan or the Asbestos Trust's assumption of all liability with respect to the Asbestos Claims.

ARTICLE 3

POWERS AND TRUST ADMINISTRATION

3.1 *Powers:*

(a) Subject to the limitations set forth in this Asbestos Trust Agreement and the Asbestos Claims Procedure, the Trustee shall have the power to take any and all actions that, in the judgment of the Trustee, are necessary or proper to fulfill the purposes of the Asbestos Trust, including, without limitation, each power expressly granted in this Article 3.1, any power reasonably incidental thereto, and any trust power now or hereafter permitted under the laws of the Commonwealth of Pennsylvania;

(b) Except as otherwise specified herein, the Trustee need not obtain the order or approval of any court in the exercise of any power or discretion conferred hereunder.

(c) Without limiting the generality of Article 3.1(a) above, the Trustee shall have the power to:

(i) receive and hold the Assets, vote the New Porter Common Stock and exercise all rights with respect thereto;

(ii) invest the monies held from time to time by the Asbestos Trust;

(iii) sell, transfer or exchange any or all of the Assets at such prices and upon such terms as he may consider proper, consistent with the other terms of this Asbestos Trust Agreement;

(iv) pay liabilities and expenses of the Asbestos Trust;

(v) change the state of domicile of the Asbestos Trust;

(vi) establish such funds, reserves and accounts within the Asbestos Trust estate, as deemed by the Trustee to be useful in carrying out the purposes of the Asbestos Trust;

(vii) sue and be sued and participate, as a party or otherwise, in any judicial, administrative, arbitative or other proceeding;

(viii) appoint such officers and hire such employees and engage such legal, financial, accounting, investment and other advisors, alternative dispute resolution panelists and agents as the business of the Asbestos Trust requires, and to delegate to such persons such powers and authorities as the fiduciary duties of the Trustee permit and as the Trustee, in his discretion, deems advisable or necessary in order to carry out the terms of this Asbestos Trust;

(ix) pay employees, legal, financial, accounting, investment and other advisors and agents reasonable compensation;

(x) reimburse himself, subject to Article 5.4, and reimburse such officers, employees, legal, financial, accounting, investment and other advisors and agents all reasonable out-of-pocket costs and expenses incurred by such persons in connection with the performance of their duties hereunder;

(xi) execute and deliver such deeds, leases and other instruments as he considers proper in administering the Asbestos Trust;

(xii) enter into such other arrangements with third parties as are deemed by the Trustee to be useful in carrying out the purposes of the

Asbestos Trust, provided such arrangements do not conflict with any other provision of this Asbestos Trust Agreement;

(xiii) in accordance with Article 5.5, indemnify (and purchase insurance indemnifying himself and members of the TAC (as defined in Article 6) and officers, employees, agents, advisers and representatives of the Asbestos Trust or the TAC to the fullest extent that a corporation or trust organized under the law of the Asbestos Trust's domicile is from time to time entitled to indemnify and/or insure its directors, trustees, officers, employees, agents, advisers and representatives;

(xiv) indemnify (and purchase insurance indemnifying) the Additional Indemnities as defined in Article 5.5 hereof;

(xv) delegate any or all of the authority herein conferred with respect to the investment of all or any portion of the Assets to any one or more reputable individuals or recognized institutional investment advisers or investment managers without liability for any action taken or omission made because of any such delegation, except as provided in Article 5.3;

(xvi) consult with the Reorganized Debtor at such times and with respect to such issues relating to the conduct of the Asbestos Trust as the Trustee considers desirable;

(xvii) make, pursue (by litigation or otherwise), collect, compromise or settle any claim, right, action or cause of action; and

(xviii) merge or contract with other trusts or claims resolution facilities that are not specifically created by this Trust Agreement or the Asbestos Claims Procedures, subject to Article 3.2(d) of this Agreement; provided that such merger or contract shall not (a) alter the Asbestos Claims Procedures; (b) subject the Reorganized Debtor or any successor in interest to any risk of having any Asbestos Claim asserted against it or them; or (c) otherwise jeopardize the validity or enforceability of the Asbestos Permanent Channeling Injunction;

(d) The Trustee shall not have the power to guaranty the debt of any Entity other than Porter.

### 3.2 *General Administration:*

(a) The Trustee shall timely file such income tax and other returns and statements and comply with all withholding obligations, as required under the

applicable provisions of the Internal Revenue Code and of any state law and the regulations promulgated thereunder;

(b) (i) The Trustee shall cause to be prepared and filed with the Bankruptcy Court, as soon as available, and in any event within ninety (90) days following the end of each fiscal year, an annual report containing financial statements of the Asbestos Trust (including, without limitation, balance sheet of the Asbestos Trust and Porter as of the end of such fiscal year and statements of operations for such fiscal year) audited by a firm of independent certified public accountants selected by the Trustee and accompanied by an opinion of such firm as to the fairness of the financial statements' presentation of the cash and investments available for the payment of claims and as to the conformity of the financial statements with generally accepted accounting principles. The Trustee shall provide a copy of such report to the TAC and to Porter.

(ii) Simultaneously with delivery of each set of financial statements referred to in Article 3.2(b)(i) above, the Trustee shall cause to be prepared and filed with the Bankruptcy Court a report containing a summary regarding the number and type of claims disposed of during the period covered by the financial statements;

(iii) All materials required to be filed with the Bankruptcy Court by this Article 3.2 shall be available for inspection by the public in accordance with procedures established by the Bankruptcy Court;

(c) The Trustee shall cause to be prepared and submitted to the TAC as soon as practicable prior to the commencement of each fiscal year a budget and cash flow projections for the Asbestos Trust and Porter covering such fiscal year and the succeeding two fiscal years;

(d) The appointment of a successor Trustee shall be approved by the TAC and the Trustee shall consult with the TAC and be subject to Article 3.2 of the Asbestos Claims Procedure on the implementation and administration of the Asbestos Claims Procedures. The Trustee shall be required to obtain the consent of a majority of the members of the TAC in order:

(i) to amend materially the Asbestos Claims Procedures;

(ii) to merge or participate with any trust or claims resolution facility that was not specifically created under this Trust Agreement or the Asbestos Claims Procedures;

(iii) to amend any provision of Article 6 herein; or

(iv) to terminate the Asbestos Trust pursuant to Article 7.2(a)(iii) herein.

(e) The Committee of Unsecured Creditors by majority vote shall provide to the Trustee Expedited Payment Election guidelines for establishing exposure and liability criteria for payment of Asbestos Personal Injuries Claims, and the Trustee shall follow such guidelines.

(f) The Trustee shall consult with the Co-Defendant Representative on the appointment of a successor trustee and on the implementation and administration of the Asbestos Claims Procedures as they impact Asbestos Co-Defendant Claims. The Trustee shall obtain the written consent of the Co-Defendant Representative to materially amend the Asbestos Claims Procedures affecting Asbestos Co-Defendant Claims.

(g) The Trustee shall consult with the Property Damage Futures Representative on the appointment of a successor trustee and on the implementation and administration of the Asbestos Claims Procedures as they impact Property Damage claims. The Trustee shall obtain the written consent of the Property Damage Futures Representative to materially amend the Asbestos Claims Procedure affecting Property Damage Claims.

### 3.3 *Claims Administration:*

(a) General Principles.

The Trustee shall proceed diligently to implement the Asbestos Claims Procedures. The Asbestos Trust shall pay or otherwise treat holders of valid Asbestos Claims in accordance with the provisions hereof as promptly as feasible. In his administration of the Asbestos Claims Procedures, the Trustee shall favor settlement over arbitration, arbitration over resort to the tort system, and fair and efficient resolution of claims in all cases, while endeavoring to preserve and enhance the Asbestos Trust estate.

(b) Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims.

(i) The Trustee shall employ mechanisms such as the review of records and estimates of the numbers and values of Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims, or other comparable mechanisms, that provide reasonable assurance the Asbestos Trust will value, and be in a financial position to pay, similar present Asbestos Personal Injury Claims and



Asbestos Co-Defendant Claims and future asbestos personal injury Demands in substantially the same manner.

(ii) The Trustee shall administer the processing and payment of Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims in accordance with the Asbestos Claims Procedures, a copy of which is annexed hereto as Annex A, as the same may be amended from time to time, in accordance with the provisions hereof and thereof.

(c) Asbestos Property Damage Claims.

(i) The Trustee shall employ mechanisms such as the review of records and estimates of the numbers and values of Asbestos Property Damage Claims, or other comparable mechanisms, that provide reasonable assurance the Asbestos Trust will value, and be in a financial position to pay, similar present Asbestos Property Damage Claims and future Asbestos Property Damage Demands in substantially the same manner.

(ii) The Trustee shall administer the processing and payment of Asbestos Property Damage Claims in accordance with the Asbestos Claims Procedures, a copy of which is annexed hereto as Annex A, as the same may be amended from time to time, in accordance with the provisions hereof and thereof.

3.4 *Asbestos Trust Beneficiaries:* The beneficiaries of this Asbestos Trust have no right or ability to influence or control the management or operation of the Asbestos Trust, including but not limited to, the right to participate in decisions relating to the investment or distribution of assets held in the Asbestos Trust.

## ARTICLE 4

### ACCOUNTS, INVESTMENTS, AND PAYMENTS

4.1 *Accounts:* The Trustee may, from time to time, create such accounts and reserves within the Asbestos Trust estate as he may deem necessary, prudent or useful in order to provide for the payment of expenses and valid Asbestos Claims and may, with respect to any such account or reserve, restrict the use of monies therein.

4.2 *Investments:* Investment of monies held in the Asbestos Trust shall be administered in the manner in which individuals of ordinary prudence, discretion and

judgment would act in the management of their own affairs, subject to the following limitations and provisions:

(a) The Asbestos Trust may acquire and hold any stock or securities issued by the Reorganized Debtor, without regard to any of the limitations set forth in the other parts of this Article 4.

(b) Except with respect to entities owned and controlled by the Asbestos Trust, the Asbestos Trust shall not acquire or hold any equity in any Entity unless such equity is in the form of securities that are traded on a national securities exchange or major international securities exchange or over the National Association of Securities Dealers Automated Quotation System.

4.3 *Source of Payments:* All Asbestos Trust expenses, payments and all liabilities with respect to Asbestos Claims shall be payable solely out of the Asbestos Trust estate. Neither Porter or the present or future directors, officers, employees or agents of Porter, nor the Trustee, the TAC, or any of their officers, agents, advisers or employees shall be liable for the payment of any Asbestos Trust expense or Asbestos Claim or any other liability of the Asbestos Trust. Under no circumstances may liabilities with respect to Asbestos Claims be paid with distributions from the Asbestos Trust in the form of stock of the Reorganized Debtor.

## ARTICLE 5

### TRUSTEE

5.1 *Number:* There shall be one (1) Trustee, Mark E. Gleason, CPA (the "Trustee").

(a) The Trustee shall serve until the earlier of (i) the termination of the Asbestos Trust pursuant to Article 7.2 below, (ii) his death, (iii) his resignation pursuant to Article 5.1(b) below, or (iv) his removal pursuant to Article 5.1(c) below, at which time his term shall terminate automatically.

(b) The Trustee may resign at any time by written notice to the TAC. Such notice shall specify a date when such resignation shall take effect, which shall not be less than 90 days after the date such notice is given, where practicable.

(c) The Trustee may be removed for good cause. Such removal shall require a majority vote of the TAC. Under no circumstances may the Trustee be removed by vote of the Asbestos Trust beneficiaries.

5.2 *Appointment of Successor Trustee:*

(a) In the event of a vacancy in the position of Trustee, the vacancy shall be filled by a majority vote of the TAC.

(b) Immediately upon the appointment of any successor Trustee, all rights, titles, duties, powers and authority of the predecessor Trustee hereunder shall be vested in, and undertaken by, the successor Trustee without any further act. No successor Trustee shall be liable personally for any act or omission of his predecessor Trustee.

5.3 *Liability of Trustee:* No Trustee, officer, or employee of the Asbestos Trust shall be liable to the Asbestos Trust, to any person holding an Asbestos Claim, or to any other Entity except for such Trustee's, officer's or employee's own breach of trust committed in bad faith or for willful misappropriation. No Trustee, officer, or employee of the Asbestos Trust shall be liable for any act or omission of any other officer, agent, or employee of the Asbestos Trust, unless the Trustee acted with bad faith, gross negligence or willful misconduct in the selection or retention of such officer, agent, or employee.

5.4 *Compensation and Expenses of Trustee.*

(a) The Trustee shall receive compensation from the Asbestos Trust for his services as Trustee on an hourly basis at the rate of \$150 per hour, or some other amount as determined by the TAC, payable as determined by the TAC. Any dispute over the compensation of the Trustee shall be subject to the jurisdiction of the Bankruptcy Court.

(b) The Asbestos Trust will promptly reimburse the Trustee for all reasonable and properly documented out-of-pocket costs and expenses incurred by the Trustee in connection with the performance of his duties hereunder.

5.5 *Indemnification of Trustee and Others.*

(a) The Asbestos Trust shall indemnify and defend the Trustee, the Asbestos Trust's officers, agents, advisers or employees, to the fullest extent that a corporation or trust organized under the laws of the Asbestos Trust's domicile is from time to time entitled to indemnify and defend its directors, trustees, officers, employees, agents or advisers against any and all liabilities, expenses, claims, damages or losses incurred by him in the performance of his duties hereunder. Notwithstanding the foregoing, the Trustee shall not be indemnified or defended in

any way for any liability, expense, claim, damage or loss for which he is liable under Article 5.3. Additionally, each member of the Committee of Unsecured Creditors and their professionals, the Future Representatives and their professionals, the Debtor's professionals and each member of the TAC (collectively, "Additional Indemnities") who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding of any kind, whether civil, administrative or arbitative, by reason of any act or omission of such Additional Indemnities with respect to (i) the Chapter 11 Case, (ii) the liquidation of any Asbestos Claims, or (iii) the administration of the Asbestos Trust and the implementation of the Claims Resolution Procedures, shall be indemnified and defended by the Asbestos Trust against expenses, costs and fees, judgments, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by each Additional Indemnitee in connection with or resulting from such action, suit, or proceeding, if he or she acted in good faith and in a manner such Additional Indemnitee reasonably believed to be in, or not opposed to, the best interests of the holders of Asbestos Claims.

(b) Reasonable expenses, costs and fees incurred by or on behalf of the Trustee or an Additional Indemnitee in connection with any action, suit, or proceeding, whether civil, administrative or arbitative from which they are indemnified by the Asbestos Trust pursuant to this Article 5.5, may be paid by the Asbestos Trust in advance of the final disposition thereof upon receipt of an undertaking by or on behalf of such Trustee or Additional Indemnitee to repay such amount unless it shall be determined ultimately that such Trustee or Additional Indemnitee is entitled to be indemnified by the Asbestos Trust.

(c) The Trustee shall have the power, generally or in specific cases, to cause the Asbestos Trust to indemnify the employees and agents of the Asbestos Trust to the same extent as provided in this Article 5.5 with respect to the Trustee.

(d) The Trustee may purchase and maintain reasonable amounts and types of insurance on behalf of an individual who is or was a Trustee, officer, employee, agent or representative of the Asbestos Trust or Additional Indemnitee against liability asserted against or incurred by such individual in that capacity or arising from his status as a Trustee, officer, employee, agent or representative.

5.6 *Trustee's Lien.* The Trustee and the Additional Indemnities shall have a prior lien upon the Asbestos Trust corpus to secure the payment of any amounts payable to them pursuant to Articles 5.4, 5.5, or 5.6.

5.7 *Trustee's Employment of Experts:* The Trustee may, but shall not be required to, consult with counsel, accountants, appraisers and other parties deemed by the Trustee to be qualified as experts on the matters submitted to them (regardless of whether any such

party is affiliated with the Trustee or the TAC in any manner, except as otherwise expressly provided in this Asbestos Trust Agreement), and the opinion of any such parties on any matters submitted to them by the Trustee shall be full and complete authorization and protection in respect of any action taken or not taken by the Trustee hereunder in good faith and in accordance with the written opinion of any such party.

5.8 *Trustee's Independence:* The Trustee shall not have acted as an advisor for any person who holds an Asbestos Claim. Further, during the term of his service, the Trustee shall not act as an advisor for any person who holds an Asbestos Claim.

5.9 *Trustee's Service as Director of Reorganized Debtor:* The Trustee may serve as director of the Reorganized Debtor.

5.10 *Bond:* The Trustee shall be required to post a bond of Fifteen Million (\$15,000,000) Dollars unless otherwise ordered by the Bankruptcy Court.

## ARTICLE 6

### TRUSTEE'S ADVISORY COMMITTEE

6.1 *Formation Duties:* A Trustee's Advisory Committee (the "TAC") shall be formed as of the Effective Date. The appointment of a successor Trustee shall be approved by the TAC and the Trustee shall consult with the TAC and be subject to Article 3.2 of the Asbestos Claims Procedures on and the implementation and administration of the Asbestos Claims Procedures. The Trustee shall consult with the TAC on any matter materially affecting the Asbestos Trust, and certain actions by the Trustee are subject to the prior consent of the TAC as provided in Article 3.2(d) hereof. The Trustee is subject to and bound by the Asbestos Claims Procedures guidelines to be established by the Committee of Unsecured Creditors and is bound by the decision of the Committee of Unsecured Creditors as provided in Article 3.2(e) hereof and as provided in Article 3.2 of the Asbestos Claims Procedures. The TAC shall endeavor to act in the best interests of the holders of all Asbestos Claims.

6.2 *Number: Chairperson*

(a) There shall be three members of the TAC. The initial TAC members shall be Philip Pahagian, Brent Rosenthal and Perry Weitz. The TAC shall act in all cases by majority vote.

(b) There shall be a Chairperson of the TAC. The Chairperson shall be Philip Pahagian. The Chairperson shall act as the TAC's liaison, he shall coordinate and schedule meetings of the TAC, and he shall handle all administrative matters that come before the TAC.

6.3 *Term of Office:*

(a) Each member of the TAC shall serve for the duration of the Asbestos Trust, subject to the earlier of his or her death, resignation, or removal.

(b) Subject to Article 6.4(b) hereof, any member of the TAC may resign at any time by written notice to each of the remaining members specifying the date when such resignation shall take place.

(c) Any member of the TAC may be removed in the event such member becomes unable to discharge his duties hereunder due to accident, physical deterioration, mental incompetence, or a consistent pattern of neglect and failure to perform or to participate in performing the duties of such member hereunder, such as repeated nonattendance at scheduled meetings. Such removal shall be made by the unanimous decision of the other members of the TAC, and it shall be effective at such time as all other members of the TAC determine.

6.4 *Appointment of Successor:*

(a) A vacancy in the TAC caused by the resignation of a TAC member shall be filled with an individual nominated by the resigning TAC member and approved by the unanimous vote of all TAC members. The resigning TAC member's resignation shall not be effective until such approval is obtained and the successor TAC member has accepted the appointment.

(b) In the event of a vacancy in the membership of the TAC other than one caused by resignation, the vacancy shall be filled by the unanimous vote of the remaining member(s) of the TAC.

6.5 *Compensation and Expenses of TAC Members:*

(a) Each member of the TAC shall receive compensation from the Asbestos Trust for his services in the amount of \$2,500 per diem for meetings attended by such member, payable as determined by the Trustee but not less frequently than quarterly. For purposes of determining the per diem amount hereunder, the Trustee shall determine the scope and duration of activities that constitute a meeting.

(b) All reasonable and properly documented out-of-pocket costs and expenses incurred by TAC members in connection with the performance of their duties hereunder will be promptly reimbursed to such members by the Asbestos Trust. The per annum compensation payable to each member of the TAC may only be increased annually by the Trustee proportionately with an increase in the Consumer Price Index--all cities (or any successor index) for the corresponding annual period. Any increase in excess of that amount may be made only with the approval of the Bankruptcy Court.

#### 6.6 *TAC Meetings:*

(a) Regular meetings of the TAC may be held at such time and place as shall from time to time be determined by the TAC, provided that the TAC shall meet as often as is necessary to respond promptly to matters referred to it for consultation or consent by the Trustee. After a schedule for regular meetings has been determined, and a notice thereof has been once given to each TAC member, regular meetings may be held without further notice being given.

(b) Special meetings of the TAC shall be held whenever called by one or more of the TAC members. Notice of each such meeting shall be delivered by overnight courier to each TAC member, addressed to him at his residence or usual place of business, at least three days before the date on which the meeting is to be held, or shall be sent to him at such place by personal delivery or by telephone or telecopy, not later than two (2) days before the day on which such meeting is to be held. Such notice shall state the place, date and hour of the meeting and the purposes for which it is called. In lieu of the notice to be given as set forth above, a waiver thereof in writing, signed by the TAC members entitled to receive such notice, whether before or after the meeting, shall be deemed equivalent thereto for purposes of this Section. No notice to or waiver by any TAC member with respect to any special meeting shall be required if such TAC member shall be present at such meeting.

(c) Any action required or permitted to be taken at any meeting of the TAC may be taken without a meeting if all members of the TAC consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the TAC.

The TAC may take any action required or permitted to be taken at any meeting by means of conference telephone or similar communication equipment provided that all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this paragraph shall constitute presence in person at such meeting.

## ARTICLE 7

### GENERAL PROVISIONS

7.1 *Irrevocability*: The Asbestos Trust is irrevocable, but is subject to amendment as provided in Article 7.3.

7.2 *Termination*:

(a) The Asbestos Trust shall automatically terminate on the date (the "Termination Date") 90 days after the first occurrence of any of the following events:

(i) subject to the consent of the TAC, the Trustee in his sole discretion decides to terminate the Asbestos Trust because (A) he deems it unlikely that new Asbestos Claims will be filed against the Asbestos Trust and (B) all Asbestos Claims duly filed with the Asbestos Trust have been liquidated and satisfied and twelve consecutive months have elapsed during which no new Asbestos Claims have been filed with the Asbestos Trust;

(ii) subject to the consent of the TAC, if the Trustee has procured and has in place irrevocable insurance policies and has established claims handling agreements and other necessary arrangements with suitable third parties adequate to discharge all expected remaining obligations and expenses of the Asbestos Trust in a manner consistent with this Asbestos Trust Agreement and the Asbestos Claims Procedures, the date on which the Bankruptcy Court enters an order approving such insurance and other arrangements and such order becomes final;

(iii) if in the judgment of the Trustee, with the consent of the TAC, the continued administration of the Asbestos Trust is uneconomic or inimical to the best interests of the persons holding Asbestos Claims and the termination of the Asbestos Trust will not expose or subject the Reorganized Debtor, any successor in interest or any Protected Party under the Channeling Injunction to any increased or undue risk of having any Asbestos Claims asserted against it or them or in any way jeopardize the validity or enforceability of the Asbestos Permanent Channelling Injunction; or

(iv) 21 years less 91 days pass after the death of the last survivor of all the descendants of Joseph P. Kennedy, Sr. of Massachusetts living on the date hereof.



(b) On the Termination Date, after payment of all the Asbestos Trust's liabilities have been provided for, all monies remaining in the Asbestos Trust estate shall be transferred to charitable organization(s) exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, which tax-exempt organization(s) shall be selected by the Trustee and the TAC jointly using their reasonable discretion; provided, however, that (i) if practicable, the tax-exempt organization(s) shall be related to the treatment of, research, or the relief of suffering of individuals suffering from asbestos caused disorders, and (ii) the tax-exempt organization(s) shall not bear any relationship to the Reorganized Debtor within the meaning of Section 468(d)(3) of the Internal Revenue Code.

7.3 *Amendments:* The Trustee, after consultation with the TAC, and subject to the TAC's consent, may modify or amend this Trust Agreement or any document annexed to it, including, without limitation, the Asbestos Claims Procedures, except (A) may not modify 3.2 of the Asbestos Claims Procedures and (B) that Articles 2.2 (Purpose), 2.4 (Acceptance of Assets and Assumption of Liabilities), 3.1(d) (precluding guaranty of others' debt), 3.2(d) (Trustee' consultation with TAC), 3.3(a)-(d) (claims administration), 5.1 (Number of Trustee), 5.2 (Appointment of Successor Trustee), 5.5 (Indemnification of Trustee and Others), 5.8 (Trustee's Disinterestedness), 6.1 (TAC Formation and Duties), 5.5 (bond), 6.2 (TAC Number and Chairperson), 6.4 (Appointment of Successor (TAC)), 7.1 (Irrevocability), 7.2 (Termination) and 7.3 (Amendments) herein shall not be modified or amended in any respect. No consent from the Settlor shall be required to modify or amend this Asbestos Trust Agreement or any document annexed to it. Any modification or amendment made pursuant to this section must be done in writing on at least ten (10) days prior notice to each member of the TAC. Notwithstanding anything contained herein to the contrary, neither this Asbestos Trust Agreement nor the Asbestos Claims Procedures shall be modified or amended in any way that would jeopardize the efficacy or enforceability of the Asbestos Permanent Channeling Injunction. The Asbestos Trust beneficiaries have no right to amend or revise any portion of this Asbestos Trust Agreement.

7.4 *Meetings:* For purposes of Article 6.5 of this Asbestos Trust Agreement, a TAC member or the Trustee shall be deemed to have attended a meeting in the event such person spends a substantial portion of the day conferring, by phone or in person, on Asbestos Trust matters with TAC members and relevant third parties. The Trustee shall have complete discretion to determine whether a meeting, as described herein, occurred for purposes of Articles 6.5.

7.5 *Severability:* Should any provision in this Asbestos Trust Agreement 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 this Asbestos Trust Agreement.

7.6 *Notices:* Notices to persons asserting claims shall be given at the address of such person, or, where applicable, such person's legal representative, in each case as provided on such person's claim form submitted to the Asbestos Trust with respect to his or her Asbestos Claim.

7.7 *Counterparts:* This Asbestos Trust Agreement may be executed in any number of counterparts, each of which shall constitute an original, but such counterparts shall together constitute but one and the same instrument.

7.8 *Successors and Assigns:* The provisions of this Asbestos Trust Agreement shall be binding upon and inure to the benefit of the Settlor, the Asbestos Trust, and the Trustee and their respective successors and assigns, except that neither the Settlor nor the Asbestos Trust nor the Trustee may assign or otherwise transfer any of its, or his rights or obligations under this Asbestos Trust Agreement except, in the case of the Asbestos Trust and the Trustee, as contemplated by Article 3.1.

7.9 *Limitation on Claim Interests for Securities Laws Purposes:* Asbestos Claims, and any interests therein, (a) shall not be assigned, conveyed, hypothecated, pledged or otherwise transferred, voluntarily or involuntarily, directly or indirectly, except by will or under the laws of descent and distribution; (b) shall not be evidenced by a certificate or other instrument; (c) shall not possess any voting rights in the Asbestos Trust; and (d) shall not entitle the holder of any Asbestos Claims to receive any dividends or interest.

7.10 *Entire Agreement: No Waiver:* The entire agreement of the parties relating to the subject matter of this Asbestos Trust Agreement is contained herein and in the documents referred to herein, and this Asbestos Trust Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

7.11 *Headings:* The headings used in this Asbestos Trust Agreement are inserted for convenience only and neither constitute a portion of this Asbestos Trust Agreement nor in any manner affect the construction of the provisions of this Asbestos Trust Agreement.

7.12 *Governing Law:* This Asbestos Trust Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania.

7.13 *Dispute Resolution:* Any disputes that arise under this Asbestos Trust Agreement or under the annexes hereto shall be resolved by the Bankruptcy Court pursuant to the Plan, except as otherwise provided herein or in the annexes hereto. Notwithstanding anything else herein contained, to the extent any provision of this Asbestos Trust Agreement is inconsistent with any provision of the Plan, the Plan shall control.

7.14 *Enforcement and Administration:* The parties hereby acknowledge the Bankruptcy Court's continuing exclusive jurisdiction to interpret and enforce the terms of this Asbestos Trust Agreement and the annexes hereto, pursuant to the Plan.

7.15 *Effectiveness:* This Asbestos Trust Agreement shall not become effective until it has been executed and delivered by all the parties hereto and until the Effective Date.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have executed this Trust Agreement this \_\_\_\_\_ day of 1998.

TRUSTEE

\_\_\_\_\_

SETTLOR

H.K. PORTER COMPANY, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TAC COMMITTEE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

11/21/24 P 3:08

COPY

IN RE:

Case No. 91-468 (PGH) WWB

H.K. PORTER COMPANY, INC.,

Chapter 11

Debtor.

H.K. PORTER COMPANY, INC.

ASBESTOS CLAIMS RESOLUTION PROCEDURES

Douglas A. Campbell, Esquire  
PA I.D. No. 23143  
Philip E. Milch, Esquire  
PA I.D. No. 53519  
Campbell & Levine, LLC  
1700 Grant Building  
Pittsburgh, PA 15219  
(412) 261-0310

## H.K. PORTER COMPANY, INC.

### ASBESTOS CLAIMS RESOLUTION PROCEDURES

*(With Modifications as of April 27, 1998)*

These H.K. Porter Company, Inc. Asbestos Claims Resolution Procedures (the "Asbestos Claims Procedures") have been prepared in connection with the Fourth Amended Plan of Reorganization of H.K. Porter Company, Inc. ("Porter") (the "Plan"), confirmed by order of the United States District Court for the Western District of Pennsylvania, dated \_\_\_\_\_, 1998, in *In re H.K. Porter Company, Inc., et al.*, Case No. 91-468-WWB (PGH) ("Chapter 11 Case") and the H. K. Porter Company, Inc. Asbestos Trust Agreement (the "Asbestos Trust Agreement"), filed in connection with the Plan.

These Asbestos Claims Procedures provide for processing, liquidating, paying, and satisfying all Asbestos Claims as provided in and required by the Plan and the Asbestos Trust Agreement. The trustee of the Asbestos Trust (the "Trustee") shall implement and administer these Asbestos Claims Procedures in accordance with the Asbestos Trust Agreement.

#### ARTICLE I. - GENERAL

##### Section 1.

##### Definitions

Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan and/or in the Asbestos Trust Agreement.

As used herein, the following terms shall have the meanings specified below:

1.1 *Asbestos Claim:* An Asbestos Personal Injury Claim, an Asbestos Co-Defendant Claim, or an Asbestos Property Damage Claim.

1.2 *Asbestos Co-Defendant Claim or Co-Defendant Claim:* Any Claim or Demand against the Debtor or the Asbestos Trust under any theory of law, equity, admiralty or otherwise, for contribution, reimbursement, subrogation, guaranty or indemnity arising out of an Asbestos Personal Injury Claim.

1.3 *Asbestos Trust:* The trust established by the Asbestos Trust Agreement.

1.4 *Asbestos Trust Agreement:* That certain H.K. Porter Company, Inc. Asbestos Trust Agreement, substantially in the form of Exhibit "1.1.9" to the Plan.

1.5 *Asbestos Personal Injury Claim:* Other than an Asbestos Co-Defendant Claim, any right to payment, Claim, remedy, liability, or Demand against the Debtor or the

Asbestos Trust now existing or hereafter arising, whether or not such right, Claim, remedy, liability, or Demand is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, whether or not the facts of or legal bases for such right, Claim, remedy, liability, or Demand are known or unknown, under any theory of law, equity, admiralty, or otherwise, for death, bodily injury, or other personal damages (whether physical, emotional, or otherwise) to the extent caused or allegedly caused, directly or indirectly, by exposure to asbestos or asbestos-containing products that were manufactured, sold, supplied, produced, distributed, released, or in any way marketed or disposed of by the Debtor or its predecessors in interest or affiliates including, without express or implied limitation, any right, Claim, remedy, liability, or Demand for compensatory damages (such as loss of consortium, wrongful death, survivorship, proximate, consequential, general, and special damages) and including punitive damages.

1.6 *Asbestos Property Damage Claim:* Any Claim or Demand against the Debtor, under any theory of law, equity, admiralty, or otherwise, for damages, or contribution or indemnity related thereto, arising from the presence in buildings, ships or other systems or structures or on land of asbestos or asbestos-containing products that was or were manufactured, sold, supplied, produced, distributed, or in any way marketed or disposed of by the Debtor or its predecessors prior to the Petition Date.

1.7 *Chapter 11 Case:* The case of the Debtor commenced by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on the Petition Date in the Bankruptcy Court at Case No. 91-468(PGH).

1.8 *Claimant:* The holder of an Asbestos Claim.

1.9 *Confirmation Order:* The order or orders of the Bankruptcy Court confirming the Plan as signed by the District Court in accordance with the provisions of chapter 11 of the Bankruptcy Code, which will contain, *inter alia*, the Asbestos Permanent Channeling Injunction and other terms and conditions fully consistent with the terms of the Evans Settlement.

1.10 *Debtor:* H.K. Porter Company, Inc., a Delaware corporation.

1.11 *Demand:* A demand for payment, present or future, that (i) was not a Claim prior to the Confirmation Date; (ii) arises out of the same or similar conduct or events that gave rise to the Claims addressed by the Asbestos Permanent Channeling Injunction; and (iii) pursuant to the Plan, is to be paid by the Asbestos Trust.

1.12 *District Court:* The United States District Court for the Western District of Pennsylvania, having jurisdiction over the Chapter 11 Case.

1.13 *Effective Date:* The first business day after the date on which all of the conditions precedent to the effectiveness of the Plan specified in section 7.5 of the Plan have been satisfied or waived or, if a stay of the Confirmation Order is in effect on such date, the first business day after the expiration, dissolution, or lifting of such stay.

1.14 *Expedited Payment Election:* The procedure for fixed and certain payment made expeditiously, as set forth in Section 5.2 of the Asbestos Claims Procedures.

1.15 *Final Order:* An order as to which the time to appeal, petition for *certiorari*, or move for reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, reargue, or rehear shall have been waived in

writing in form and substance satisfactory to the Debtor or the Reorganized Debtor, as the case may be, and their counsel or, in the event that an appeal, writ of *certiorari*, or reargument or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or *certiorari* has been denied or from which reargument or rehearing was sought, and the time to take any further appeal, petition for *certiorari* has been denied or from which reargument or rehearing was sought, and the time to take any further appeal, petition for *certiorari* or move for reargument or rehearing shall have expired.

1.16 *Liquidated Claim*: An Asbestos Claim, the amount of liability for which has been fixed, pursuant to agreement, applicable law, these Asbestos Claims Procedures or otherwise.

1.17 *Porter*: The Debtor.

1.18 *Property Damage Insurance Policies*: Those policies of insurance listed or identified on Exhibit 1.1.68 to the Plan.

1.19 *Trustee*: The person serving as trustee of the Asbestos Trust, pursuant to the terms of the Asbestos Trust Agreement.

1.20 *Unliquidated Claim*: Any Asbestos Claim, the amount of liability for which has not been fixed, whether pursuant to agreement, applicable law, or otherwise, as of the date on which such Claim is sought to be estimated.

## Section 2.

### Purpose and Interpretation

2.1 Purpose. (a) These Asbestos Claims Procedures are adopted pursuant to the Asbestos Trust Agreement. They are designed to provide fair, reasonable and prompt payment to Claimants with similar, valid Asbestos Claims in substantially the same manner;

(b) The funds anticipated to be available to the Asbestos Trust to pay Asbestos Claims is small compared to the number and amount of such Claims that may be filed with the Asbestos Trust. Moreover, the transaction costs of screening Asbestos Claims will reduce the amount of the fund available for Claimants. These Asbestos Claims Procedures are intended to pay valid Asbestos Claims without excessive expenditure on claims processing.

2.2 Interpretations. Nothing in these Asbestos Claims Procedures shall be deemed to create a substantive right for any Claimant. Without limiting the foregoing, these Asbestos Claims Procedures specifically shall not create any substantive right for any Claimant to be afforded now, or in the future, an Expedited Payment Election, as described in Section 5.2 herein, in any amount. These Asbestos Claims Procedures are procedural, and they may be amended, deleted, or added to pursuant to the terms of the Asbestos Trust Agreement and the terms of these Asbestos Claims Procedures.



Section 3.

Trustee's Advisory Committee and Committee of Unsecured Creditors

3.1 Trustee's Advisory Committee: The Trustee shall consult with the Trustee's Advisory Committee ("TAC"), appointed pursuant to the Asbestos Trust Agreement on the implementation and administration of these Asbestos Claims Procedures, including, but not limited to, implementation of procedures under various claimant payment programs, including any future programs offering expedited payments; development of Asbestos Personal Injury Claims categories and values of claims, as set forth in Section 5.3(b); auditing and monitoring claims; alternative dispute resolution forms and procedures; releases; and interpretation of these Asbestos Claims Procedures. When consultation is required under the Asbestos Trust Agreement or these Asbestos Claims Procedures, the Trustee need only seek advice and counsel from the TAC and is free to accept or reject any recommendation of the TAC. The Trustee shall be subject to the consent of the TAC on the issues enumerated in Article 3.2(d) of the Asbestos Trust Agreement, consistent with the provisions of that Section.

3.2 The Committee of Unsecured Creditors: The Committee of Unsecured Creditors of H.K. Porter Company, Inc. by majority vote shall provide to the Trustee Expedited Payment Election guidelines for establishing exposure and other liability criteria for payment of Asbestos Personal Injury Claims under Section 5.2 of these Asbestos Claims Procedures, and the Trustee shall follow such guidelines.

ARTICLE II. - ASBESTOS PERSONAL INJURY CLAIM PROCEDURES

Section 4.

Payment Percentage; Periodic Estimates

4.1 Determination of Payment Percentage. There is inherent uncertainty regarding Porter's total liability to Claimants with Asbestos Personal Injury Claims and/or Asbestos Co-Defendant Claims, as well as the total value of the assets available to pay such Claims. Consequently, there is inherent uncertainty regarding the amounts that such Claimants will receive. To ensure substantially equivalent treatment of all present and future Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims, prior to making distributions to Claimants, the Trustee shall determine the percentage of full liquidated value that Asbestos Personal Injury Claims and/or Asbestos Co-Defendant Claims would be likely to receive ("Payment Percentage"). No Claimant shall receive payments that exceed the Trustee's most recent determination of the Payment Percentage. The Trustee must base his determination on the one hand, on estimates of the number, types, and values of present and future Asbestos Personal

Injury Claims and Asbestos Co-Defendant Claims and, on the other hand, on the value of the Asbestos Trust's assets, the liquidity of those assets, the Asbestos Trust's expected future expenses for administration and legal defense, and other material matters that are reasonable and likely to affect the sufficiency of funds to pay a comparable percentage of full value to all Claimants with Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims. At yearly intervals, the Trustee shall review his determination of the Payment Percentage to assure that it is based on accurate, current information and may, after such review, change the Payment Percentage, if necessary. When making these determinations, the Trustee shall exercise common sense and flexibly evaluate all relevant factors, including the practical limitations imposed by the inability to predict with precision the future assets and liabilities of the Asbestos Trust, the costs involved in preparing such evaluations, and any other factors the Asbestos Trust considers relevant.

#### 4.2 Payment Percentage.

(a) In the event the Trustee, after any periodic re-evaluation under Section 4.1 determines that the Payment Percentage should be changed, such change shall be applied to all unpaid present Claimants, all future Claimants and all partially paid present Claimants so that each Claimant in a substantially similar position is treated reasonably similarly. The Trustee shall not attempt to recover from any paid Claimant or Claimant's representative the difference between the amount paid to the Claimant and the then prevailing Payment Percentage, and no paid Claimant or Claimant's representative will have any obligation to return to the Asbestos Trust any such differential.

(b) The Trustee shall consult with the TAC concerning any proposal for adjusting the Payment Percentage, and shall supply the results of any analysis performed by or on behalf of the Trustee as well as any valuations prepared by the Trustee's consultants, if any. The proposed adjustment shall take effect unless affirmatively objected to by the TAC. In case of such affirmative objection, the issue shall be resolved in accordance with Section 7.13 of the Asbestos Trust Agreement.

4.3 Equalization of Payment Percentages. In the event a higher Payment Percentage is determined, the Trustee may make an additional payment to those Asbestos Trust beneficiaries whose cumulative payment was less than the higher Payment Percentage, consistent with the objective of paying Claimants with similar Asbestos Personal Injury Claims in a substantially similar manner. However, the Trustee should not make such an additional payment if he concludes that the administrative burden or cost does not justify the additional payment at that time. In the event that the Trust receives significant additional funds that materially increase the Payment Percentage, the Trustee shall make such additional payments.

Section 5.

Claims Types, Processing and Payment

5.1 Prepetition Liquidated Claims.

(a) Processing and Payment. Unless not feasible after every reasonable effort, no later than 90 days after the Effective Date the Trustee shall pay Asbestos Personal Injury Claims that were liquidated by settlement agreement entered into prior to February 15, 1991 or by judgment that became final and nonappealable prior to February 15, 1991 ("**Prepetition Liquidated Claims**"). These claims shall be paid in an order to be determined by the Trustee based on a first-in first-out ("**FIFO**") principle. These Asbestos Personal Injury Claims may require no processing other than verification of the Claimant's identity, payment, and release of the Asbestos Trust. The liquidated value of a Prepetition Liquidated Claim shall be the amount awarded in the prepetition judgment or settlement agreement and Claimants with Prepetition Liquidated Claims shall be paid the appropriate Payment Percentage based upon that liquidated value.

5.2 Expedited Payment Election.

(a) Rationale. Those Claimants with Asbestos Personal Injury Claims who choose the Expedited Payment Election shall make a full and final settlement with the Asbestos Trust (except as provided in Section 5.2(d) herein) in exchange for a single cash payment equal to the Payment Percentage of the amounts shown below for each disease category:

Mesothelioma	\$20,000
Lung Cancer	\$12,000
Other Cancer	\$7,500
Non-malignancy	\$3,750

This Expedited Payment Election is designed, in part, for Claimants who easily can be determined by the Asbestos Trust to have Asbestos Personal Injury Claims and who desire to have a fixed and certain payment made expeditiously rather than wait for Non-Expedited Payment. The guidelines provided by the Committee of Unsecured Creditors may decrease these amounts in instances where exposure criteria is not required of a Claimant.

(b) Scheduled Claims. All Claimants with Asbestos Personal Injury Claims whose Claims were scheduled by the Debtor in its Amended Schedules filed on or about March 16, 1992, and who, in connection with the balloting for the Plan and other reasonable notice, do not elect Non-Expedited Payment, shall be conclusively presumed to have chosen the Expedited Payment Election.

(c) Processing and Payment. Unless not feasible after every reasonable effort, no later than 180 days after the Effective Date, the Trustee shall process and pay the Claimants with Asbestos Personal Injury Claims who choose the Expedited Payment Election in an order to be determined by the Trustee based on a FIFO principle.

(d) Subsequent Malignancy. A Claimant with an Asbestos Personal Injury Claim based upon a non-malignant asbestos injury or condition who chooses the Expedited Payment Election as provided herein may file a new Asbestos Personal Injury Claim for an asbestos-related malignancy that is subsequently diagnosed, and any additional payments to which such Claimant may be entitled shall not be reduced by the amount of the Expedited Payment.

(e) Releases. Claimants with Asbestos Personal Injury Claims who receive an Expedited Payment shall execute and deliver to the Trustee a general release in a form satisfactory to the Trustee and may not thereafter file a new Asbestos Personal Injury Claim based upon the same disease. A Claimant with an Asbestos Personal Injury Claim based upon a non-malignant asbestos injury or condition who receives an Expedited Payment shall execute and deliver a limited release that shall reserve to such Claimant the right to submit a claim for an asbestos malignancy that is subsequently diagnosed.

(f) No Review. The Trustee's decision that a Claimant with an Asbestos Personal Injury Claim should not receive an Expedited Payment is not reviewable. However, a Claimant with an Asbestos Personal Injury Claim whose Asbestos Claim is denied an Expedited Payment may then elect Non-Expedited Payment as set forth in Section 5.3.

### 5.3 Non-Expedited Payment.

(a) Rationale. A Claimant (i) who initially elects non-Expedited Payment, or (ii) whose Asbestos Personal Injury Claim was rejected by the Trustee for Expedited Payment and who then elects Non-Expedited Payment, shall have his or her Asbestos Personal Injury Claim reviewed, based upon an evaluation of exposure, medical evidence of injury and any other factors generally regarded as relevant under applicable tort law. The review for Non-Expedited Payment of Asbestos Personal Injury Claims is designed for Claimants with serious or fatal asbestos-related injuries whose Asbestos Personal Injury Claims justify the added expense of individualized examination.

(b) Categories and Values. The Asbestos Trust will categorize Asbestos Personal Injury Claims by injury. The Asbestos Trust shall use these categories to resolve Asbestos Personal Injury Claims as expeditiously and economically as possible. For each category, the Asbestos Trust shall recognize maximum liquidated values as follows:

Disease Category	Maximum Non-Expedited Liquidated Values
1. Asbestosis and non-malignancies	\$7,500.00
2. "Other" cancers	\$15,000.00
3. Lung cancer	\$24,000.00
4. Mesothelioma	\$40,000.00

Offers of payments to Claimants shall be determined by assigning to their Asbestos Personal Injury Claim an appropriate value that does not exceed the maximum liquidated value and multiplying that value by the Payment Percentage. The Asbestos Trust shall not be required to recognize any minimum liquidated value.

(c) Processing and Liquidation. The Asbestos Personal Injury Claims of Claimants who have chosen Non-Expedited Payment shall be processed and liquidated in the following order of priority:

(i) substantially all Asbestos Personal Injury Claims of Claimants who had filed lawsuits against Porter prior to February 15, 1991;

(ii) substantially all Asbestos Personal Injury Claims of Claimants who had not filed lawsuits against Porter prior to February 15, 1991, but who hold filed timely proofs of claim or been scheduled by the Debtor as liquidated and undisputed in the Chapter 11 Case;

(iii) Asbestos Personal Injury Claims not described in subsections (i) through (ii) above, shall be processed and liquidated as soon as possible in the order in which they are received but not before the claims described in subsections (i) through (ii) above.

(d) Payment. While payments to Claimants with Asbestos Personal Injury Claims generally should be made in the same order in which the Claims are liquidated, provided the Trustee acts consistently with Section 524(g)(2)(B)(ii)(V) of the Bankruptcy Code, he shall have complete discretion to determine the timing and the appropriate method for making payments, but may not use such discretion as a method of obtaining more favorable settlements with Claimants. Such methods may include, in the discretion of the Trustee, a method for the payment on an installment basis, in which case any installment payment shall be subject to the Payment Percentage in effect at the time such installment payment is made.

(e) Disputes Over Non-Expedited Payment. Claimants who reject the Trustee's offer after review for Non-Expedited Payment and who wish to dispute their eligibility for payment, their categorization, or the amount of the Trustee's offer under such review, must initiate one of the alternative dispute resolution procedures established by the Trustee pursuant to Section 7.6 and otherwise follow the procedures set forth in Section 7.

(f) Releases. Claimants with Asbestos Personal Injury Claims who receive a Non-Expedited Payment shall execute and deliver to the Trustee a general release in a form satisfactory to the Trustee and may not thereafter file a new Asbestos Personal Injury Claim based upon the same disease. A Claimant with an Asbestos Personal Injury Claim based upon a non-malignant asbestos injury or condition who receives a Non-Expedited Payment shall execute and deliver a limited release that shall reserve to such Claimant the right to submit a claim for an asbestos malignancy that is subsequently diagnosed.

5.4 Exigent Health Claims. At any time the Trustee may individually evaluate Exigent Health Claims as defined in this Section 5.4. These Claims may be considered separately no matter what the order of processing otherwise would have been under this Section 5.

An Asbestos Claim qualifies as an Exigent Health Claim if the Claimant provides: (i) documentation that a physician has diagnosed the Claimant as having an asbestos-related illness and (ii) a declaration or affidavit made under penalty of perjury by a physician who has examined the Claimant within one hundred twenty (120) days of the date of the declaration or affidavit in which the physician states, that due to an asbestos disease, there is substantial medical doubt that the Claimant will survive beyond six (6) months from the date of the declaration or affidavit.

5.5 Adjudication of Claim. The Liquidated Claim recognized by the Asbestos Trust with respect to any Asbestos Claim shall constitute and be considered an adjudication of that Asbestos Claim.

## Section 6.

### Claims Material

As soon as reasonably practicable, but not later than six months following the Effective Date, the Trustee shall make available claims materials ("**Claims Materials**") to each person or his attorney with an Asbestos Personal Injury Claim who has filed a proof of claim in the Bankruptcy Court, is listed on Porter's bankruptcy schedules, or has pending a lawsuit against Porter or otherwise has been identified by the Trustee as holding an Asbestos Personal Injury Claim that is neither a Prepetition Liquidated Claim defined in Section 5.1 nor an Asbestos Personal Injury Claim for which an expedited cash payment election has been made as set forth

in Section 5.2. For any person holding an Asbestos Personal Injury Claim who is first identified to Porter or the Trustee any time subsequent to the Effective Date, the Asbestos Trust shall make available the Claims Material no later than six months following such identification, and it shall include an offer for the Claimant to elect Expedited Payment. The Asbestos Trust may send Claims Materials to a Claimant in care of an attorney representing the Claimant.

The Claims Materials will include descriptions of these Asbestos Claims Procedures, instructions, and a claim form. If feasible, the forms used by the Asbestos Trust to obtain claims information shall be the same or substantially similar to those used by other asbestos claims resolution facilities. Instead of collecting some or all claims information from a Claimant or the Claimant's attorney, the Asbestos Trust may obtain such information from electronic data bases maintained by any other asbestos claims resolution organization, provided that the Asbestos Trust informs the Claimant that it plans to obtain information as available from such other organizations unless the Claimant objects in writing or provides such information directly to the Asbestos Trust.

## Section 7.

### Guidelines for Resolution of Disputes Over Non-Expedited Payment

#### 7.1 Proof of Claims

(a) Proof of Disease In order to establish an Asbestos Personal Injury Claim, a Claimant must submit at least one medical report from a qualified physician who has actually examined the Claimant that contains a diagnosis of asbestos related injury. This proof of disease may, in the Trustee's discretion, be satisfied by medical reports accepted by another asbestos claims resolution facility. The Trustee may require the submission of x-rays, laboratory tests, medical examinations or reviews, other medical or any other evidence to support such Asbestos Personal Injury Claims and may also require that the medical evidence submitted comply with recognized medical standards regarding equipment, testing methods and procedures to assure that such evidence is reliable. The Trustee will categorize Asbestos Personal Injury Claims based on the medical evidence submitted to the Trust as part of the Claimant's proof of claim. A Claimant may, but need not, supplement this information with more current medical evidence. Where the Claimant has filed an incomplete claim for categorization, the Trustee may notify the Claimant of the need for additional information and the Trustee need not process the Asbestos Personal Injury Claim until the file is complete.

(b) Proof of Exposure. The Trustee may require such evidence of exposure or may apply such presumptions based on job site, occupation, dates of employment, and other factors as the Trustee in his discretion may from time to time determine are appropriate to balance the goal of paying only Claimants with exposure to Porter asbestos-containing product

with the goal of preventing excessive expenditure on claim processing. Any such requirements and presumptions should be calculated to yield findings with respect to exposure that would be permissible under the Federal Rules of Evidence.

(c) Modification of Evidentiary Requirements. The Trustee may from time to time review the nature of the documentation and other evidence the Trustee will require to establish an Asbestos Claim under each disease category and in the exercise of his discretion may modify such requirements to the extent he deems advances in medical knowledge, change in claim filing patterns, or the goal of preventing excessive expenditure on claims handling make such modification appropriate.

(d) Proof of Validity Under Applicable Law. The Trustee may require such additional evidence, if any, under the applicable substantive law and statute of limitations as the Trustee in the exercise of his discretion may determine is appropriate to balance the goal of paying only valid claims with the goal of preventing excessive expenditure on claim processing.

7.2 Discretion To Alter Order of Processing or Suspend Payments. Provided it is consistent with Section 524(g)(2)(B)(ii)(V) of the Bankruptcy Code, in order to reduce transaction costs the Trustee may process, liquidate, and pay Asbestos Personal Injury Claims in groups or otherwise no matter what the order of processing otherwise would have been under Section 5. In the event that the Trustee determines it advisable, he may suspend the normal order of processing or payment in favor of Claimants who elect Expedited Payment under any future payment election programs offered by the Asbestos Trust. Also, in the event that the Asbestos Trust faces temporary periods of limited liquidity, the Trustee may temporarily limit or suspend payments altogether.

7.3 Cost Considered. Notwithstanding any provision of these Asbestos Claims Procedures to the contrary, the Trustee shall always give appropriate consideration to the cost of investigating and uncovering invalid Asbestos Personal Injury Claims so that the payment of valid Asbestos Personal Injury Claims is not further impaired by such processes. In issues related to the validity of Asbestos Personal Injury Claims, e.g., exposure and medical evidence of injury, the Trustee shall have the latitude to make judgments regarding the amount of transaction costs to be expended by the Asbestos Trust so that valid Asbestos Personal Injury Claims are not further impaired by the costs of additional investigation. Nothing herein shall prevent the Trustee, in appropriate circumstances, from contesting the validity of any Asbestos Personal Injury Claim whatever the costs.

7.4 Punitive Damages. In determining the value of any Asbestos Personal Injury Claim, non-compensatory punitive or exemplary damages or damages for risk of cancer or fear of cancer shall not be considered or allowed, notwithstanding their availability in the tort system. Pre-judgment interest, post-judgment interest, interest on deferred payments, or any other type of interest, delay damages, or similar damages associated with Asbestos Personal Injury Claims, shall not be paid or allowed.



7.5 Offer of Payment. If after reviewing the proof submitted by a Claimant under Section 7.1, the Trustee determines that such Asbestos Personal Injury Claim meets the Asbestos Trust's criteria, the Trustee shall tender the Claimant an offer of payment in the amount of the established Payment Percentage of a liquidated value set forth in Section 5.3(b), together with a form of release to be developed by the Trustee for this purpose. If the Claimant accepts the offer and returns the release properly executed, the Trustee shall disburse payment within 30 days thereafter or as promptly as the Asbestos Trust's financial condition then permits. Alternatively, the Trustee may send the payment to the attorney for the Claimant, as Trustee for the Claimant, and such attorney shall hold the payment until the release is executed, at which time the attorney shall distribute the payment to the Claimant. If the Claimant does not respond to the Trustee's offer within three months, unless that time is extended by the Trustee, the Trustee's offer and the Asbestos Personal Injury Claim will be deemed to be withdrawn. A Claimant may also elect to withdraw or defer payment of an Asbestos Personal Injury Claim at any time. An Asbestos Personal Injury Claim that is withdrawn or deemed to have been withdrawn may be refiled at any time, and shall be ordered on the Trustee's claims list based on the date of receipt.

7.6 Alternative Dispute Resolution. The Trustee shall establish an appropriate alternative dispute resolution process so that the Claimants and the Asbestos Trust shall have a full range of alternative dispute resolution devices available for their use in the individualized review process, including reviews by specialized panels, mediation and arbitration.

7.7 Settlement Favored. Settlements shall be favored over all other forms of Asbestos Personal Injury Claim resolution, mediation shall be favored over arbitration and litigation, and arbitration shall be favored over litigation and the lowest feasible transaction costs for the Asbestos Trust shall be incurred in order to conserve resources and ensure funds to pay all valid Asbestos Personal Injury Claims.

7.8 Arbitration: Jury Trials. Claimants may elect to submit their Asbestos Personal Injury Claims to binding or non-binding arbitration only after other alternative dispute resolution procedures established by the Trustee have been exhausted.

If arbitration becomes necessary, arbitrators shall return awards that do not exceed the maximum Non-Expedited Payment liquidated amount set forth in Section 5.3(b). Arbitrators shall not consider the Payment Percentage in determining the value of any Asbestos Personal Injury Claim. If a Claimant submits to binding arbitration or accepts an award after non-binding arbitration, the award will establish the liquidated value of the Asbestos Personal Injury Claim, which will be multiplied by the then current Payment Percentage in order to determine the amount that the Claimant will receive. The Claimant will then receive payments and execute and deliver a general release in the same manner as a Claimant who elected Expedited Payment.

The Chapter 11 Case and the Asbestos Claims Procedures shall have no effect on trial venue or choice of laws. All claims and defenses (including, with respect to the Asbestos Trust, all claims and defenses which could have been asserted by Porter) that exist under

applicable law shall be available to both sides at Trial; provided, however, that the death of Claimant while his/her Asbestos Personal Injury Claim is pending against the Asbestos Trust shall not reduce the value of the deceased claimant's Asbestos Personal Injury Claim, notwithstanding applicable state law to the contrary. The Trustee may waive any defense or concede any issue of fact or law. The award of an arbitrator or the recommendation of a mediator and their positions and admissions of the parties during compliance with alternative dispute resolution procedures shall not be admissible for any purpose at trial by any party or third party and they are expressly determined not to be admissions by either party. In all cases, the statute of limitations will be tolled as of the earlier of the date the Asbestos Personal Injury Claim was filed with the Asbestos Trust or the date the Claimant filed his/her complaint against Porter.

If necessary, the Trustee may obtain an order from the U.S. District Court for the Western District of Pennsylvania, ("**District Court**") incorporating an offer of judgment to liquidate the amount of the claim, scheduling discovery and trials in such a fashion as not to create an undue burden on the Asbestos Trust, or containing any other provisions, in order to ensure that the Trustee fulfills its obligations in accordance with the principles set forth in the Asbestos Trust Agreement.

A Claimant who, in accordance with the Asbestos Claim Procedures elects to resort to the legal system and obtains a final judgment for money damages shall have an Asbestos Personal Injury Claim with a liquidated value equal to the judgment amount, less the amount of any prejudgment interest or non-compensatory punitive damages contained therein, and no post-judgment interest shall accrue on such judgment amount.

7.9 Releases. The Trustee shall have the discretion to determine the form and nature of the releases given to the Asbestos Trust in order to maximize recovery for Claimants against other tort-feasors without increasing the risk or amount of claims for indemnification or contribution from the Asbestos Trust. As a condition to making any payment to a Claimant, the Asbestos Trust shall obtain a general, partial, or limited release as appropriate in accordance with the applicable state or other law, consistent with the provisions of these Asbestos Claims Procedures and the payment selection by the Claimant. If allowed by state law, the endorsing of a check or draft for payment by or on behalf of a Claimant shall constitute such a release. In addition, and as a prerequisite, the Claimant shall execute any documents necessary (i) for the Asbestos Trust to perfect its claims, if any, against Porter's insurers to receive indemnity for payments, (ii) to release any Asbestos Personal Injury Claim the Claimant may have against the insurer, and (iii) for the Asbestos Trust to receive and keep any and all payments made by such insurer for payment of such claim.

7.10 Auditing, Monitoring and Verifying. The Trustee may conduct random or other audits to verify information submitted in connection with these Asbestos Claims Procedures. In the event that an audit reveals that invalid information has been provided to the Asbestos Trust, the Trustee may penalize any Claimant or Claimant's attorney by disallowing the Asbestos Personal Injury Claims or seeking sanctions from the District Court including, but not limited

to, requiring the offending source to pay the costs associated with the audit and any future audit or audits, reordering the priority of payment of the affected Claimants' Asbestos Personal Injury Claims, raising the level of scrutiny of additional information submitted from the same source or sources, or prosecuting the Claimant or Claimant's attorney for presenting a fraudulent Asbestos Personal Injury Claim in violation of 18 U.S.C. §152. The Asbestos Trust may develop methods for auditing the reliability of medical evidence, including independent reading of x-rays. If its audits show an unacceptable level of reliability for medical evidence submitted by specific doctors or medical facilities, the Asbestos Trust may refuse to accept medical evidence from such doctor or facilities.

7.11 Claims Bar Date. Notwithstanding anything to the contrary contained herein, including, without limitation Section 5.3(c) herein, in order to be eligible for payment under these Asbestos Claims Procedures, a Claimant must have complied with any applicable claims bar date order issued by the Bankruptcy Court or must have been excused from such compliance by the Trustee pursuant to his discretion under Article 3.3(e) of the Asbestos Trust Agreement.

7.12 Statute of Limitations. For purposes of determining the validity of an Asbestos Personal Injury Claim, any applicable statute of limitations shall be deemed to have been extended for a period of sixty (60) days beyond its normal limit, and it will be deemed to have been tolled as of the date referenced in Section 7.8 hereof. This extension shall have no application, however, to any applicable claims bar date set by an order of the Bankruptcy Court.

### ARTICLE III. - ASBESTOS CO-DEFENDANT CLAIM PROCEDURES

#### Section 8.

##### Co-Defendants Claims

8.1 Co-Defendant Claims: Co-Defendant Claims shall be processed, liquidated, allowed, paid and satisfied as set forth in this Section 8. As used in this Section 8, the term "Direct Claimant" shall mean a holder of an Asbestos Personal Injury Claim that through theories of contribution, indemnification or subrogation gives rise to a Claim against the Asbestos Trust by a Co-Defendant Claimant, and the Asbestos Personal Injury Claim of such Direct Claimant is a "Direct Claim." Co-Defendant Claims shall be divided into two general categories: (i) those claims based on verdicts or judgments returned or entered against Co-Defendants by Direct Claimants, or post-verdict settlements reached between Co-Defendants and Direct Claimants in connection with suits by Direct Claimants for asbestos-related injury or disease against Co-Defendant Claimants (the "Underlying Litigation"), prior to the Effective Date ("Pre-Effective Date Claims") and (ii) those arising thereafter ("Post-Effective Date Claims"). Co-Defendant Claimants shall have such procedural rights reasonably necessary to

pursue or defend rights accorded them by the Claims Procedure, and the Asbestos Trust and/or the Trustee waive any rights they or the Debtor or the Reorganized Debtor might have regarding Co-Defendant Claims under 11 U.S.C. §§ 502(e), 509(b) and 509(c) to the extent such statutory provisions may apply to any Co-Defendant Claims. The Trustee, Direct Claimants and Co-Defendant Claimants are bound by the terms of this Section and must abide by the following procedures in processing, evaluating, allowing and paying Co-Defendant Claims and in calculating set-off amounts against verdicts or judgments.

8.2 Pre-Effective Date Claims: All Pre-Effective Date Claims shall be filed within 90 days after the Effective Date and shall be processed, liquidated, allowed, paid and satisfied by the establishment and distribution of a fund consisting of \$750,000 cash and the first \$1.0 million after taxes recovered from the Porter Retained Insurance Policies and/or the Tobacco Contribution Action, net of taxes, whether by settlement, litigation, judgment or otherwise (the "Pre-Effective Date Fund" or "Fund"), as set forth in this Section 8.2. The process for holding and allocation of this Fund shall in all material respects, follow the same principles as those set forth in Findley v. Falise, 878 F.Supp. 473, 601-606 (E. & S.D.N.Y. 1995) (setting forth Distribution Principles for Contribution Claim Fund in Manville Personal Settlements Trust restructuring) (the "Manville Trust Fund Principles"), except for specific dates, deadlines and fund amounts, as set forth in this Section.

(a) Establishment of Pre-Effective Date Fund: On or before the Effective Date, the Trustee shall deposit, and maintain in the Asbestos Trust's name, \$750,000 in a segregated interest-bearing account which shall meet the requirements of a qualified settlement fund or trust under applicable provisions of the Internal Revenue Code. Any proceeds of the Porter Retained Insurance Policies and/or the Tobacco Contribution Action payable to the Fund shall be deposited in such account as such funds are received. The Trustee shall release such funds only upon the written instructions of the Fund Administrators or by Bankruptcy Court Order.

(b) Allocation of Pre-Effective Date: The proceeds of the Fund shall be allocated among Co-Defendant Claimants against whom compensatory verdicts or judgments were returned or entered in favor of Direct Claimants prior to the Effective Date, based on each Co-Defendant's proportionate share of the total of such compensatory verdicts and judgments which amount shall be calculated as follows:

(1) In respect of compensatory damage judgments or verdicts entered after February 15, 1991, and prior to the Effective Date, and paid, satisfied or settled by a Co-Defendant no later than 90 days after the Effective Date (the "Payment Date"), at 100% of the sum paid or agreed to be paid by the Co-Defendant;

(2) In respect of compensatory damage judgments entered after February 15, 1991, and prior to the Effective Date but on appeal or otherwise unresolved as the Payment Date, at 70% of the amount of a Co-Defendant's share of the judgment; and

(3) In respect of compensatory damage judgments entered prior to February 15, 1991, which have been paid, satisfied, or settled by a Co-Defendant, at 25% of the sum paid by the Co-Defendant.

(c) Distribution of the Fund: The Fund Shall be distributed by the Fund Administrators pursuant to the allocation set forth above in Section 8(2)(b) herein. The initial distribution to Co-Defendants shall be within 180 days of the Effective Date. Thereafter, the need for subsequent distributions will be evaluated by the Fund Administrators at 180 day intervals. If the Fund Administrators determine, at their discretion, that the Fund has sufficient cash to warrant subsequent distributions, then the Fund Administrators shall direct that such distribution be made at that time.

(d) Administration of the Fund: The role of the Fund Administrators, as described in the Manville Fund Principles, shall be filled in connection with the Pre-Effective Date Claims by counsel for present Co-Defendant Claims and the Co-Defendant Representative. Mark Peterson, who, as special Advisor to the Manville Trust, was to resolve any Fund allocation disputes as set forth in the Manville Fund Principles, shall also serve in that role in connection with this fund, such role not to conflict with any other work he may perform for the Asbestos Trust, the TAC or the Committee of Unsecured Creditors of H.K. Porter, Inc. The Fund Administrators may use a Special Advisor to resolve outstanding Fund allocation disputes prior to arbitration, as provided in Section 8.5(a). The costs incurred by the Fund Administrators in administering the fund shall be borne by the Fund itself.

(e) Approval of Settlements. Prior to the Fund receiving \$1.0 million from the Porter Retained Insurance Policies and/or Tobacco Contribution Action, the Co-Defendant Representative must approve the settlement of any litigation involving the Porter Retained Insurance Policies and/or the Tobacco Contribution Action, unless the after tax proceeds of any such settlement is for more than \$1.0 million.

(f) Termination of the Fund. The Fund shall terminate at the earlier of (i) the distribution of \$1,750,000, plus any accrued interest to Co-Defendants, minus the administrative expenses; (ii) distribution of all cash in the Fund and a determination by the Fund Administrator that no further funds will be received from the Porter Retained Insurance Policies or the Tobacco Contribution Action; or (iii) termination of the Asbestos Trust pursuant to Article 7.2 of the Asbestos Trust Agreement.

8.3 Co-Defendant Claims Arising Out of Post-Effective Date Verdicts or Judgments: Co-Defendant Claims based on compensatory verdicts or judgments returned after the Effective Date ("Post-Effective Date Claims") shall be treated as set forth in this Section 8.3. In order to limit transaction costs of the Asbestos Trust and of claimants, and in recognition of the funds available to resolve all asbestos health claims that might be brought against the Reorganized Debtor or the Asbestos Trust, the goal of these procedures shall be, in all substantive respects to treat the Reorganized Debtor and the Asbestos Trust in the Underlying Litigation in the same manner as the Debtor has been treated since February 15, 1991.

(a) Post-Effective Date Claims Based on Unliquidated Direct Claims: If a Direct Claimant proceeds to trial or verdict in the Underlying Litigation without having liquidated his or her Direct Claim against the Asbestos Trust, there shall be no joint, and/or joint and several share assigned by the trier of fact or the trial court to the Reorganized Debtor or the Asbestos Trust, and no joint, or joint and several set-off or verdict reduction in respect of the Reorganized Debtor or the Asbestos Trust. The Co-Defendant Claimant(s) against which such verdict or judgment was returned may submit a claim to the Asbestos Trust and succeed in all respects to the rights of the Direct Claimant as to the joint, and joint and several, components of the Direct Claim, providing, however, that the Co-Defendant Claimant shall notify the Asbestos Trust within 90 days of the entry of judgment or return of the verdict, or shall waive any claim against the Asbestos Trust as to the verdict or judgment in question (but none other). Upon payment by satisfaction of a verdict or judgment returned after the Effective Date, as to which timely notice has been given, the Co-Defendant Claimant(s) shall succeed in all respects to the joint, or joint and several, portion of the Direct Claim against the Asbestos Trust and may pursue such Direct Claim in accordance with these Claims Procedures. Notwithstanding any contrary provisions of applicable law, a Co-Defendant Claim pursued under this Section 8.3(a) shall not be limited, lost or extinguished in any fashion by virtue of a Co-Defendant Claimant's settlement with a Direct Claimant reached after a contested trial resulting in at a minimum a verdict or jury or court fact-finding regarding an individual Direct Claimant's injury and entitlement to compensatory damages. Nothing in this section shall affect the operation of applicable law which imposes several liability only for all, or certain categories of, damages.

(b) Co-Defendant Claimant to Stand in Direct Claimant's Stead: In pursuing a Co-Defendant Claim, except as set forth to the contrary in Section 8.5, (i) the Co-Defendant Claimant shall stand in the stead of the Direct Claimant in whose favor the verdict or judgment was returned; and (ii) the Co-Defendant Claim shall be processed and evaluated on the same basis as if the Direct Claimant directly presented the claim to the Asbestos Trust, without any enhancement, discount or limitation because the claim is asserted by Co-Defendant Claimant, provided, however, that Co-Defendant Claimants are not required to provide information unavailable to them because such information is solely within the control of the Direct Claimant.

8.4 Post-Effective Date Claims Based on Liquidated Direct Claims: If a Direct Claim against the Asbestos Trust is Liquidated prior to trial, any joint, or joint and several, judgment obtained by a Direct Claimant against the Co-Defendant Claimant(s) shall be reduced or offset by the dollar amount of the Direct Claimant's settlement with the Trust, as further described below in Section 8.4(a).

(a) Calculation of Set-Off Amount: Notwithstanding any contrary provision of these Claims Procedures, the Asbestos Trust Agreement, or applicable law, no joint, or joint and several, liability share shall be assigned under applicable law to the Asbestos Trust or H.K. Porter in entering or molding a verdict or judgment, and the joint and/or joint and several portion of the Asbestos Trust and/or H.K. Porter's liability shall be provided for solely pursuant to the terms of this Section 8.4(a). In the manner set forth in Findley v. Falise, 929 F.Supp. 1, \_\_\_\_ (E. & S.D.N.Y. 1996), the amount paid or agreed to be paid by the Asbestos Trust

to the Direct Claimant, shall be deducted from that amount of the verdict or judgment for which nonsettling defendants would be responsible, without regard to the existence or potential liability of the Asbestos Trust and/or H.K. Porter, and Co-Defendants waive any rights to a set-off that exceeds the amount paid or agreed to be paid by the Trust to the Direct Claimant. Co-Defendants shall not be required to show exposure of the Direct Claimants to H.K. Porter asbestos or asbestos-containing products to receive this credit. Nothing in this section shall affect the operation of applicable law which imposes several liability only for all, or certain categories of, damages.

(b) Status of Trust (or H.K. Porter): The Direct Claimant and the Asbestos Trust shall consent to any procedures reasonably required in order enable a trial court to reduce any judgment according to the terms of these Claims Procedures. Solely to the extent necessary to obtain the verdict reduction described in Section 8.4(a) and for no other reason, the Trust, (itself or in H.K. Porter's stead) shall be deemed to be (i) a settled defendant within the meaning of the applicable law, and (ii) a legally responsible joint tort-feasor under applicable law, without introduction of further proof. Should a trial court require that the Asbestos Trust or H.K. Porter be a party in order to effect such reduction, no objection shall be made by the Asbestos Trust or the Direct Claimant to filing at any stage of the proceedings (including, but not limited to, the verdict-molding stage) by Co-Defendant Claimant(s) of a third-party complaint or to the joinder of the Asbestos Trust, for itself or in H.K. Porter's stead, as a party for this limited purpose only. The Asbestos Trust, if made a party, shall not be required to enter an appearance, be subjected to discovery as a party, or be subject to default or other trial court process or procedure.

8.5 General Provisions Regarding Co-Defendant Claims: The following provisions shall apply to all Co-Defendant Claims:

(a) Resolution of Claims: The principle that settlement shall be the favored method of Claims resolution shall apply to Co-Defendant Claims with no less force than as to Direct Claims. If a negotiated resolution of a Co-Defendant Claim cannot be reached, the Co-Defendant Claim shall be decided by binding arbitration, by a single arbitrator, selected from a list of arbitrators who are acceptable to both the Trustee and the Co-Defendant Representative. No Co-Defendant Claim shall exit to the tort system. In such arbitrations and in its negotiations with Co-Defendant Claimants, the Asbestos Trust shall not assert any H.K. Porter defenses based on the state of the art, or failure to show negligence or product defect (whether based upon design, manufacture or failure to warn), except in those circumstances (as set forth in the Claims procedures) under which the Asbestos Trust would also have asserted those defenses in respect of the underlying Direct Claim. In any arbitration involving a Co-Defendant Claim, the arbitrator shall deem the asbestos containing products of H.K. Porter to be defective products capable of causing Asbestos-related disease.

(b) Proof Required for Co-Defendant Claim: The Co-Defendant Claimant shall provide the Asbestos Trust with evidence of the verdict and judgment returned or entered against it, and of payment by the co-Defendant Claimant to the Direct Claimant, as well as with

medical reports introduced by the Direct Claimant at trial, if any. In evaluating Co-Defendant Claims, the Asbestos Trust shall consider as a factor a Co-Defendant Claimant's potentially limited access to certain information regarding the Direct Claim. In order to reduce transaction costs, the Asbestos Trust, in consultation with the Co-Defendant Representative, may develop claim form(s) specifically addressing Co-Defendant Claims.

(c) Processing and Payment of Claims: Co-Defendant Claims shall be included in the FIFO queue established pursuant to these Claims Procedures in the same position and manner as the underlying Direct Claim would have been processed and paid pursuant to Section 5.3(c) of these Asbestos Claims Procedures.

(d) Discovery and Informational Issues: The Asbestos Trust shall comply with the rules of discovery under applicable law concerning requests by a Co-Defendant Claimant for product exposure and disease information provided by the Direct Claimant pertaining to such Direct Claim. In response to a Co-Defendant Claimant request, the Asbestos Trust and the Direct Claimant shall promptly verify, no later than the start of jury selection (i) the filing of such Direct Claim, or (ii) the fact of the settlement of such Direct Claim, and also shall provide information regarding the amount and terms of any such settlement of a Direct Claim. Without waiver by the Asbestos Trust or Direct Claimants of their rights to object to discovery of such information, neither product exposure nor disease information provided pursuant to this subsection shall be considered inadmissible at trial based on Rule 408 of the Federal Rules of Evidence or any of its state law counterparts.

(e) Litigation Between Co-Defendant Claimants and Direct Claimants: In any Underlying Litigation, Co-Defendant Claimants and Direct Claimants shall retain their respective rights under applicable law to introduce evidence at trial, however, under no circumstances shall a joint, or joint and several, liability share be allocated to the Asbestos Trust, H.K. Porter or the Reorganized Debtor.

(f) Asbestos Trust Not to be Treated as Bankrupt: From and after the Effective Date, and for procedural purposes only, under no circumstances (other than the commencement by the Asbestos Trust of formal bankruptcy or insolvency proceedings), shall the Asbestos Trust (or H.K. Porter) be treated in any underlying litigation as a bankrupt or insolvent defendant, nor shall the Asbestos Trust (or H.K. Porter) be considered a person who cannot be made a party for lack of personal jurisdiction, or otherwise a party over who a Direct Claimant is unable to obtain jurisdiction.

8.6 No Modification Without Consent: Neither the terms of this Section nor the provisions of these Claims Procedures as to arbitration (as they apply to Co-Defendant Claimants) may be modified without the written consent of the Co-Defendant Representative or Bankruptcy Court Order. Other provisions of the Claims Procedures may be modified (after prior notice to the Co-Defendant Representative) without the consent of the Co-Defendant Representative unless the modification (i) has a adverse effect on Co-Defendant Claimants and (ii) discriminates against them *vis-a-vis* Direct Claimants, in which case the modification shall



require the written concurrence of the Co-Defendant Futures Representative or Bankruptcy Court Order.

#### ARTICLE IV. - ASBESTOS PROPERTY DAMAGE CLAIMS PROCEDURES

##### Section 9.

###### Purpose and Interpretation

9.1 Purpose. These Asbestos Property Damage Claims Procedures ("PD Procedures") are designed to provide similar treatment to Claimants with similar Asbestos Property Damage Claims in substantially the same manner pursuant to the Plan.

The PD Procedures shall provide the exclusive method for disposition and payment of Asbestos Property Damage Claims asserted against Porter. The goal is to provide fair treatment to all Claimants with Asbestos Property Damage Claims, taking into account the resources available to the Asbestos Trust for this purpose. As such, the PD Procedures pertain only and are unique to the Chapter 11 Case and have no applicability on any other basis and are not relevant to any litigation or other disputed proceeding.

9.2 Interpretation. Nothing in these PD Procedures shall be deemed to create a substantive right for any Claimant with an Asbestos Property Damage Claim. These PD Procedures are procedural and they may be amended, deleted or added to pursuant to the terms of the Asbestos Trust Agreement and the terms of these PD Procedures.

##### Section 10.

###### Assumption of Liability

The Trustee, on behalf of the Asbestos Trust, expressly assumes liability pursuant to the Plan for all Asbestos Property Damage Claims. The sole recourse of a Claimant with an Asbestos Property Damage Claim shall be a recovery under the coverage provided by the Property Damage Insurance Policies, and such Claimant shall have no right whatsoever to collect its Asbestos Property Damage Claim against any other assets or property of the Debtor or the Asbestos Trust or to assert its Asbestos Property Damage claim against any Protected Party as defined in the Plan.

Section 11.

Duties of Trustee and Rights of Claimants

The Asbestos Permanent Channeling Injunction prohibits holders of Asbestos Property Damage Claims from suing Porter or any Protected Party. Any individual or entity holding an Asbestos Property Damage Claim, however, may sue the Asbestos Trust based upon such a Claim. In the event that the holder of an Asbestos Property Damage Claim is successful in obtaining a judgment against the Asbestos Trust, such holder's sole recourse to having the judgment satisfied or paid is by way of a recovery under the coverage provided by the Property Damage Insurance Policies and the liability of the Trust shall be limited to the applicable, unexhausted and available coverage limits of the Property Damage Insurance Policies.

Upon receipt of any Asbestos Property Damage Claim, the Trustee shall promptly give notice to the companies who may have a duty to defend and/or a duty to indemnify pursuant to Property Damage Insurance Policies.

The Trustee shall cooperate with such companies in the control, defense and/or trial of any Asbestos Property Damage Claims so as to effect a final determination thereof, but shall not be liable for payment of defense costs.

The liability of the Trust shall be limited to the duties to give notice and to cooperate as set forth in this section. In any event, the liability of the Trust shall be limited to the applicable, unexhausted and available coverage limits of the Property Damage Insurance Policies.

ARTICLE V. - MISCELLANEOUS

Section 12.

Miscellaneous

12.1 Amendments. The Trustee may modify, delete or add to any of these Asbestos Claims Procedures (including, without limitation, amendments to conform these procedures to advances in scientific or medical knowledge or other changes in circumstances) provided he first obtains any advice and consent of the TAC required by Article 3.2(d) of the Asbestos Trust Agreement. Notwithstanding anything contained herein to the contrary, Asbestos Claims Procedures shall not be modified or amended in any way that would jeopardize the validity or enforceability of the Asbestos Permanent Channeling Injunction.

12.2 Severability. Should any provision contained in the Asbestos Claims 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 the Asbestos Claims Procedures.

12.3 Governing Law. The Asbestos Claims Procedures shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania.

## EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**IN RE:** )  
 )  
H. K. PORTER COMPANY, INC., ) Case No. 91-468 WWB (PGH)  
 )  
Debtor. )

**DISCLOSURE STATEMENT TO ACCOMPANY  
FOURTH AMENDED CREDITORS' COMMITTEE  
PLAN OF REORGANIZATION FOR H. K. PORTER COMPANY, INC.  
DATED FEBRUARY 27, 1998  
(Modified as of May 6, 1998)**

Douglas A. Campbell, Esquire  
Philip E. Milch, Esquire  
Campbell & Levine, LLC  
1700 Grant Building  
Pittsburgh, PA 15219  
(412) 261-0310  
Counsel to the Committee of Unsecured  
Creditors of H. K. Porter Company, Inc.

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## I. INTRODUCTION

The Committee of Unsecured Creditors of H. K. Porter Company, Inc. (the "Committee") submits this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code to the holders of Claims and interests in connection with (i) the solicitation of acceptances or rejections of the Fourth Amended Creditors' Committee Plan of Reorganization of H. K. Porter Company, Inc. (the "Plan"), dated February 27, 1998 and (ii) the hearing on confirmation of the Plan (the "Confirmation Hearing") scheduled for Thursday, June 25, 1998. Unless otherwise defined herein, all capitalized terms contained in this Disclosure Statement shall have the meanings ascribed to them in the Plan.

Since early on in the Chapter 11 Case, the Committee, on behalf of the Debtor's estate, has been embroiled in costly, complex litigation with the Evans Defendants regarding the alleged fraudulent transfer of Porter's assets by, on behalf of, or to the Evans Defendants, in an attempt to recover these assets for the benefit of the Debtor's estate (the "Fraudulent Conveyance Action"). In June, 1996, the Fraudulent Conveyance Action was ordered to mediation before Bankruptcy Judge McCullough of the Western District of Pennsylvania. After numerous discussions and negotiations, both before Judge McCullough and privately between parties-in-interest in which the relative liabilities of the defendants, the difficulty of proving claims and defenses, and the ability to collect on a judgment were assessed by the respective parties, and discussed with Judge McCullough. Based in part on these factors, the parties to the Fraudulent Conveyance Action arrived at a global settlement that the Committee, the Debtor, the Personal Injury Futures Representative, the Property Damage Futures Representative and the Co-Defendant Futures Representative believe fairly reflects the relative strengths and weaknesses of the various claims against and defenses asserted by the Evans Defendants and the ability of the Evans Defendants to collectively contribute to the settlement. The Committee's Plan incorporates the terms of this global settlement.

Under the Plan, the Debtor would be reorganized and be in the business of managing and investing its money primarily for the benefit of all holders of asbestos-related claims -- whether currently known, or arising in the future -- against the Debtor. A trust will be created to resolve and make distributions on account of these claims, and would be funded in part by cash contributed by the Evans Defendants. All Administrative and Priority Claims would be paid in full, Retiree Claims would receive their previously settled treatment, and other allowed non-asbestos Unsecured Claims will receive a distribution of approximately 5% on their Claims. To the extent the Reorganized Debtor realizes any recovery post-confirmation from the Porter-Retained Insurance Policies and/or the Tobacco Contribution Action, then the Reorganized Debtor shall pay the Pro Rata Share of such additional money to the non-asbestos Unsecured Creditors and shall be obligated to pay the Asbestos Trust its Pro Rata Share of such additional money. All litigation among the parties to the Fraudulent Conveyance Action would cease, and the Fraudulent Conveyance Action would be dismissed with prejudice. The Evans Defendants would be protected against future liability arising from the Debtor's activities by an injunction pursuant to section 105(a) of the Bankruptcy Code and under a permanent injunction pursuant to section 524(g) of the Bankruptcy Code. A summary of the Evans Settlement is provided in Section IV.E.5, entitled "THE

**CHAPTER 11 CASE -- Significant Events During Case -- Evans Litigation and Evans Settlement.”**

A copy of the Plan, including all of the exhibits to the Plan, is enclosed with this Disclosure Statement. In addition, those Creditors who are entitled to vote to accept or reject the Plan will receive a Ballot for acceptance or rejection of the Plan enclosed with this Disclosure Statement.

**THIS DISCLOSURE STATEMENT DOES NOT PURPORT TO BE A COMPLETE DESCRIPTION OF THE PLAN, A COMPLETE DESCRIPTION OF THE FINANCIAL DATA PERTAINING TO THE DEBTOR, A COMPLETE DESCRIPTION OF THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE OR A COMPLETE DESCRIPTION OF ANY OTHER MATTERS THAT MAY BE DEEMED SIGNIFICANT BY CERTAIN CREDITORS OR INTEREST HOLDERS.**

**NO INFORMATION CONCERNING THE DEBTOR IS AUTHORIZED BY THE COMMITTEE OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE WHICH ARE OTHER THAN AS CONTAINED IN THIS STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE COMMITTEE, WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTION AS MAY BE DEEMED APPROPRIATE.**

**THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY AN ORDER OF THE BANKRUPTCY COURT OR DISTRICT COURT AFTER NOTICE AND A HEARING. THE COURT FOUND THAT THE INFORMATION CONTAINED HEREIN IS ADEQUATE PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE. HOWEVER, THE COURT HAS NOT PASSED UPON THE PLAN, NOR ARE THE DISCLOSURE STATEMENT AND ORDER AFFIRMING SAME TO BE CONSTRUED AS APPROVAL OR ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT OR DISTRICT COURT.**

**CREDITORS ARE URGED TO READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY AND THE PLAN IN ITS ENTIRETY IN ORDER TO FORMULATE THEIR OPINION WITH RESPECT TO THE PLAN. HOWEVER, IT IS ESPECIALLY IMPORTANT TO READ THE PLAN ITSELF, FOR IT IS THE CONTROLLING DOCUMENT.**

Pursuant to the provisions of the Bankruptcy Code, only classes of Claims or interests that are “impaired” are entitled to vote to accept or reject the Plan. The Claims in each of Classes 2, 3, 4, 5, 6 and 7 of the Plan (*see* Section V.A, entitled, “**THE PLAN OF REORGANIZATION -- Classification and Treatment of Claims and Equity Interests**” for a description of these classes) are impaired, and Claimants in such classes who are entitled to vote on the Plan may do so by completing and mailing the enclosed Ballot to the address set forth on the Ballot so that it is received by 5:00 p.m. Eastern Standard Time on

Wednesday, June 17, 1998 (the "Voting Deadline"). *See* Section VII.A, entitled, "CONFIRMATION AND CONSUMMATION PROCEDURE -- Solicitation of Votes" for a more detailed description of the voting procedures.

The Claims in Class 8 (Subordinated Shareholder Claims) and the Claims in Class 9 (Equity Interests) of the Plan are impaired, but, under the Bankruptcy Code, are deemed to have rejected the Plan because they are not receiving or retaining any property under the Plan. Therefore, holders of Subordinated Shareholder Claims and Equity Interests are not receiving Ballots with this Disclosure Statement.

If you did not receive a Ballot, it may be because the Committee believes that you are not entitled to vote on the Plan.

The following are **NOT** entitled to vote on the Plan and, therefore, have not received Ballots with this Disclosure Statement:

- **Administrative Expense Claims**
- **Priority Claims**
- **Former Shareholder Claims**
- **Equity Interests**
- **Claimants whose Claims have been fully disallowed**
- **Claimants whose Claims are the subject of pending objections and have not been allowed for voting purposes**

If you are not listed above and you did not receive a Ballot, received a damaged Ballot, or lost your Ballot, please call Philip E. Milch, Esquire at (412) 261-0310.

If you are not entitled to vote solely because your Claim is the subject of a pending objection, you may apply to the Bankruptcy Court for an order allowing your Claim for voting purposes only.

The Bankruptcy Code defines "acceptance" of a plan by a class of claimants as acceptance by holders of two-thirds in dollar amount and more than one-half in number of the claims of that class that cast ballots for acceptance or rejection of the plan. The Committee is seeking acceptance of the Plan by Claimants in Classes 2, 3, 4, 5, 6 and 7. For a complete description of the requirements for acceptance of the Plan, *see* Section VII.C.1, entitled, "CONFIRMATION AND CONSUMMATION PROCEDURE -- Confirmation -- Acceptance." Moreover, the Plan requires that at least 75% of the holders of Asbestos Claims (Classes 4 and 5) who vote on the Plan vote to accept the Plan and the releases given therein. A critical element of the Plan is the provision for releases of claims

against the Evans Defendants by all of the parties to the Fraudulent Conveyance Action. This includes creditors on whose behalf the Committee prosecuted the Fraudulent Conveyance Action. The primary motivating factor which led to the global settlement on which the Plan is based was the desire of all parties to the Fraudulent Conveyance Action to cease the costly and time-consuming litigation currently pending and avoid future litigation from being commenced. Indeed, the Evans Defendants would not have agreed to make the contributions they are making unless they were given full and complete releases from all parties. Moreover, due to uncertain precedent in the Third Circuit regarding the validity of third-party discharges, it has been deemed necessary to obtain the unambiguous manifestation of assent to such releases on the ballots provided for voting on the Plan.

**Thus, you should be aware that, if you are a holder of a Claim who is entitled to vote on the Plan, and you vote to accept the Plan, you will also be expressly consenting to release the Evans Defendants as provided in bold on the ballots provided for members of your class.**

The Debtor, the Committee, the Personal Injury Futures Representative, the Property Damage Futures Representative and the Co-Defendant Futures Representative believe that the Plan provides the most expeditious and equitable vehicle for enabling the Debtor to pay its Creditors and holders of present and future Asbestos Claims against the Debtor, and to emerge from bankruptcy as a company in the business of investing and managing money for the benefit of future Asbestos Claimants. The contribution of the Evans Defendants to the Debtor is an essential and integral part of this reorganization and enhances the return to holders of Asbestos Claims under the Plan. The releases were insisted upon and heavily negotiated by and among the Settling Parties and constitute a fundamental aspect of the global settlement incorporated in the Plan. Although the releases are broad and will effectively bar any further action by any party, including a dissatisfied Creditor, against the Evans Defendants (except as may otherwise be provided for in the Plan), based on negotiations and proceedings to date, these third-party releases constitute an essential element of the Evans Settlement and the Plan.

Because the holders of Claims in Class 8 and the Equity Interests holders in Class 9 are deemed to have rejected the Plan, the Committee intends to request that the Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code. Section 1129(b) permits the confirmation of the Plan notwithstanding the nonacceptance of the Plan by one or more impaired classes of claims or interests. Under that section, the Plan may be confirmed by the Bankruptcy Court if it does not “discriminate unfairly” and is “fair and equitable” with respect to the non-accepting class and provided that at least one impaired class votes to accept the Plan. For a more detailed description of the requirements for confirmation of a non-consensual plan, *see* Section VII.C, entitled, “CONFIRMATION AND CONSUMMATION PROCEDURE -- Confirmation.”

**CONFIRMATION AND CONSUMMATION ARE SUBJECT TO CONDITIONS PRECEDENT THAT COULD LEAD TO DELAYS IN CONSUMMATION OF THE PLAN. ALSO, NO ASSURANCE CAN BE GIVEN THAT EACH OF THESE CONDITIONS WILL BE SATISFIED OR WAIVED (AS PROVIDED IN THE PLAN) OR THAT THE PLAN WILL BE CONSUMMATED EVEN IF CONFIRMED.**

After carefully reviewing this Disclosure Statement, including the Exhibits, each Claimant in an impaired class that is entitled to vote should vote on the enclosed Ballot and return the Ballot in the envelope provided so that it is received by the Voting Deadline -- 5:00 p.m Eastern Standard Time, on Wednesday, June 17, 1998. If you have a Claim in more than one class and you are entitled to vote Claims in more than one class, you will receive separate Ballots for each Claim.

All Ballots should be returned to the following address:

Campbell & Levine, LLC  
1700 Grant Building  
Pittsburgh, PA 15219

If you have any questions about the Plan, this Disclosure Statement, or the procedures for voting, please call Philip E. Milch, Esquire at (412) 261-0310.

**TO BE COUNTED, YOUR BALLOT MUST BE ACTUALLY RECEIVED AT THE APPROPRIATE ADDRESS BY THE VOTING DEADLINE -- 5:00 P.M. EASTERN STANDARD TIME, ON WEDNESDAY, JUNE 17, 1998. BALLOTS MUST BE DELIVERED BY MAIL, COURIER, OR DELIVERY SERVICE. FACSIMILE BALLOTS WILL NOT BE ACCEPTED. ANY COMPLETED BALLOTS RECEIVED THAT DO NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN SHALL BE DEEMED TO CONSTITUTE AN ACCEPTANCE OF THE PLAN AND A RELEASE OF ANY PRESENT OR FUTURE CLAIMS OR DEMANDS AGAINST THE EVANS DEFENDANTS AS SET FORTH ON THE BALLOTS.**

Pursuant to section 1128 of the Bankruptcy Code, the Confirmation Hearing will be held on Thursday, June 25, 1998, at 1:30 p.m., before the Honorable Warren W. Bentz, United States Bankruptcy Judge, and the Honorable Gustave Diamond, United States District Court Judge, in Courtroom No. 2, located on the 8th Floor, United States Post Office and Courthouse, Seventh Avenue and Grant Street, Pittsburgh, PA 15219. The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be served and filed on or before Wednesday, June 17, 1998 at 4:30 p.m., in the manner described under Section VII.B, entitled, "CONFIRMATION AND CONSUMMATION PROCEDURE -- Confirmation Hearing." The Confirmation Hearing may be adjourned from time to time by the District Court without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned date of the Confirmation Hearing.

**THE COMMITTEE BELIEVES THAT THE PLAN PROVIDES THE BEST POSSIBLE RECOVERIES TO THE CLAIMANTS. THE COMMITTEE, THEREFORE, BELIEVES THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF EACH AND EVERY CLASS OF CLAIMANTS AND RECOMMENDS THAT YOU VOTE TO ACCEPT THE PLAN. IN ADDITION, EACH OF THE FUTURES REPRESENTATIVES RECOMMENDS ACCEPTANCE OF THE PLAN AS BEING IN THE BEST INTERESTS OF ALL HOLDERS OF ASBESTOS CLAIMS.**

## II. OVERVIEW OF THE PLAN

The following is a brief overview of the provisions of the Plan. This overview is qualified in its entirety by reference to the provisions of the Plan. In addition, for a more detailed description of the terms and provisions of the Plan, *see* Section V, entitled, “**THE PLAN OF REORGANIZATION.**”

The Plan accomplishes the primary objectives of the Committee, which it believes will result in a successful reorganization:

1. The Plan treats all liabilities of the Debtor, particularly Asbestos Claims (which term includes, by definition, future Demands), in a manner which the Committee believes to be fair and equitable.
2. The Plan provides for the implementation of the Evans Settlement which will significantly enhance the value of the Debtor’s estate and, hence, the distribution to holders of Asbestos Claims.
3. The Plan provides for the continuing operation of the Debtor for a *minimum* period of five years.

The Plan designates nine classes -- seven classes of Claims, one combined class of Subordinated Shareholder Claims, and one class of Equity Interests. These classes take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Equity Interests.

The Plan accomplishes, and is premised on, a resolution of the Debtor’s liability for all Asbestos Claims, present and future, by channeling them to the Asbestos Trust. In exchange for the Pro Rata Share of the Distribution Value being distributed to the Asbestos Trust, the Asbestos Trust will assume and be responsible for all liability for Asbestos Claims. In addition to the procedures and guidelines contained in the Asbestos Trust Agreement, Asbestos Claims Resolution Procedures have been developed to assure that the holders of all such Claims and Demands, whether presently known or unknown, are treated in substantially the same manner. Moreover, as fully described in Section V.H. entitled, “**THE PLAN OF REORGANIZATION -- Discharge of the Debtor, the Asbestos Permanent Channeling Injunction, and the Section 105 Injunction**” such Claimants will be permanently enjoined from pursuing their claims against the Reorganized Debtor and certain other parties.

The following table briefly summarizes the classification and treatment of Claims and Equity Interests under the Plan:

**SUMMARY OF CLASSIFICATION AND  
TREATMENT UNDER THE PLAN<sup>1</sup>**

<u>Class</u>	<u>Classification and Treatment</u>
—	<b>Administrative Expenses</b> <ul style="list-style-type: none"><li>● Paid in full in cash on the Effective Date or on such other terms to which the parties agree.</li></ul>
1	<b>Priority Claims</b> <ul style="list-style-type: none"><li>● Paid in full in cash on the Effective Date.</li><li>● Unimpaired -- not entitled to vote.</li></ul>
2	<b>Retiree Claims</b> <ul style="list-style-type: none"><li>● Previously received payment, no additional payment anticipated.</li><li>● Impaired - Entitled to vote.</li></ul>
3	<b>Connors Disability Retiree Claims</b> <ul style="list-style-type: none"><li>● Benefits modified during case, no further payment provided.</li><li>● Impaired -- Entitled to vote.</li></ul>
4	<b>Asbestos Property Damage Claims</b> <ul style="list-style-type: none"><li>● Asbestos Trust to be funded, in part, with insurance policies potentially applicable to property damage claims, which shall be the sole recourse for holders of Claims in this class.</li><li>● Impaired - Entitled to Vote.</li></ul>

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<sup>1</sup>This table is only a summary of the classification and treatment of Claims, Demands and Equity Interests under the Plan. Reference should be made to the entire Disclosure Statement and the Plan for a complete description of such classification and treatment.



**5 Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims**

- Claims channeled to Asbestos Trust -- Trust to receive Pro-Rata Share of Distribution Value. Claims to be processed and paid pursuant to Asbestos Claims Resolution Procedures.
- Impaired -- Entitled to Vote.

**6 Non-Asbestos Lung Disease Claims**

- Holders of Class 6 Claims will be granted relief from the automatic stay imposed by section 362 to pursue their Claims against the Debtor, to the extent of available insurance coverage.
- Impaired -- Entitled to Vote.

**7 Unsecured Claims**

- Holders of Class 7 Claims shall receive on the Initial Distribution Date their Pro-Rata Share of the Distribution Value.
- Impaired -- Entitled to Vote.

**8 Subordinated Shareholder Claims**

- Holders of Class 8 Claims will receive no distribution on account of such Claims until all other Claims have been paid in full. There is only a remote possibility that they will receive any distribution.
- Impaired -- Deemed to reject the Plan.

**9 Equity Interests**

- Holders of Class 9 Equity Interests shall receive no distribution under the Plan; Equity Interests are to be canceled.
- Impaired -- Deemed to have rejected the Plan.

As a separate condition to confirmation of the Plan, at least 75% of the holders of Asbestos Claims (Classes 4 and 5) who vote on the Plan must vote to accept the Plan. Moreover, in order for confirmation of the Plan to occur, the Plan specifies that the

Confirmation Order must contain findings that are consistent with or required by section 524(g) of the Bankruptcy Code in order to satisfy the requirements for a “channeling injunction” of the type that is provided under the Plan (*see* Section V.B, entitled, “**THE PLAN OF REORGANIZATION -- Conditions to Confirmation**” and Section V.H, entitled, “**THE PLAN OF REORGANIZATION -- Discharge of the Debtor, the Asbestos Permanent Channeling Injunction, and the Section 105 Injunction**”).

Following confirmation of the Plan, the Plan will not become effective (as such term is used in section 1129 of the Bankruptcy Code) until the first Business Day after which certain other conditions have been satisfied or waived or, if a stay of the Confirmation Order is in effect on such date, the first Business Day after the dissolution, lifting or expiration of such stay. These conditions are described in Section V.C, entitled, “**THE PLAN OF REORGANIZATION -- Conditions Precedent to the Effective Date under the Plan.**” For purposes of this Disclosure Statement, the Committee has assumed that the Effective Date will be June 30, 1998. Of course, there can be no certainty that the Effective Date will occur by such date, and the satisfaction of many of the conditions to the occurrence of the Effective Date is beyond the control of the Committee.

Distributions on account of Allowed Claims other than Asbestos Claims, will be made within 90 days of the Effective Date or as soon as practicable thereafter. The timing of distributions to holders of Allowed Asbestos Personal Injury Claims will be established by the Trustee pursuant to the Asbestos Trust Agreement and the Asbestos Claims Resolution Procedures adopted in connection with such agreement.

Notwithstanding the foregoing, a payment will only be made on account of a Disputed Claim when, and to the extent that, such Disputed Claim becomes Allowed. All payments to be made in cash under the Plan will be made by check or wire transfer.

### **III. HISTORY OF BUSINESS AND EVENTS LEADING TO COMMENCEMENT OF CASE**

During its history, Porter was involved in various areas of manufacturing and sales. Starting in the 1950s, as the result of several acquisitions, and through 1983, Porter engaged in the manufacture and sale of asbestos-containing products.

In the early 1970s, Porter began to be named in lawsuits for wrongful death or personal injuries arising out of exposure to Porter’s or its predecessors’ asbestos containing products. Porter later began to be named in asbestos property damage lawsuits.

By the beginning of 1980, Porter had been named as a defendant in 2,004 asbestos lawsuits. In the ensuing years, asbestos claims against Porter steadily increased and by the beginning of 1985, Porter had been named in approximately 13,000 asbestos lawsuits. By the filing date of its bankruptcy petition on February 15, 1991, Porter had been named in approximately 78,000 such suits. Although Porter was successful in securing millions of dollars in insurance coverage for asbestos claims, in the late 1980s it was forced to sell certain operating assets to raise cash to satisfy asbestos claims while a major insurance

coverage claim against Transamerica Insurance Company was pending in the District Court. Porter's coverage claim against Transamerica was not successful, however, and on February 15, 1991, after having exhausted all appeals in the Transamerica case, Porter filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code.

#### IV. THE CHAPTER 11 CASE

##### A. Creditors Committee and its Professionals

The Committee was established on March 7, 1991, and represents the interests of Creditors holding unsecured Claims against the Debtor and its Estate. Its current members are:

Baron & Budd, PC  
3102 Oak Lawn Avenue  
Suite 1100  
Dallas, TX 75219  
Attn: Brent Rosenthal, Esquire

Glasser & Glasser  
600 Dominion Tower  
999 Waterside Drive  
Norfolk, VA 23510  
Attn: Richard Glasser, Esquire

Kazan, McClain, Edises & Simon  
171 Twelfth Street  
Suite 300  
Oakland, CA 94607  
Attn: Steven Kazan, Esquire

Maritime Asbestosis Legal Clinic  
1370 Penobscot Building  
Detroit, MI 48226  
Attn: Alan Kellman, Esquire

Ness, Motley, Loadholt, Richardson & Poole  
2202 Jackson Street  
P.O. Box 365  
Barnwall, SC 29812  
Attn: Timothy Eble, Esquire

Weitz & Luxemberg  
40 Fulton Street, 19th Floor  
New York, NY 10038  
Attn: Perry Weitz, Esquire

Robins, Kaplan, Miller & Ciresi  
2049 Century Park East  
Suite 3100  
Los Angeles, CA 90067  
Attn: Roman Silberfeld, Esquire

Wilentz, Goldman & Spitzer, P.C.  
90 Woodbridge Center Drive  
Woodbridge, NJ 07095  
Attn: Philip Pahigian, Esquire

The Bankruptcy Court authorized the Committee to retain (i) Campbell & Levine, LLC as its general bankruptcy counsel; (ii) Cindrich & Titus (renamed Titus & McConomy) as its litigation co-counsel; (iii) Legal Analysis Systems, Inc. as its asbestos disease consultant; (iv) Altschuler, Melvoin and Glasser as its financial advisor; and (v) M. J. Whitman, Inc., as its investment banker and financial advisor.

##### B. Debtor's Professionals

The Debtor has engaged certain professionals, the principal engagements being: (i) Stonecipher, Cunningham, Beard & Schmitt, P.C. as its bankruptcy counsel; (ii) Meyer,

Unkovic & Scott as its special insurance litigation counsel; (iii) Ernst & Young as its tax accountants; and (iv) Cohen & Grigsby as its special tax claims litigation counsel.

**C. Retiree Committee and its Professionals**

The Retiree Committee was established on November 8, 1991 at the request of the Debtor in order to represent the interests of former salaried and hourly employees in the modification of their Retiree Benefits pursuant to section 1114 of the Bankruptcy Code. The members of the Retiree Committee are:

Paul G. Whitehead, Esquire  
United Steelworkers of America  
5 Gateway Center  
Pittsburgh, PA 15222

Kevin Murphy, an employee of the Industrial Union Dept. on Confederation of Industrial Unions belonging to AFL-CIO  
815 16th Street, NW  
Washington, DC 20006

Robert W. Davison - former salaried employee  
202 Buckingham Rd.  
Pittsburgh, PA 15215

The Bankruptcy Court authorized the Retiree Committee to retain

- (i) Ian D. Lanoff, Esquire  
Bredhoff & Kaiser  
1000 Connecticut Avenue, NW  
Suite 1500  
Washington, DC 20036  
(As its Counsel)
- (ii) The Segal Company  
Suite 500  
1920 N Street, NW  
Washington, DC 20036-1601  
(As its Actuary)

**D. Futures Representatives**

The Court appointed: (i) George L. Cass as the Personal Injury Futures Representative; (ii) Roberta A. Colton as the Co-Defendant Futures Representative; and (iii) Mark L. Glosser as the Property Damage Futures Representative. Each of the foregoing representatives retained their respective firms as legal counsel.

## **E. Significant Events During Case**

### **1. Multidistrict Litigation**

Shortly before the Petition Date, Porter was served with an Order to Show Cause by the Judicial Panel on Multidistrict Litigation (the "MDL Panel") in an action styled *In re Asbestos Product Liability Litigation (No. VI)*. The order directed Porter and other parties involved in asbestos-related personal injury litigation to show cause before the MDL Panel why all asbestos-related personal injury suits should not be consolidated before a single court. In its Response dated April 1, 1991, Porter took the position that the MDL Panel lacked authority to transfer the Porter Chapter 11 Case. Consistent with Porter's position, the MDL Panel in July of 1991 ordered a transfer of approximately 26,000 asbestos-related personal injury actions pending in federal courts to the United States District Court for the Eastern District of Pennsylvania and assigned those actions to the United States District Judge Charles R. Weiner for coordinated or consolidated pretrial proceedings, but excluded debtors that had sought relief under the Bankruptcy Code from the purview of such consolidation.

On August 21, 1992, the MDL Panel, at the request of Judge Weiner, issued another order to show cause with respect to certain debtors that were the subject of cases pending under the Bankruptcy Code. Pursuant to this second Order to Show Cause, Porter and twelve other chapter 11 debtors were directed to show cause before the MDL Panel why all the bankruptcy cases of manufacturers of asbestos-containing products, including that of Porter, should not be transferred to the United States District Court for the Eastern District of Pennsylvania. Porter again filed a Response in opposition to such proposed transfer, and counsel for Debtor appeared for oral argument before the MDL Panel on November 19, 1992. By a decision entered on December 9, 1992, the MDL Panel agreed with Porter's position and declined to transfer the Porter Chapter 11 Case and the other asbestos-related cases currently pending under the Bankruptcy Code.

### **2. The Claims Quantification Process and The Expedited Payment Election**

One of the principal accomplishments of the case has been the quantification of more than 120,000 pre-petition Asbestos Personal Injury Claims, which was achieved through a consensual process and the amendment of the Debtor's Schedules, rather than through the time-consuming process of the filing, evaluation and, in many cases, litigation, of individual proofs of Claim.

Quantification of these asbestos-disease Claims on a consensual and streamlined basis was felt to be necessary, in light of the relatively small fund available, the large number of such Claims pending, the enormous dollar amounts of such Claims, and the prohibitive cost and delay associated with litigating objections to such Claims. Due to statutory limits on the jurisdiction of the Bankruptcy Court, the trial of each objection would have to be conducted in the United States District Court, which already has a critical backlog in its civil caseload. Absent this consensual quantification, there was a substantial likelihood that most, if not all, of the estate property would have been consumed by the cost of the objection process. Furthermore, large reserves would have to have been established pending the outcome of the

claims objection process, thus reducing or eliminating a prompt distribution to Creditors. To avoid these problems, the Debtor proposed to the Committee, and the Committee cooperated with the Debtor in executing, a quantification process with respect to pre-petition Asbestos Personal Injury Claims (“Claims Quantification Process”).

To develop this procedure, the Debtor and the Committee studied historical information regarding the Debtor’s payment and settlement of Asbestos Personal Injury Claims. It appeared that the historical value of Porter’s payment share per 100 Asbestos Personal Injury Claims was approximately \$500,000.00. The Debtor and the Committee then classified the various kinds of asbestos-related illnesses in an effort to determine the value of particular Claims by disease. Such classifications were as follows: (1) Non-Malignancies; (2) Other Cancers; (3) Lung Cancer; and (4) Mesotheliomas. Then, based upon historical information from the Debtor and the experience of the members of the Committee, occurrence frequency and a value ratio for the various diseases were assigned, with the result being illustrated as follows:

<u>Disease</u>	<u>Value Ratio</u>	<u>Value Per Claim</u>	<u>Occurrence Frequency (%)</u>	<u>Amount Per 100 Claims</u>
Non Malignancies	1.0	\$3,750	88.0	\$330,000
Other Cancers	2.0	\$7,500	1.5	\$11,250
Lung Cancers	3.2	\$12,000	6.5	\$78,750
Mesotheliomas	5.3	\$20,000	4.0	<u>\$80,000</u>
				<u>\$500,000</u>

Having determined what it considered to be an appropriate value ratio for the various kinds of asbestos disease Claims, the Committee worked with the Debtor to implement a procedure which invited holders of Asbestos Personal Injury Claims, through their counsel, to consent to having their Claims scheduled by the Debtor as liquidated and undisputed in such amounts. This procedure required proof of diagnosis for the various cancers, including Mesotheliomas, and allowed for an audit for diagnosis of these cancer claims as well as the non-malignancy claims.

The culmination of the Claims Quantification Process was the filing by the Debtor of 16 volumes of Amendments to its Bankruptcy Schedules, listing as “undisputed and liquidated” more than 120,000 Asbestos Personal Injury Claims. Because the Claims were listed on the Debtor’s Schedules, these Asbestos Personal Injury Claimants were deemed, under the Bankruptcy Code, to have filed proofs of Claim without the need for the physical filing and administration of 120,000 separate claims. The procedure did not effect “allowance” of claims, but merely quantified their dollar amount. The Claims Quantification Process did not, and does not, bar any party, including the Debtor, from later objecting to the allowance of these Claims.

The Creditors’ response to the procedure was overwhelmingly positive, and resulted in the consensual quantification of the vast majority of pre-petition Asbestos Personal Injury

Claims without litigation or even the need for preparing, filing and processing proofs of Claim. At the time that the Claims Quantification Process was being implemented it was contemplated that all claims to which an objection had not been filed within a certain period post-confirmation would be deemed "allowed" upon confirmation of the Plan. The current Plan, instead, provides for the creation of an Asbestos Trust, which will implement certain Asbestos Claims Resolution Procedures to determine allowance and payment of Asbestos Personal Injury Claims. (*See* Section VI.B, entitled "**THE ASBESTOS TRUST -- Asbestos Personal Injury Claims Resolution Procedures.**") One of the provisions of the Asbestos Claims Resolution Procedures dovetails with, and attempts to take advantage of, the success of the Claims Quantification Process. The Asbestos Claims Resolution Procedures provide the opportunity to Asbestos Personal Injury Claimants to make an "Expedited Payment Election" which, for those who have participated in the Claims Quantification Process, would essentially result in a reaffirmation of their Claims for the amounts agreed to in the Claims Quantification Process. The Ballot accompanying the Plan gives claimants the opportunity to make the Expedited Payment Election at the time of voting on the Plan which, it is hoped, will further expedite the initial distributions to be made by the Asbestos Trust to Asbestos Personal Injury Claimants.

### 3. Post-Petition Asbestos Claims and Future Asbestos Claims

Because an asbestos-related disease may take many years to manifest itself after exposure, it is statistically certain that there are many individuals who were exposed to Porter asbestos products but who have not yet become ill, and thus have no reason to assert a Claim against Porter at this time. Although no firm estimates of the number of these individuals can be made, the consultant to the Committee has suggested that a range of 428,772 to 542,777 individuals may in the future file claims because they manifest diseases caused by asbestos-containing products manufactured or distributed by Porter, with a range of total value from \$2.07 billion to \$2.623 billion. Using a discount rate of 7%, the present value of these Claims ranges from \$1.572 billion to \$1.784 billion. This range of possible liability was estimated using alternative assumptions about (i) the incidence of asbestos-related cancers, (ii) propensity to sue, and (iii) the relationship between the number of Claims for malignant and nonmalignant disease. Each future claim was valued based on the same historical data utilized in the Claims Quantification Process.

At the time of the filing of this Case, section 524(g) of the Bankruptcy Code had not yet been enacted, and there was no uniformity of precedent or opinion in the Third Circuit or elsewhere on the issue of whether individuals who manifest disease after a bankruptcy is filed as a result of pre-petition exposure hold "claims" against a debtor's estate, or even whether such individuals are entitled to representation. On August 6, 1992, Gene Locks, then a member of the Committee, filed a Motion with the Bankruptcy Court for the *sua sponte* appointment of a representative for creditors in this Case manifesting injuries post-petition. The Bankruptcy Court, by Order dated October 22, 1992, dismissed the Motion because it determined that a Committee member had no standing to file such a motion. On February 3, 1993, just two days after the filing of the Committee's First Plan of Reorganization (the "First Plan"), the Bankruptcy Court denied reconsideration of the Locks Motion. On appeal, the District Court affirmed, determining not only that the appointment of a representative for future claimants is not mandatory, but also rejecting, in *dicta*, the contention that these

individuals have cognizable claims against the Debtor's estate. *Locks v. U.S. Trustee*, 157 B.R. 89 (W.D. Pa. 1993). Obviously, because a legal representative for future claimants had not yet been appointed when the District Court rendered its decision, the District Court did not have the benefit of any brief or argument by any future claimant or authorized representative. Shortly before the District Court's decision, the Bankruptcy Court, in ruling on the adequacy of a disclosure statement filed by the Committee in conjunction with the First Plan, ruled that a plan which failed to provide for claimants who will manifest an asbestos-related injury post-petition, but before final distribution, could not be confirmed, and directed the United States Trustee to appoint a representative for unknown future claimants. In light of the District Court's Opinion and in response to a Motion by the Committee, the Bankruptcy Court vacated its previous Order and appointed a legal representative for unknown future claimants, now defined in the Plan as the Personal Injury Futures Representative.

In order to obtain a binding ruling on these issues, the Debtor filed a Declaratory Judgment Action against the Personal Injury Futures Representative, and also filed objections to the proofs of Claims of two known post-petition claimants, Josephine Crawford ("Crawford") and Anthony Tamburrino ("Tamburrino"), seeking rulings that post-petition claimants, whether known or unknown, are not "creditors" entitled to distribution in a Chapter 11 (the "Test Objections"). At the time, the Debtor did not have plans for continued operations and did not require protection against future claims. The Debtor therefore contended that claimants manifesting diseases post-petition not only did not have administrative expenses priority over claims which arose pre-petition, but were not entitled to any distribution, even if they became known during the pendency of the case. The Debtor based its arguments primarily on decisions in the Third Circuit, particularly *Schweitzer v. Consolidated Rail Corp.*, 758 F.2d 936 (3d Cir. 1985) cert. denied, 474 U.S. 864 (1985), a case decided under the railroad reorganization provision of the old Bankruptcy Act, which has been repealed; *Matter of M. Frenville Co., Inc.*, 744 F.2d 332 (3d Cir. 1984) cert. denied, 469 U.S. 1160 (1985), a case involving the automatic stay; and the decision of the District Court in *Locks v. United States Trustee, supra*. The Personal Injury Futures Representative and Crawford and Tamburrino contended that the *Schweitzer* and *Frenville* cases are distinguishable, and that an individual whose disease does not manifest itself until after the debtor files a liquidating bankruptcy should not be deprived of the ability to collect a distribution.

During the pendency of these actions, a number of decisions in other Circuits were rendered which called into question the Debtor's analysis of this issue, particularly with respect to claimants who manifest a disease or are injured prior to the confirmation of a plan of reorganization. But even those decisions simply heightened the confusion surrounding the future claims issues.

In light of the unsettled and evolving principals of law which control, and the costs, delay and uncertainties inherent in continued litigation of the Declaratory Judgment Action and the Test Objections, the Committee filed its Third Amended Plan of Reorganization which, in part, embodied a settlement of the Declaratory Judgment Action and Test Objections. That settlement, *inter alia*, would have treated post-petition, pre-confirmation



claims, as well as future claims, as general unsecured claims, entitled to share in future recoveries by the Debtor's estate, if any, from the Evans Litigation, from certain insurance policies of the Debtor, and from litigation against the Pennsylvania Insurance Guaranty Association ("PIGA"). However, the Third Amended Plan was never confirmed.

The driving force behind the Committee's Fourth Amended Plan of Reorganization is the settlement reached with the Evans Defendants, which will result in cash payments with a present value of \$31 million being paid to the Reorganized Debtor to partially fund the Asbestos Trust. The Asbestos Trust will process and handle all valid present and future Asbestos Personal Injury Claims and Asbestos Property Damage Claims. The Evans Litigation will be dismissed, and the Protected Parties, including the Evans Defendants, will be protected by the Asbestos Permanent Channeling Injunction and the Section 105 Injunction. In addition to the Evans Settlement, since the filing of the Third Amended Plan, the Debtor's estate has realized recoveries totaling \$37 million from PIGA and various of its insurance carriers through the efforts of its special insurance counsel. (*See* Section IV.E.7, entitled, "**THE CHAPTER 11 CASE -- Significant Events During Case -- Insurance Coverage and Recoveries.**") Thus, the "contingent" recoveries which were to be shared by the post-petition and future claimants under the Third Amended Plan have now been "realized", bringing the value of the Debtor's estate to more than \$100 million, and the Fourth Amended Plan will treat all similar Asbestos Claims in substantially the same manner under the terms of the Asbestos Trust. Because the Debtor will now survive confirmation as the Reorganized Debtor, in the business of managing and maximizing the value available for the Asbestos Trust, the Debtor is able to utilize, and provide to the Protected Parties, the protections of section 524(g) of the Bankruptcy Code. One of Congress' overriding goals in the enactment of section 524(g) was to enfranchise the largest possible group of claimants, present and future, suffering from exposure to asbestos products, and to provide this universe of claimants with roughly equivalent distributions under the Plan.

In order to insure that all future asbestos claimants are properly represented in the context of the confirmation of the Plan, and in compliance with section 524(g), the Debtor sought and obtained Orders, dated December 18, 1997, approving the appointment of the Co-Defendant Futures Representative and the Property Damage Futures Representative. On that same date, because section 524(g) had not been enacted at the time of the appointment of the Personal Injury Futures Representative, the Bankruptcy Court clarified its earlier Order to make clear that the Personal Injury Futures Representative is a "legal representative" as required by section 524(g)(4)(B)(i). Finally, as part of the Voting Procedures Order entered by the Bankruptcy Court on January 27, 1998, the Bankruptcy Court rendered a determination, based on arguments made by the Debtor in its Voting Procedures Motion relating to the effect of the enactment of section 524(g), that no Asbestos Claims are entitled to administrative expense priority under the proposed Plan.

The Committee believes that, even under the law of the Third Circuit, the enactment of section 524(g) overrides all arguably contrary case law as it may have applied to the treatment of future asbestos-related claims, thus permitting the Committee to propose a Plan which will treat all similar Asbestos Claims in substantially the same manner for an indefinite period into the future, and shield the Reorganized Debtor and the Protected Parties from any liability related to those Asbestos Claims.

#### 4. Dade County Litigation

For more than ten years prior to the filing of its Chapter 11 Petition, Porter was involved in litigation pending in Dade County, Florida against Metropolitan Dade County and captioned *H. K. Porter Company, Inc. v. Metropolitan Dade County, et al.* (Case No. 81-2766-CIV-EBD) (the “Dade County Litigation”). In the Dade County Litigation, Porter challenged the constitutionality of a minority business enterprise set-aside provision in connection with a contract for electrified rail for the Metrorail in Miami, Florida. Porter’s Chicago Works, a division of Porter at the time, had submitted the low bid, which was rejected due to the minority set-aside provision. Porter sought lost profit damages in the amount of \$1.5 million, plus interest. The case had an extremely complicated pre-petition history, with several decisions at various levels in favor of Defendant, Dade County. In 1988, the United States Supreme Court granted Porter’s Petition for Certiorari, and then remanded the case for reconsideration. In 1990, the United States District Court for the Southern District of Florida reaffirmed its prior judgment in favor of Dade County. Due to the expense involved in the litigation and the repeated decisions against Porter, Porter was tempted to abandon the Dade County litigation following the 1990 District Court opinion. However, Attorney Charles C. Kline, who had represented Porter throughout the litigation, continued to believe that Porter’s position in the litigation was correct, and offered to continue representation of Porter through a second appeal to the 11th Circuit on a 50% contingency fee basis. Porter agreed to that arrangement by way of a November 27, 1990 agreement with Attorney Kline. Shortly after the filing of Porter’s Chapter 11, the Debtor filed an Application to retain Attorney Kline to continue representation of Porter in the Dade County Litigation pursuant to the same 50% contingency fee arrangement. By Order dated May 29, 1991 Mr. Kline’s retention was approved by the Bankruptcy Court. Late in 1992, the United States Court of Appeals for the Eleventh Circuit found in favor of Porter, and settlement discussions intensified. In exchange for Porter agreeing to join in a Motion to Withdraw the Opinion of the United States Court of Appeals for the Eleventh Circuit, Metropolitan Dade County agreed to pay Porter the total sum of \$1.2 million, resulting in a net recovery to the Debtor’s estate of \$600,000.00. [That recovery was the subject of further litigation when a former subsidiary of H. K. Porter, Delta Star, Inc. laid claim to the proceeds. That litigation was also resolved favorably to Porter. (See Section IV.F.6, entitled, “THE CHAPTER 11 CASE -- Resolution of Significant Claims -- Delta Star Claim”).]

#### 5. Evans Litigation and Evans Settlement

On December 31, 1992, the Committee, pursuant to authorization from the Bankruptcy Court, commenced an adversary proceeding captioned Committee of Unsecured Creditors of H. K. Porter Company, Inc. v. Thomas Mellon Evans, et al., in the Court of Common Pleas of Allegheny County asserting an action for fraudulent conveyance on behalf of the Debtor’s estate (the “Fraudulent Conveyance Action”) against, among others, former shareholders, directors and officers of the Debtor and the prepetition purchaser of a substantial portion of the Debtor’s assets (the named defendants in the Fraudulent Conveyance Action are collectively referred to herein as the “Evans Defendants”). The Fraudulent Conveyance Action was subsequently removed to the United States District Court

for the Western District of Pennsylvania and was then transferred to the Bankruptcy Court where it was docketed at Adversary Proceeding No. 93-2581 (WWB).

The Order of the Bankruptcy Court authorizing the filing of the Fraudulent Conveyance Action also authorized the Creditors' Committee to engage Campbell & Levine and Titus & McConomy (formerly known as Cindrich & Titus) as its counsel in the Fraudulent Conveyance Action on a partially contingent fee basis, in relevant part, as follows: (i) services to be billed at 50% of regular hourly rates, with no more than \$1.5 million in hourly fees to be paid; and (ii) a contingent fee equal to 20% of the recovery, less hourly fees paid, subject to final approval of the Bankruptcy Court. As of January 31, 1998, a total of approximately \$1.2 million had been paid from the Bankruptcy Estate to counsel at the rate of 50% of regular hourly rates. The application for final fees will be filed on behalf of counsel for the Committee in sufficient time to give notice to all interested parties so that the hearing for final approval of fees can be held at the same time as the confirmation hearing on the Plan. While the final fees are subject to award by the Court, counsel for the Committee will not seek fees in excess of 20% of the present value of the total recovery less the fees already paid.

The Fraudulent Conveyance Action challenged transfers by Porter from 1983 through 1988 of a substantial portion of its business operations, together with millions of dollars in cash dividends, to its controlling shareholder, Thomas Mellon Evans, members of his immediate family or close associates, or entities controlled directly or indirectly by him. The first transfer occurred in May of 1983, when Porter distributed its shares of Fansteel, Inc. on a pro rata basis through a tax-free "stock dividend". The second transfer consisted of cash dividends from 1983 through 1988. The third and fourth transfers occurred in the summer of 1988 when Porter sold two indirect, wholly-owned subsidiaries to entities controlled by the Evans Defendants for a combined consideration of \$65.3 million.

After briefing and argument on the Evans Defendants' Motion to Dismiss, the Bankruptcy Court, by Memorandum Opinion, denied their Motion to Dismiss, and the case, to be heard as a non-jury trial before Judge Warren E. Bentz of the Bankruptcy Court, thereafter proceeded to discovery. The parties engaged in years of extensive and frequently contentious discovery. On June 3, 1996, the Fraudulent Conveyance Action was ordered to mediation before the Honorable M. Bruce McCullough of the Bankruptcy Court. As a result of lengthy negotiations and numerous conciliation sessions before Judge McCullough, the Committee, the Personal Injury Futures Representative and the Evans Defendants reached an agreement to settle the Fraudulent Conveyance Action and to provide for a plan of reorganization which incorporates the terms of such settlement, which has as its centerpiece a trust/injunction mechanism established pursuant to section 524(g) of the Bankruptcy Code.

The material terms of the agreement in principle among the Settling Parties are contained in a Memorandum of Understanding, a copy of which is attached hereto as Exhibit "A" and are incorporated in, and form a fundamental basis of, the Plan. Such material terms also form the basis of the Evans Settlement (a copy of which is attached as Exhibit 1.1.47 to the Plan) which provides for, among other things (a) the stay and, upon the Effective Date of the Plan, the dismissal, with prejudice, of the Fraudulent Conveyance Action against the Evans Defendants, (b) transfer to the Debtor, on the Effective Date, by

the Evans Defendants of (i) \$20 million cash, (ii) a promissory note payable over twenty years in the principal amount of \$11 million with interest thereon accruing at the rate of 7% per annum and (iii) a letter of credit securing the promissory note, (c) establishment of a trust for the benefit of holders of Asbestos Claims and Demands which satisfies the requirements of section 524(g)(2)(B)(i), (d) the issuance of a permanent injunction pursuant to section 524(g)(1) enjoining any entity from taking legal action against the Debtor, the Reorganized Debtor, or any of the Evans Defendants or their assets with respect to a Claim or Demand, (e) the issuance of an injunction pursuant to Section 105(a) enjoining the taking of any action against any of the Evans Defendants or their assets with respect to the subject matter of the Fraudulent Conveyance Proceeding, the Debtor's prepetition business activities or omissions, any of the Evans Defendants' alleged status as a successor to or affiliate of the Debtor, any asbestos-related claim against the Debtor or any non-asbestos-related lung disease claim against the Debtor, and this Chapter 11 Case (except as otherwise provided in the Plan), (f) releases in favor of the Evans Defendants from the Reorganized Debtor, the Committee and each creditor voting on the Plan and (g) rights of set-off against the promissory note and indemnification from Reorganized Debtor in favor of the Evans Defendants to supplement the releases and injunctions for amounts incurred by any of the Evans Defendants for any judgment, settlement or cost of defending against an action asserting a Settlement Claim, or challenging the Asbestos Permanent Channeling Injunction or the Section 105 Injunction.

In addition, the conditions precedent to both Plan confirmation and the Effective Date as set forth in the Plan are essential components of the Evans Settlements [see section V.C, entitled, "**THE PLAN OF REORGANIZATION -- Conditions Precedent to the Effective Date under the Plan.**"] Each and every component of the Evans Settlement (and, therefore, the Plan) is essential to the global settlement that has been negotiated in this case, between and among the Settling Parties.

## **6. Qualified Settlement Fund**

Due to the success of the Debtor's insurance litigation counsel in obtaining recoveries from various insurance companies, the Debtor would have had taxable income in 1996 and 1997 of approximately \$800,000.00 and \$25,500,000.00 respectively. The resulting tax liability would have been significant. Pennsylvania generally does not allow the carryback of tax attributes to offset income in previous tax years. Therefore, the Debtor would have paid approximately \$2,650,000.00 in nonrecoverable state tax for the years 1996 and 1997.

In the absence of a confirmed plan, the Debtor could not create the necessary deductions by making distributions directly to creditors. Therefore, on December 20, 1996, the Debtor, by Order of the Bankruptcy Court (SCBS-153), established its Qualified Settlement Fund pursuant to the regulations under section 468B of the Internal Revenue Code. In order to receive a current deduction on liability, the Internal Revenue Code requires that there be "economic performance" by the taxpayer with respect to that liability. Generally, economic performance requires actual payment of the debt. However, the regulations to section 468B provide that economic performance is deemed to have occurred when payments are made to a qualified settlement fund for the benefit of the creditors, thereby giving rise to a current deduction. When the Qualified Settlement Fund was

established in 1996, \$800,000.00 was contributed to the fund which offset the income for 1996 entirely. In 1997, the Debtor had substantial insurance litigation recoveries. Thus, in December of 1997, the Debtor paid \$25,500,000.00 into the Qualified Settlement Fund, and therefore offset over \$25,000,000.00 in taxable income for that year.

In addition, at the time the Qualified Settlement Fund was established, the Debtor could not predict when a confirmed plan could be obtained. Therefore, the Debtor was protecting itself against potential federal tax liability as well. For federal purposes, a corporation may carryback net operating losses in order to offset income. However, the carryback period is now only two years. Therefore, if a confirmed plan was not obtained until 1999, the Debtor would have been obligated to pay over \$250,000.00 in non-refundable federal taxes for 1996, and if the plan was not confirmed until the year 2000 the non-refundable tax liability for 1997 would have been nearly \$9 million. By establishing the Qualified Settlement Fund in 1996, the Debtor ensured that the federal tax for those years would be minimized regardless of when a plan could be confirmed.

The establishment of the Qualified Settlement Fund has saved the Debtor at least \$2,650,000.00 in tax liability to date and can likely be used as a post-confirmation tax planning vehicle to preserve even more of the estate for the Creditors.

## **7. Insurance Coverage and Litigation Recoveries**

One of the principal accomplishments of the Case to date has been the recovery on various insurance-related claims by the Debtor and its special insurance litigation counsel. At the time of the filing of the Case, there were only two insurance-related causes of action pending, one against the Pennsylvania Insurance Guaranty Association (“PIGA”), and one against the Insurance Company of North America (“INA”).

The PIGA cause of action arose out of the insolvency of one of the Debtor’s insurance carriers, Integrity Insurance Company. This cause of action was listed as a “contingent” claim for \$15 million on the Debtor’s Schedules of Assets. At the time of the filing, Porter had sued PIGA for \$5 million in the Court of Common Pleas of Allegheny County, the lawsuit had been pending for more than a year and a half, and settlement negotiations had produced no offer from PIGA.

The INA claim was the subject of an alternative dispute resolution procedure to determine INA’s liability arising out of Porter’s participation in the Wellington Group, a group of asbestos producers who agreed to a settlement and verdict sharing arrangement. No value was attributed to the INA claim on the Debtor’s Schedule of Assets but correspondence revealed that the claim demand was \$50,000.00, the total limits of two lost policies.

Other than these two pending causes of action, the Debtor did not, as of the Petition Date, believe that it possessed any significant insurance-related assets. In fact, the Debtor informed counsel for the Debtor that it had exhausted the policy limits of all of its asbestos-related insurance, both primary and excess, and the Debtor listed no value under the heading of “interests and insurance policies” on its Schedule of Assets. By Order of the Bankruptcy Court dated April 3, 1992, the Debtor retained the law firm of Meyer, Unkovic & Scott for

the purpose of serving as special insurance counsel, primarily in connection with the pursuit of the PIGA Common Pleas action, but also to assist the Debtor generally with other insurance matters as they arose.

The following will summarize the recoveries made by the Debtor through its special insurance counsel and the claims and lawsuits that are currently being pursued by the Debtor.

**a. PIGA**

Debtor's single largest insurance claim was against the Pennsylvania Insurance Guaranty Association ("PIGA") which arose out of the insolvency of one of the Debtor's insurance carriers, Integrity Insurance Company. Integrity issued three comprehensive general liability policies to the Debtor, each having a limit of \$5 million, between May 1, 1981 and May 1, 1984. Integrity was declared insolvent by the Insurance Commissioner of the State of New Jersey in March, 1987. Thus, PIGA became statutorily obligated to step into the shoes of Integrity under the terms of the Pennsylvania Insurance Guaranty Act, which was designed to protect insureds from suffering losses as a result of the insolvency of their carriers, subject to a \$300,000.00 maximum limit per claim. Prior to the inception of bankruptcy, the Debtor had filed an action against PIGA in the Court of Common Pleas for \$5 million seeking indemnity under one of the Integrity policies. After insurance counsel was appointed, insurance counsel investigated PIGA's potential liability and concluded that PIGA was liable to Debtor for the entire limits of \$15 million and that PIGA also had an obligation to indemnify the Debtor for substantial defense fees that the Debtor had incurred in defending the underlying asbestos claims. The Debtor filed a declaratory judgment action against PIGA in the United States District Court for the Western District of Pennsylvania, seeking \$15 million in indemnity, as well as defense costs incurred in the settlement and disposition of underlying asbestos claims. PIGA strenuously defended the litigation for several years, never made an offer to Debtor and obtained a summary judgment that Porter's claim against PIGA was limited to a total of \$900,000.00 because each policy represented a single \$300,000.00 claim under the Guaranty Act. PIGA then offered to settle the matter for \$900,000.00. Debtor declined the offer and appealed the judgment to the United States Court of Appeals for the Third Circuit, obtaining a reversal of the judgment and a holding by the Third Circuit that the \$300,000.00 limitation applied to each of the underlying claims separately, not to the aggregate claim that Debtor was making against PIGA. Subsequent to that decision, the Debtor then obtained a summary judgment on other liability issues in the United States District Court, and on the eve of the damage trial, Porter and PIGA settled the lawsuit for the amount of \$25 million. All but \$1.2 million of that amount has been collected, and a dispute regarding the balance is now being litigated before the United States Court of Appeals for the Third Circuit.

With respect to the liquidation of Integrity Insurance Company, Debtor's insurance counsel has been able to obtain an allowed claim for the Debtor in that liquidation proceeding in the amount of \$15 million, representing the indemnity limits of the Integrity policies. The claim, however, is subject to reduction based on a formula related to recoveries which the Debtor might make from various guaranty associations, including PIGA. In addition, Debtor's insurance counsel is pursuing a claim for pre-petition counsel fees expended by the Debtor in settlement or litigation of asbestos claims. These counsel fees exceed \$20 million.

No payments have been received from the Integrity Insurance liquidator to date, but Porter anticipates a substantial dividend when its counsel fees claim is accepted.

**b. Columbia Casualty Company**

On February 12, 1993, Porter commenced an action against Columbia Casualty Company ("Columbia") in the United States District Court seeking a declaratory judgment that a policy issued by Columbia to Porter afforded two separate aggregate periods of coverage to Porter, and, thus, required Columbia to reimburse and indemnify Porter for \$4 million in claims which Porter had previously paid. Columbia had already paid the first aggregate limit of \$4 million to Porter, and the District Court agreed with Columbia's position that the policy provided only one aggregate period of coverage. Porter appealed the decision to the United States Court of Appeals for the Third Circuit. In its opinion dated September 8, 1995, the Third Circuit agreed with Porter and construed the policy as providing two separate aggregate periods. Porter then received its second payment of \$4 million from Columbia and reserved the right to litigate the issue of whether prejudgment interest was owing to Porter as a result of Columbia's wrongful denial of Porter's claim for the separate aggregate. After motions for summary judgment were filed, the District Court agreed with Porter that prejudgment interest was owing and entered judgment in the amount of an additional \$1,993,685.52. Columbia appealed to the Third Circuit, the Third Circuit affirmed the District Court's judgment, and that additional sum has been paid to Porter.

**c. INA**

Early in the bankruptcy, Porter paid \$5.2 million to the Pennsylvania Department of Environmental Resources to settle an environmental claim arising from the Hopewell Dumpsite which Porter once owned. Special insurance litigation counsel made a claim against INA for indemnification for the settlement amount. As a result of that claim and other potential claims, INA paid Porter the sum of \$3,666,489 million pursuant to a Settlement Agreement the terms of which remain confidential.

**d. CNA**

In February of 1993, Porter brought suit against Continental Casualty Company ("Continental") seeking a declaration that a general liability policy issued by Continental to Porter for the policy period of April 15, 1955 through July 1, 1958 provided coverage for certain bodily injury claims asserted against Porter by claimants who were exposed to asbestos products manufactured by the Thermoid Company. Thermoid had been acquired and merged into Porter in December of 1958, several months after the expiration of the Continental policy. Porter contended that CNA was responsible for the pre 1958 claims against Thermoid, even though Porter was not affiliated with Thermoid during the initiation of the claims, on the theory that the insurance was retroactive. Prior to the District Court rendering a decision on the merits of the pending summary judgment motions filed by the parties, the case was settled for the sum of \$800,000.00.

**e. Other Recoveries**

Other insurance recoveries resulting from either negotiation and/or litigation for which settlements have been approved by the United States Bankruptcy Court, or for which settlements are in the process of being approved, are as follows:

a.	Industrial Indemnity Company	\$551,988.00;
b.	Liberty Mutual Insurance Company	\$651,990.00;
c.	Federal Insurance Company	\$425,000.00;
d.	INA	\$40,000.00;
e.	CNA	\$66,250.00.

The total recoveries to date made by the Debtor for the benefit of the estate from insurance related claims and litigation total approximately \$37 million.

**f. Property Damage Claims**

At the time that special counsel was appointed, there were in excess of \$6 billion of claims filed in the bankruptcy by property damage claimants contending that Porter's asbestos products had caused property damage. Porter's special insurance counsel reviewed Porter's insurance policies and concluded that the endorsements contained in certain policies excluding certain types of asbestos claims did not exclude Asbestos Property Damage Claims. The discovery of such potential coverage totaling \$57,300,000 enabled Porter to accommodate the property damage claimants through the creation of a separate class in the Plan. See Section IV.F.7, entitled, "THE CHAPTER 11 CASE -- Resolution of Significant Claims -- Property Damage Claims" for a more complete discussion of Asbestos Property Damage Claims and the events resulting from the identification of potential insurance coverage for those claimants.

**g. Ongoing Insurance Items**

Debtor has engaged in negotiations with four insurance companies on the issue of whether exclusions for asbestosis contained in their policies exclude claims for malignancies caused by asbestos. The aggregate limit of the policies containing such exclusions is \$45 million. In the event that the Debtor is not able to favorably settle these claims in the near future, the Debtor, the Reorganized Debtor or the Asbestos Trust may seek declaratory judgments against two carriers and may file for arbitration against the remaining two, seeking adjudications that the carriers are liable for Porter's malignancy claims.

The Debtor is presently in litigation against Travelers Insurance Company seeking coverage for the aforementioned Hopewell settlement. Travelers is contending not only that an exclusion in its policy excludes coverage for the environmental claim but that the terms of the policy limit the claim to \$500,000.00.

Porter has made claim against CNA seeking an adjudication that an endorsement in two policies issued by CNA to Porter during the years 1958 to 1964 creates additional aggregates for each of Porter's subsidiaries. In the event that Porter obtains an adjudication



that the CNA policies do create additional aggregate limits for Porter subsidiaries, Porter will seek damages in excess of \$6 million.

Finally, Porter has made claim against CNA for counsel fees arising from certain policies that CNA issued to Porter in the late 1970s and early 1980s. Porter contends that even though those policies purport to contain an asbestos exclusion for bodily injuries arising from products manufactured by certain of Porter's divisions and subsidiaries, nevertheless, CNA had a duty to defend asbestos claims until CNA could limit the claims to the subsidiaries and divisions mentioned in the exclusion. The claim for counsel fees is in excess of \$20 million.

## **F. Resolution of Significant Claims**

### **1. IRS Claim**

In 1989 and 1990, Porter carried back a total of \$61 million in net operating losses and \$4.3 million in capital losses to offset income in the 1976-79, 1981, and 1984-86 tax years. The result was that Porter received tax refunds in excess of \$25.5 million. After the Case was filed, the Internal Revenue Service (the "IRS") disputed Porter's entitlement to those refunds and filed a proof of Claim against Porter's estate for approximately \$28 million for the return of those refunds and for associated penalties and interest. Because the Claim would be entitled to priority, the Debtor would have had to pay the IRS' Claim on a dollar for dollar basis, thereby diminishing the value of the estate by \$28 million. The Debtor disputed the position taken by the IRS and began formal negotiations on the Claim.

The crux of the dispute was whether Porter met the "continuity of business" requirement contained in the Internal Revenue Code after the 1987 transactions which resulted in Porter converting from a publicly held to a privately held company. If Porter did not continue to do business after those transactions, then Porter could not carry back the \$65 million in losses that it incurred after those transactions to tax years prior to going private, and the refunds would have to be repaid. In presenting its position to the IRS, the Debtor focused solely on the transactions that took it private in the summer of 1987. Since Porter continued to operate its business all through the rest of 1987, the Debtor argued that Porter clearly satisfied the continuity of business requirement. The IRS, instead, focused not only on the 1987 transactions, but also on the transactions that took place in the beginning of 1988 in which all of Porter's operating assets were sold. It argued that all of those transactions were part of one preconceived and integrated plan. Since at the end of all of those transactions Porter was not operating, the continuity of business requirement, the IRS argued, could not be met.

When discussions between the parties failed to resolve the dispute, the Debtor requested a Technical Advice Memorandum. On December 3, 1992, the Technical Advice Memorandum was issued, but unfortunately adopted the position of the IRS that the refunds should be returned to the IRS. With the unfavorable Memorandum, it became apparent that the matter would not be resolved in the Debtor's favor through negotiations with the IRS. In October of 1993, the Debtor filed with the Bankruptcy Court an objection to the Priority Claim of the IRS (Adv. Proc. 93-2505). Discovery proceeded with interrogatories being

exchanged, numerous depositions being taken, and thousands of pages of documents being produced. The difficulty with the litigation was that there was no middle ground.

Depending on how a court ruled on the continuity of business issue, the Debtor would either keep all of the refunds, or be required to pay the entire \$28 million to the IRS. Through two and a half years of discovery and negotiations, the Debtor succeeded in convincing the IRS that the Debtor's position was more likely to prevail in the adversary proceeding. In April of 1996, the proceeding was settled between the parties, and the settlement was approved by the Bankruptcy Court. The settlement provides that the IRS accepts as full satisfaction of its Claim the waiver by the Debtor of the following: (i) the right to collect an additional \$500,000.00 in refunds to which the Debtor contends it is entitled; (ii) the right to utilize its \$2,549,754.00 of general business credits, (iii) the right to utilize its \$2,459,858.00 of foreign tax credits; and (iv) the right to utilize the first \$2,500,000.00 of net operating losses generated after 1993. The \$28 million Priority Claim of the IRS was settled without the Debtor having to make any cash payments out of the assets of the estate.

## **2. Pension Claims**

Pre-petition, the Debtor was the plan sponsor of two pension plans: the Amended and Restated Pension Plan for Salaried Employees of H. K. Porter Company, Inc. (the "Salaried Plan"), and the Connors Steel Company Pension for Hourly Paid Employees (the "Connors Plan"). The Salaried Plan was over-funded by approximately \$1,200,000.00. The Connors Plan, although containing sufficient assets to enable it to meet its obligations to pay benefits as they regularly became due without requiring Porter to make annual contributions to the plan fund, was determined to be under-funded on an actuarial basis.

The Pension Benefit Guaranty Corporation (the "PBGC") filed a proof of Claim against the Debtor asserting a contingent claim in the amount of \$8,229,600.00, being the PBGC's estimate of its damages if the Connors Plan were to be terminated. The PBGC asserted priority status for this Claim under 11 U.S.C. section 507(a)(1) or (a)(7), under ERISA sections 4068(a) and (c)(2) and under, 29 U.S.C. sections 1368(a) and (c)(2). The Debtor and the Committee disagreed with the asserted priority and believed that under applicable law the Claim would be an Unsecured Claim without priority and could be reduced substantially in amount. After extensive negotiations among the PBGC, the Debtor, and other parties, an agreement was reached which provided that upon the merger of the Salaried Plan and the Connors Plan, HBD Industries, Inc. ("HBD") would assume plan sponsorship of the merged plans, as well as all of the liability arising therefrom. The agreement further provided that upon assumption of plan sponsorship of the merged plans by HBD, the PBGC would withdraw its claim against the Debtor. The pension settlement agreement was approved by the Bankruptcy Court by Order dated April 25, 1994. The PBGC formally withdrew its claim on December 15, 1994. Thus, while the estate lost the over-funding in the Salaried Plan, which would amount, after payment to the IRS of the applicable 50% excise tax, to approximately \$600,000.00, the Estate was relieved of the burden of a Priority Claim in excess of \$8 million for which priority was asserted.

### **3. Retiree Benefit Claims**

As of the Petition Date and continuing thereafter, the Debtor was obligated to provide health insurance benefits and death benefits to various former salaried and hourly employees of the Debtor pursuant to Retiree Benefit plans. Until such time as the Court ordered a modification of the Retiree Benefits, Debtor was required to continue, post-petition, the full amount of those benefits. At the request of the Debtor, the Court appointed a Retiree Committee by Order dated November 8, 1991 for the purpose of negotiating a modification of the Retiree Benefits pursuant to section 1114 of the Bankruptcy Code.

In the course of their negotiations, the parties agreed upon the present value of the retiree health insurance Claim based upon the calculations of the actuary retained by the Retiree Committee. The present value of the retiree health insurance Claim of \$17,841,254.00 was included in the Debtor's Amended Schedules. The Debtor's Schedules were also amended to include \$977,060.00 on account of Debtor's obligation to pay death benefits to various retirees. Accordingly, consistent with the agreement of the parties, the Debtor's Schedules reflect Retiree Benefit Claims totaling \$18,818,314.00.

While negotiations for a permanent modification of the Retiree Benefits continued, the Retiree Committee proposed, and the Debtor accepted, an interim modification which had the effect of reducing the Debtor's monthly cost by 50%. The interim modification was approved by Order of the Court dated June 2, 1992 and became effective July 1, 1992.

After further negotiations failed to produce an agreement among the parties, the Debtor filed a Motion for Approval of Permanent Modification of Retiree Benefits pursuant to section 1114(e)(1)(B) at Motion No. SCBS-56. Following the filing of the Debtor's section 1114 Motion, and in advance of trial, the Debtor, the Retiree Committee and the Committee conducted additional discussions which resulted in a settlement. The retiree settlement, as approved by Order of Court dated December 29, 1992, provided for the additional payment by the Debtor of \$2 million to fund a trust established by the Retiree Committee for the continuation of retiree health insurance and to pay retiree death benefit claims. The amount of \$2 million represented 10.62% of the total amount of the Retiree Benefit Claims of \$18,818,314.00. The settlement further provided that once all general unsecured creditors were paid 10.62% of their claims, the Retirees were to share on a pro-rata basis in any additional distribution. In exchange for the aforementioned payment, Debtor's obligation to provide further Retiree Benefits was terminated. Inasmuch as there is no possibility that the funds of this estate will be sufficient to pay general unsecured creditors a distribution of 10.62% on account of their claims, there will be no further distribution on account of Retiree Benefit Claims.

### **4. Ohio Bureau of Workers Compensation**

The Ohio Bureau of Workers Compensation (the "Bureau") filed two estimated proofs of Claim as follows: A Priority Claim in the amount of \$53,852.59 based upon the Debtor's alleged statutory obligation to pay workers compensation premiums; and a Priority Claim in the amount of \$8,320,000.00 based upon Debtor's obligation to pay the costs of various workers compensation claims, which Claims the Bureau asserted as being entitled to the same

priority as an excise tax. Debtor provided workers compensation insurance on a self-insured basis until the sale during the summer of 1988 of its Ohio facilities located in Bellefontaine and Warren. On or about March 5, 1996, the Debtor filed an Objection to both of the Bureau's Claims at Motion No. SCBS-127. In its Objection, the Debtor objected to both the amount and the priority of the Bureau's Claims. Following the Debtor's initial negotiations with the Bureau and in light of the decision of the Sixth Circuit in *In Re Suburban Motor Freight, Inc.*, 36 F.3d 484 (6th Cir. 1994), the Bureau agreed that its \$8.3 million claim would not be entitled to priority status. After extensive negotiations and upon a further review of its claim, the Debtor and the Bureau entered into a Stipulation which was approved by the Bankruptcy Court on October 18, 1996 which resulted in the reduction of the \$8,320,000.00 Priority Claim to \$69,584.24 as a general Unsecured Claim and the reduction of the \$53,852.59 Priority Claim to \$6,205.75 as a Priority Claim. The Plan provides that Priority Claims will be paid in full. The unsecured portion of the Bureau's claim shall be included in Class 7.

## **5. Environmental Claims**

Given the myriad of manufacturing and similar businesses in which Porter was involved, some environmental claims were being pursued against Porter prior to the Chapter 11 filing, and additional environmental Claims were filed after the Chapter 11 was commenced. In recognition of the fact that unsecured creditors would likely be receiving only a small percentage of allowed claims, and in recognition of the significant professional fees which must be incurred to defend against environmental Claims, Porter and its advisors, in consultation with the Committee and its advisors, adopted what they believe is a practical approach to environmental Claims against Porter, which has led to the resolution of most of the outstanding environmental Claims filed to date.

### **a. Resolved**

#### **i. Hopewell Dump Site**

Prior to the Chapter 11 filing, Porter was facing action by the Commonwealth of Pennsylvania, Department of Environmental Resources, now the Department of Environmental Protection (the "DEP"), pursuant to an August 15, 1990 DEP Order requiring Porter to conduct a clean-up of a site in Hopewell Township, Beaver County, Pennsylvania (the "Hopewell Dump Site"). In part because of its qualifications, and in part because it had already been engaged by Porter prior to the Chapter 11 for this purpose, Porter continued the services of Civil & Environmental Consultants, Inc. ("CEC") to assist with Hopewell Dump Site matters. In consultation with its advisors and the Committee, the Debtor negotiated an amicable resolution of the dispute between the Debtor and DEP, which resulted in the execution of a settlement on October 23, 1991 (the "DEP Settlement"), which was approved by the Bankruptcy Court on November 4, 1991 at Motion No. 91-7709M. After the DEP Settlement was approved, Porter expended \$5.3 million in remediation and related costs associated with the Hopewell Dump Site. Although Porter's expenditure of \$5.3 million was not sufficient to complete a remediation of the Hopewell Dump Site (a possibility recognized in the DEP Settlement) the settlement provided that Porter would have no further responsibility for Hopewell Dump Site matters once it expended \$5.3 million. Special

insurance counsel to Porter is pursuing certain insurers of Porter in an effort to recover some of the \$5.3 million expended. Porter's pursuit of such insurance coverage, to the extent it exists, was also contemplated within the DEP Settlement. At the filing of this Disclosure Statement, the outcome of the pursuit of such insurers is difficult to predict. Any funds recovered from insurers will become part of the Debtor's estate to be distributed pursuant to the terms of the Plan.

## **ii. Sandvik Claim**

Another resolved environmental Claim against the Debtor is the approximately \$11 million Unsecured Claim of Sandvik, Inc. ("Sandvik") associated with a manufacturing plant in Danville, Virginia (the "Danville Facility") which was constructed, owned and operated by Porter from 1959 through 1971. Through various Claims it filed against the Debtor during the Chapter 11 case, Sandvik asserted that it had expended in excess of \$10 million associated with the Danville Facility, and expected to incur an additional \$1 million to \$2 million in final clean-up work required by the Commonwealth of Virginia, Department of Environmental Protection.

Commencing in mid-1996, the Debtor, its counsel, and the Committee's counsel worked with representatives of CEC to ascertain the degree to which Porter might have liability for the environmental costs associated with the Danville Facility and whether or not such potential liabilities could be amicably resolved with Sandvik. All reasonably available information was examined, after which settlement negotiations commenced. As a result, the Debtor and Sandvik entered into a June 23, 1997 Settlement Agreement (the "Sandvik Settlement") whereby Sandvik was granted a \$5.5 million allowed general Unsecured Claim against the Debtor in full satisfaction of all of its Claims against the Debtor now or in the future. The Sandvik Settlement also required the Debtor to seek authority to make an immediate payment to Sandvik of 5.6% of its Allowed Claim, or \$308,000.00. On September 22, 1997, at Motion No. SCBS-170, the Bankruptcy Court approved that portion of the Sandvik Settlement which provided for a \$5.5 million Allowed Unsecured Claim; however, as a result of further negotiations between Sandvik and the Committee, the immediate payout to Sandvik was reduced to \$247,500.00, representing a 4.5% distribution. Sandvik will receive no further distributions unless and until all Allowed Unsecured Claimants have received more than a distribution 4.5% on account of their Claims.

## **iii. Bollinger Plant**

A further resolved environmental matter was an approximately \$1.8 million Claim filed by the United States of America, on behalf of the United States Environmental Protection Agency (the "EPA") with regard to a facility in Ambridge, Beaver County, Pennsylvania, which was owned and/or operated by Porter or entities subsequently acquired by Porter from approximately 1937 through 1970 (the "Bollinger Plant").

Prior to Porter's Chapter 11 filing, the EPA had conducted a "Superfund" clean-up at the Bollinger Plant and thereafter asserted that Porter and various other entities were potentially responsible persons ("PRPs") who should reimburse the EPA for any expenses it incurred. In its initial Claim, the EPA asserted entitlement against the Debtor for about \$1.6

million, thereafter amended to approximately \$1.8 million. When the EPA's claim was resolved, the EPA had asserted that it was prepared to amend the Claim to seek \$2 million from the Debtor. During the Chapter 11 Case, in addition to Bollinger Plant Claim it filed (as amended) against the Debtor in the Bankruptcy Court, the EPA also instituted in the United States District Court for the Western District of Pennsylvania at Civil Action No. 96-579 a lawsuit against the Debtor and other PRPs seeking recovery of Superfund costs incurred by the EPA at the Bollinger Plant.

After considerable analysis and negotiation, the EPA and the Debtor entered into a Settlement Agreement (the "EPA Settlement"), whereby the EPA was to receive an Allowed general Unsecured Claim against the Debtor in the amount of \$1,550,000.00, in full and complete satisfaction of the EPA's Bollinger Plant Claim (as amended) against the Debtor, including the termination of said Civil Action No. 96-579. Additionally, the Debtor was to receive insulation from any lawsuits, claims or otherwise which had been or might in the future be brought against Debtor by other PRPs of the Bollinger Plant. The EPA Settlement was approved by the Bankruptcy Court on February 25, 1997 at Motion No. SCBS-147, over the objections of three related PRPs, who asserted that Porter should bear more of the liability. Bankruptcy Court approval of the EPA Settlement was, however, only the first step, as the EPA Settlement also required approval of the District Court at Civil Action No. 96-579.

On October 2, 1997, United States Magistrate Judge Kenneth J. Benson issued a Report and Recommendation wherein he recommended to the District Court that it approve the EPA Settlement, over the objections of various other PRPs. Thereafter, by Memorandum Order dated November 26, 1997, United States District Judge William L. Standish adopted the Report and Recommendation previously issued by Magistrate Judge Benson. Judge Standish's Order was not appealed by any of the PRPs who had previously objected to the EPA Settlement, thus finalizing the settlement. This final approval of the EPA Settlement enabled the Debtor to receive from E. Stanley Kleeman, another PRP who had entered into a separate settlement with the EPA, the withdrawal of a proof of Claim he filed against the Debtor on February 21, 1996 at Claim No. 37536, for contribution in an unliquidated amount.

Thus, the only Bollinger Plant Claim against the Debtor will be the \$1,550,000.00 Allowed Unsecured Claim in favor of the EPA.

#### **iv. Camalloy Wire**

Another resolved Claim against the Debtor was a \$3 million Unsecured Claim filed by Camalloy Wire, Inc. ("Camalloy"), which had filed a lawsuit against Porter on February 27, 1991, at a time when Camalloy was not aware of the Chapter 11 filing. Camalloy's Claim for \$3 million arose out of an indemnification agreement with Porter related to Porter's sale to Camalloy of a facility it had controlled or owned from 1953 to 1982.

In consultation with the Committee, the Debtor negotiated a settlement with Camalloy which only gave recognition to Camalloy's actual expenditures, but gave no recognition to possible future expenditures which Camalloy might be required to make incident to the site.

That settlement, which gave Camalloy a \$150,000.00 Allowed general Unsecured Claim, was approved by the Bankruptcy Court on August 26, 1997, at Motion No. SCBS-151.

**v. EPA Escrow**

Another finalized environmental claim resulted in \$40,000.00 of escrowed funds being returned to the Debtor.

Prior to the Chapter 11 filing, Porter had been sued by the EPA in the United States District Court for the Eastern District of California at Civil Action No. 89-0704 LKK-JFM. That lawsuit arose out of a claim by the EPA that Porter was liable for response costs incurred by the EPA. Just prior to the Chapter 11 filing, a \$40,000.00 Porter check had been deposited into the escrow account of Porter's counsel in California, with the understanding that the check would be turned over to the EPA upon court approval of a Consent Decree between Porter and the EPA. Although the EPA lodged the Consent Decree with the District Court in California, it requested that the District Court not execute it until further request. Although no such request was made, on May 13, 1991, a little more than three months after Porter's Chapter 11 filing, the District Court entered the Consent Decree.

In post-bankruptcy negotiations with the EPA, the Debtor took the position that the EPA had no entitlement to the \$40,000.00 and that the Consent Decree was void because it had been entered without recognition of the Porter Chapter 11 filing. The result of negotiations with the EPA was a December 7, 1994 Bankruptcy Court Order at Motion No. SCBS-103, approving a Stipulation between the Debtor and the EPA whereby the \$40,000.00 was returned to the Debtor and became part of its bankruptcy estate, while the EPA was given a \$40,000.00 Allowed general Unsecured Claim.

**b. Unresolved**

Several environmental Claims against the Debtor remain to be resolved.

**i. IMO DeLaval**

IMO DeLaval, Inc. ("IMO") has filed a nearly \$4 million Claim against the Debtor for alleged clean-up costs it incurred at a site in Lawrenceville, New Jersey. CEC has been assisting the Debtor and its counsel with an analysis of the potential liability under the Claim and a strategy for attempting to amicably resolve the Claim, to which the Debtor has already filed an Objection at Motion No. SCBS-152. The Debtor and its representatives have worked with IMO and its representatives to amicably resolve IMO's Claim. IMO and the Debtor have entered into a Stipulation whereby IMO would be given a \$1.5 million Allowed general Unsecured Claim in the case. The Stipulation has been filed or will be filed with the Court for consideration, and Court approval is anticipated.

**ii. Atlantic Steel**

Also unresolved is proof of Claim No. 37389 filed by a group of steel companies (the "Atlantic Steel Claimants"). The Atlantic Steel Claimants are asserting an Unsecured Claim

against the Debtor in the amount of \$20.5 million for “undivided costs for environmental clean-up, including both accrued and estimated future costs” associated with several waste disposal sites in Tifton County, Georgia (the “Georgia Sites”). The claim of the Atlantic Steel Claimants was filed on June 15, 1995, well after the passage of the March 16, 1992 claims bar date, which may or may not become an issue in the matter.

According to the Atlantic Steel Claimants, the Debtor is a PRP with responsibility for approximately \$4 million to \$8 million of the \$20.5 million clean-up of the Georgia Sites. CEC has been requested to work with the environmental consultants to the Atlantic Steel Claimants to evaluate from an environmental consultant’s perspective the Debtor’s potential liability and, consistent with prior matters, to assist in determining whether or not the Claims of the Atlantic Steel Claimants can be amicably resolved for an Allowed Unsecured Claim of some mutually agreed amount. If they cannot, the Claim will be litigated.

### iii. Newman

The final known, unresolved environmental Claim was filed by Newman & Co. (“Newman”) at Claim No. 37456 in the amount of \$150,000.00. Given the relatively small amount of Newman’s Claim and the anticipated percentage distribution available to unsecured creditors, Porter has requested CEC to conduct a brief analysis of the Claim to determine Porter’s potential for liability and whether or not the Newman claim can be amicably resolved in exchange for an Allowed Unsecured Claim in an amount to be agreed upon.

This Disclosure Statement does not and cannot address environmental Claims against Porter which have not been filed with the Bankruptcy Court. To the extent such unfiled Claims exist, then to the extent such additional Claims are allowed, distribution to unsecured creditors could be negatively affected.

## 6. Delta Star Claim

By a Bankruptcy Court Order dated August 19, 1993, the Debtor’s settlement in the Dade County litigation was approved resulting in a net recovery to the Debtor’s Estate of (\$600,000.00) six hundred thousand dollars. (*See* Section IV.E.4, entitled, “**THE CHAPTER 11 CASE -- Significant Events During Case -- Dade County Litigation**”). Subsequent to the payment of that settlement, Delta Star, Inc. filed a *Motion to Partially Vacate And Modify Order of Court Dated August 19, 1993, And For Supplemental Relief* (Motion No. MML-1) in which Delta Star claimed entitlement to the entire settlement proceeds. Delta Star claimed that when Porter spun off its Lynchburg, Virginia and Belmont, California divisions to Delta Star by way of an ESOP, that the Dade County litigation was one of the assets transferred to Delta Star. The Debtor successfully convinced the Bankruptcy Court that the settlement proceeds constituted property of the Debtor’s estate, and the Bankruptcy Court entered an Opinion and Order denying Delta Star’s Motion on June 23, 1995. Delta Star appealed that decision to the District Court. During the pendency of the Appeal, the parties entered into a Stipulation whereby Delta Star would have an allowed, unsecured claim against the Debtor’s estate in the amount of \$600,000.00 to be paid pro rata with other general unsecured claims, relinquishing any claim to the \$600,000.00 settlement proceeds.



## 7. Property Damage Claims

Prior to the Petition Date, Porter and numerous other companies were sued in both state and federal court by various entities owning or operating commercial properties and public buildings, such as school districts, counties, cities, states and libraries. Porter vigorously contested these lawsuits prepetition, and was never required to pay a single dollar pursuant to either settlement or judgment in connection with a property damage lawsuit.

Sixty-one Asbestos Property Damage Claims in the aggregate amount of approximately \$5.8 billion were filed against the Debtor prior to the March 16, 1992 bar date. Four of those Claims arose out of prepetition class actions in which the Debtor was a defendant. The Debtor did not believe that it had any material liability on account of Asbestos Property Damage Claims. Further, counsel for the Debtor had been told by the Debtor that it had been advised that its insurance coverage applicable to asbestos property damage litigation had been exhausted.

The Debtor filed objections to all of the Asbestos Property Damage Claims. Based upon Porter's history of not being held liable for property damage, and based upon counsel for the Debtor's representation that there were no insurance policies from which recovery could be made, the majority of property damage claimants either withdrew their claims or permitted them to be dismissed by virtue of the default procedures available under the Local Rules of the Bankruptcy Procedure for the Western District of Pennsylvania.

Certain of the property damage claimants, however, including all of the class action claimants, refused to withdraw their Claims, and proceeded to litigate the Debtor's objections, in particular, the Debtor's contention that the plaintiffs had failed to specifically identify Porter product as having been present in the buildings at issue. Both sides filed voluminous briefs on the issue of whether or not a property damage claimant could avoid specific product identification by advancing novel legal theories, such as: "concert of action," "market share liability," "alternative liability," "enterprise liability," and "civil conspiracy."

While proceeding with these objections, the Debtor instructed its recently retained special insurance counsel to undertake an investigation of the Debtor's insurance coverage in order to confirm or refute its belief that no further insurance coverage was available for property damage claims. Special counsel made the surprising finding that substantial insurance was still potentially available for the payment of property damage litigation costs, and, if applicable, recoveries. Believing that it had the duty to disclose this new information, counsel for the Debtor informed counsel for the various property damage claimants of the existence of several insurance policies potentially insuring up to \$57 million in property damage claims. (See Plan Exhibit "1.1.68") Upon learning of the potential coverage, the property damage claimants filed in the Bankruptcy Court a **Motion to Vacate Default Judgments and to Reinstate Dismissed or Withdrawn Claims**, naming the Debtor and the Committee as respondents. Because both the Debtor and the Committee had originally prevailed upon the property damage claimants to withdraw their Claims due to a believed absence of insurance, neither the Debtor nor the Committee saw fit to contest the motion to reinstate the Claims.

Over the objection of Travelers Insurance Company, the Bankruptcy Court, by Order dated June 16, 1993 and Opinion dated June 7, 1993, reinstated the Asbestos Property Damage Claims “only to the extent that they may attempt to seek a recovery on account of insurance coverage ...and no claim may otherwise be made against the estate assets.” The Order made no reference to Travelers (or any other insurer) and expressly stated that the Bankruptcy Court “makes no determination as to whether or not the affected claims are valid and enforceable...” The Debtor’s objections to those Claims remained pending.

Travelers appealed the Bankruptcy Court’s Order to the United States District Court and, subsequently, to the United States Court of Appeals for the Third Circuit. By Order and Opinion dated January 17, 1995, the Court of Appeals held that Travelers was not a “person aggrieved” by the Bankruptcy Court Order, and thus lacked standing to appeal. The Court of Appeals directed the District Court to vacate its judgment and to enter an order dismissing Travelers’ appeal from the Bankruptcy Court.

Thus reinstated, the Asbestos Property Damage Claims are Claims which must be treated by the Plan. The Asbestos Property Damage Claims are classified as Class 4 Claims and, on the Effective Date, are to be granted relief from the automatic stay to pursue their Claims against the Property Damage Insurance Policies, which will be held as assets of the Asbestos Trust. The Plan also provides for the possibility that the Trustee of the Asbestos Trust and the Property Damage Futures Representative may seek to compromise, settle or effect a buy-out of any or all of the Property Damage Insurance Policies. Additionally, the Plan provides that the Trustee may institute suit with respect to such policies. Any recoveries from such policies, either by compromise or through litigation, shall be allocated between the holders of Class 4 and Class 5 Claims as the Trustee and the Property Damage Futures Representative shall agree, subject to Court approval. The property damage claimants, the face amount of whose Claims still total \$5.8 billion, will have no right of recovery against either the Debtor or the Reorganized Debtor, and any recoveries ultimately made by the property damage claimants will not deplete assets which would otherwise have been available to pay Asbestos Personal Injury Claims or other Creditors of the Debtor’s estate. (See Section XI.A.4, entitled, “**CERTAIN RISK FACTORS TO BE CONSIDERED -- Overall Risks to Recovery by Holders of Claims -- Asbestos Property Damage Insurance and Non-Asbestos Lung Disease Insurance.**”)

## **8. Co-Defendant Claims**

During the pendency of the Case, approximately 240 Claims with face amounts aggregating over \$1 billion (some Claims were filed in unliquidated amounts) have been asserted against the Debtor by parties seeking contribution, reimbursement, guaranty, subrogation, or indemnity as a defendant of the Debtor in lawsuits wherein damages were sought for asbestos personal injuries (the “Co-Defendant Claims”). To date all such Co-Defendant Claims have either been withdrawn or dismissed by Order of Court as a result of objections filed by the Committee and by the Debtor. The principal basis for the Debtor’s and the Committee’s objections were the contingent, unliquidated nature of the Claims. As such, the Debtor and the Committee sought the disallowance of the Claims pursuant to section 502(e)(1)(B) of the Bankruptcy Code. Notwithstanding the withdrawal or disallowance of the Co-Defendant Claims, the Plan provides for such Claims, and for such

Demands as may be asserted in the future, to be included in the Asbestos Permanent Channeling Injunction. Pursuant to the Asbestos Trust Agreement and the Asbestos Claims Resolution Procedures, Co-Defendant Claims submitted to the Asbestos Trust will be processed and paid. For a more complete description of the procedures relative to Co-Defendant Claims, see Section VI.C. entitled "THE ASBESTOS TRUST -- Asbestos Co-Defendant Claims Resolution Procedures."

#### **9. Alabama Wage Concession and Discrimination Claims**

Claims were asserted by former employees of Connors Steel Company in Birmingham, Alabama arising out of a Wage Concession Agreement entered into between Connors Steel Company and the United Steel Workers in the early 1980s. The various wage-related disputes were resolved by a Memorandum of Agreement dated December 18, 1984 which adopted an arbitrator's award of November 27, 1984. Connors Steel Company subsequently satisfied all of its obligations arising on account of the wage concession Claims. Notwithstanding the foregoing, approximately forty-five (45) individuals asserted Claims against the Debtor in the approximate amount of \$770,000.00. Debtor filed omnibus objections to such Claims at Motion Nos. SCBS-107 and SCBS-111 asserting that the Debtor had no continuing liability on account of such Claims. By Orders of Court dated June 21, 1995 forty-three (43) wage concession Claims were disallowed. By Stipulation filed at Motion No. SCBS-182 and approved by the Court on October 27, 1997, the remaining two wage concession Claims were disallowed.

In addition, forty-one (41) Claims were filed as Priority Claims in the amount of \$700.00 each (totaling \$28,700.00 collectively) arising out of a class action discrimination suit brought in the Northern District of Alabama. The suit was resolved by Judgment and Order dated September 5, 1975 which directed Porter to pay \$200,000.00 to members of the class. The individuals filing proofs of Claim against Debtor elected to opt out of the class. Inasmuch as those claimants had failed to pursue their Claims in any other manner prior to the Petition Date, the Debtor filed an objection to all such Claims at Motion No. SCBS-109. The Court subsequently entered an Order disallowing all such Claims on April 7, 1995.

#### **10. Insurance Objections**

Several insurance companies filed Claims asserting the Debtor had continuing liability to pay premiums on policies issued pre-petition. The Debtor filed objections which resulted in the following reduction in Claims: (i) MetLife insurance Claim was reduced from approximately \$300,000.00 to approximately \$101,000.00; (ii) the Hartford Insurance Claim totaling \$344,493.00 was disallowed in its entirety, and (iii) the Continental Casualty Company and Transportation Insurance Company Claim in the amount of \$3,500,306.00 was disallowed in its entirety. Currently, objections are pending to the Claim of Federal Insurance Company filed in the amount of \$1,382,221.00 and to the Claim of Continental Insurance Company, filed in the amount of \$2,013,850.00.

## **11. Dissenting Shareholder Claims**

A class proof of Claim was filed on behalf of twenty-two (22) former shareholders of Porter who exercised their rights as dissenting shareholders at the time of the merger transactions by which Porter became privately held on August 27, 1987. The dissenting shareholders sought to preserve their rights by commencing litigation in the Chancery Court in the State of Delaware. Such litigation was pending as of the Petition Date. Subsequent to the Petition Date, the dissenting shareholders discontinued the Delaware litigation and caused to be filed a class proof of Claim in the amount of \$1,412,735.00. The Debtor filed an adversary proceeding against the dissenting shareholders at Adversary No. 97-2264 WWB requesting that the dissenting shareholder Claims be allowed in the amount of \$65.00 per share, and that such Claims be equitably subordinated pursuant to section 510(c) of the Bankruptcy Code. The allowance of the Claims for \$65.00 per share was for the sake of expedience and did not constitute an admission of any liability whatsoever to the dissenting shareholders. The Bankruptcy Court entered an Order on July 21, 1997 granting the Debtor's requested relief. As a result, the dissenting shareholder Claims are allowed in the amount of \$65.00 per share and are subordinated to all other Claims with distribution on account of such Claims to be made only after all other Claims have been paid in full. The dissenting shareholder Claims have been classified in Class 8 under the Plan. In light of the dollar value of Claims in Class 5 and Class 7 relative to the value of the Debtor's assets, there will not be any distribution on account of dissenting shareholder Claims.

## **12. Unredeemed Shareholder Claims**

Approximately fifteen (15) individuals filed claims totaling \$50,000.00 on account of shares of Old Porter Common Stock which the claimants failed to redeem at the time of the merger transactions by which Porter became privately held on August 27, 1987. The Debtor filed an adversary proceeding against such claimants at Adversary No. 97-2265 WWB requesting that the allowed amount of such Claims be equitably subordinated pursuant to section 510(c) of the Bankruptcy Code. By Order issued July 21, 1997, the Court granted Debtor's Motion and directed that the allowed unredeemed shareholder Claims shall be subordinated to all Claims pursuant to section 510(c), with distribution on account of such Claims to be made only after all other Claims have been paid in full. The unredeemed shareholder Claims have been classified in Class 8 under the Plan, along with the dissenting Shareholder Claims. In light of the dollar value of all other Claims relative to the Debtor's assets, there will be no distribution on account of the unredeemed shareholder Claims.

## **G. Summary of Asset Recoveries And Reduction in Priority Claims**

Within one year after the Petition Date, the total assets of the Debtor's estate amounted to approximately \$48 million. At the same time, Priority Claims had been filed against the Debtor in the total amount of approximately \$44.5 million.

As a result of the efforts of the Debtor and the Committee through the course of this Case, the size of the estate has increased by more than double, while nearly all of the Priority Claims (which must be paid dollar for dollar) have been eliminated.

The additional recoveries are largely attributable to the following:

1	Dade County Litigation	\$600,000
2.	Insurance Coverage Litigation	\$37,000,000
3.	Evans Settlement (present value)	<u>\$31,000,000</u>
	<b>TOTAL</b>	<b><u>\$68,600,000 +</u></b>

Thus, the benefit to the estate has been two-fold: (i) approximately \$44.5 million of Priority Claims have been eliminated, while (ii) the assets of the estate have been increased by nearly \$70 million. As a result, unsecured non-priority creditors who once had claims against an estate with a potential minimum value of \$4 million now have recourse to approximately \$93 million from which to recover.

## V. THE PLAN OF REORGANIZATION

The Committee believes that, through the Plan, Creditors will obtain a substantially greater recovery from the estate of the Debtor than the recovery that would be available if the assets of the Debtor were liquidated under chapter 7 of the Bankruptcy Code. The summary of the Plan set forth below is qualified in its entirety by the more detailed provisions set forth in the Plan.

### A. Classification and Treatment of Claims and Equity Interests

The Plan classifies Claims and Equity Interests separately and provides different treatment for different classes of Claims and Equity Interests in accordance with the Bankruptcy Code. As described more fully below, the Plan provides, separately for each class, either that Claims are unimpaired (and therefore paid in full), or that holders of Claims and Equity Interests will receive various types of consideration (*e.g.*, cash, recourse to the Asbestos Trust, relief from stay to pursue insurance policies) in partial payment of their Claims, or no distribution, thereby giving effect to the different rights of the holders of Claims and Equity Interests of each class.

#### 1. Administrative Expenses

“Administrative Expenses” are Claims constituting a cost or expense of administration of the Chapter 11 Case allowed under section 503(b) of the Bankruptcy Code. Such Claims include any actual and necessary costs and expenses of operating and preserving the estate of the Debtor, any allowance of compensation and reimbursement of expenses to the extent allowed by a Final Order under section 330 of the Bankruptcy Code, and fees or charges assessed against the estate of the Debtor under section 1930 of Title 28 of the United States Code.

Pursuant to the Plan, an Administrative Expense will be paid in full, in cash, on the later of the Effective Date and the date such Administrative Expense becomes Allowed, or as soon thereafter as is practicable. Allowed Administrative Expenses representing obligations

incurred in the ordinary course of business by the Debtor will be assumed and paid by the Reorganized Debtor in accordance with the terms and conditions of the particular transactions and any agreements relating thereto.

Aside from those Administrative Expenses that will be paid in the ordinary course of business, the Debtor estimates that, on the Effective Date, it will have Allowed Administrative Expenses representing unpaid fees and expenses of professionals retained in the Chapter 11 Case of approximately \$8 million.

All payments to professionals for compensation and reimbursement of expenses and all payments to reimburse expenses of members of the Committee and the Futures Representatives will be made in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Court relating to the payment of interim and final compensation and expenses. The Bankruptcy Court will review and determine all requests for compensation and reimbursement of expenses.

Section 503(b) of the Bankruptcy Code also provides for payment of compensation to creditors, indenture trustees, and other persons making a "substantial contribution" to a reorganization case and to attorneys for, and other professional advisers to, such persons. Requests for compensation must be approved by the Bankruptcy Court after a hearing on notice at which the Debtor and other parties in interest may participate and, if appropriate, object to the allowance of any compensation and reimbursement of expenses. The precise amounts that may be sought by entities for such compensation are not known at this time. However, Article 11, Section 11.7 of the Plan specifically sets forth that the fees and expenses of the attorneys representing Josephine Crawford and Anthony Tamburrino in connection with the Test Objections should be paid by the estate, since that litigation and the resolution of the treatment of claimants whose asbestos disease did not manifest until post-petition made a "substantial contribution" to the formulation of the Plan. The fees and expenses of those professionals are included in the "unpaid fees and expenses of professionals retained in the Chapter 11 case" estimated above.

## **2. Class 1: Priority Claims**

The "Priority Claims" consist of those Claims that are entitled to priority in accordance with section 507(a) of the Bankruptcy Code, other than Administrative Expenses. Such Claims include various tax, wage and employee benefit-related Claims. The Debtor believes that unpaid Priority Claims consist primarily of miscellaneous tax Claims, and total only approximately \$27,000.00.

Pursuant to the Plan, the holders of Allowed Priority Claims will be paid in full, in cash, on the Effective Date. Priority Claims are unimpaired under the Plan.

## **3. Class 2: Retiree Claims**

The "Retiree Claims" consist of Claims arising out of the Debtor's liability for Retiree Benefits, other than Connors Disability Retiree Claims (which are treated in Class 3). Pursuant to an Order of the Bankruptcy Court, \$2 million was paid by the Debtor on account

of Retiree Benefits to the Retirees' Committee as the representative of the holders of Class 2 Claims. That payment was used to fund a benefit plan established by the Retirees' Committee for the holders of such Claims. No further payments shall be made on account of Class 2 Claims. Class 2 is impaired under the Plan.

**4. Class 3: Connors Disability Retiree Claims**

"Connors Disability Retiree Claims" consist of Claims for Retiree Benefits by creditors who are retired employees of the Connors Steel Company, a former subsidiary of the Debtor, based upon an agreement between Porter and such Creditors to provide them with disability life insurance coverage. As required by the Bankruptcy Code, the Plan provides that after the Effective Date, payment on account of Class 3 Claims shall continue at the level and for the duration established pursuant to 11 U.S.C. sections 1114(e)(1)(B) or 1114(g). In actuality, however, the Debtor has already satisfied all of its obligations under its agreement with the holders of Connors Disability Retiree Claims, and no further payment will be made on account of such Claims. Class 3 is impaired under the Plan.

**5. Class 4: Asbestos Property Damage Claims**

"Asbestos Property Damage Claims" are those Claims against the Debtor for damages arising from the presence in buildings, ships or other systems or structures or on land of asbestos or asbestos-containing products that was or were manufactured, sold, supplied, produced, distributed, or in any way marketed or disposed of by the Debtor. The term includes future property damage-related Demands, as well as Claims and Demands for reimbursement, contribution, indemnification or subrogation relating thereto. Asbestos Property Damage Claims filed during the Case total approximately \$5.8 billion.

Under the Plan, all Asbestos Property Damage Claims will be channeled to the Asbestos Trust, which will be established pursuant to the Asbestos Trust Agreement. Class 4 Claims shall be fully satisfied and discharged as against the Debtor by virtue of the establishment and funding of the Asbestos Trust. The allowance and payment of individual Asbestos Property Damage Claims will be handled by the Asbestos Trust, subject to the terms and conditions imposed on the Asbestos Trust by the Plan and the Asbestos Claims Resolution Procedures.

A holder of a Class 4 Claim will under no circumstances be entitled to a distribution of any funds from the Asbestos Trust and the sole recourse of the holder of an Asbestos Property Damage Claim shall be recovery under the coverage provided by the Property Damage Insurance Policies listed on Plan Exhibit "1.1.68" (which are to be assumed and assigned by the Debtor to the Asbestos Trust), or the allocation of the proceeds of such policies (See, Section 3.2.4(2) of the Plan) and, pursuant to the Asbestos Permanent Channeling Injunction and/or the Section 105 Injunction, all Entities shall be permanently and forever enjoined from taking any actions for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to any Asbestos Property Damage Claims from the Reorganized Debtor or any of the other Protected Parties (or their assets and properties), other than actions brought to enforce any right or obligation under the Plan, any Exhibits to the Plan, or any other agreement or instrument between the Debtor or

the Reorganized Debtor and the Asbestos Trust. Since Porter has never been held liable or paid any money in settlement of any Asbestos Property Damage Claim and since no judicial determination has been made regarding the availability of coverage under the insurance policies, it is impossible to predict the dollar amount or percentage distribution on account of such Claims. A holder of a Class 4 Claim who obtains an earlier judgment will have earlier access to the available, unexhausted insurance, if any. The potential exists that all applicable insurance coverage may be exhausted for holders of Class 4 Claims obtaining later judgments. The holders of Class 4 Claims should take note that suits may need to be filed against the Asbestos Trust within thirty (30) days of notice of the Confirmation Order, to the extent any applicable statute of limitations under non-bankruptcy law would have expired during the pendency of the Chapter 11 Case. (See section 108(c) of the Bankruptcy Code.)

Each holder of an Asbestos Property Damage Claim that agrees to accept the Plan, or his authorized representative, also agrees to the affirmative release set forth on the Class 4 special ballot.

**6. Class 5: Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims**

As of the Petition Date, approximately 78,000 lawsuits on account of Asbestos Personal Injury Claims were outstanding against Porter. During the Case, approximately 120,000 Asbestos Personal Injury Claims were consensually quantified pursuant to the Asbestos Claims Quantification Process (*See* Section IV.E.2, entitled, “**THE CHAPTER 11 CASE -- Significant Events During Case -- The Claims Quantification Process and Expedited Payment Election.**”) Prior to the implementation and completion of this process, there were approximately 37,000 individual asbestos-related proofs of Claim filed in the case for varying dollar amounts greatly exceeding the claim values assigned under the Asbestos Claims Quantification Process. All but approximately 5,000 of these Asbestos Personal Injury Claims were subsequently quantified under the Claims Quantification Process and, pursuant to the Declarations executed by the filing attorneys, these proofs of Claim will be deemed withdrawn upon confirmation of the Plan and replaced with quantified Claims.

During this Case, 240 Asbestos Co-Defendant Claims were filed against the Debtor’s estate with face amounts aggregating approximately \$1 billion. All of these Claims were either withdrawn or dismissed as being “contingent” and therefore invalid under section 502(e)(1)(B) of the Bankruptcy Code. However, a certain number of these Claims have ripened for determination during the Case, and others will continue to ripen after the Confirmation Date, and they therefore must be treated under the Plan. A segregated fund within the Asbestos Trust will be established and will be the only source of recovery for Claims arising as a result of judgments entered prior to the Effective Date. As to Claims arising from judgments entered after the Effective Date, procedures have been established in the Asbestos Claims Resolution Procedures to address the submission of such Claims against the Asbestos Trust. The Committee does not believe that payments made by the Trust on account of Asbestos Personal Injury Claims will be materially affected by recoveries, if any, made against the Asbestos Trust by the holders of Asbestos Co-Defendant Claims.



Under the Plan, all Class 5 Claims will be channeled to the Asbestos Trust established pursuant to the Asbestos Trust Agreement and paid pursuant to the Asbestos Claims Resolution Procedures. Class 5 Claims shall be fully satisfied and discharged as against the Debtor by virtue of the establishment and funding of the Asbestos Trust. The sole recourse of the holder of a Class 5 Claim shall be the Asbestos Trust, and, pursuant to the Asbestos Permanent Channeling Injunction and/or the Section 105 Injunction, all Entities shall be permanently and forever enjoined from taking any actions for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to any Asbestos Personal Injury Claims or Asbestos Co-Defendant Claims from, among others, any Protected Party or the Reorganized Debtor (or their assets and properties), other than actions brought to enforce any right or obligation under the Plan, any Exhibits to the Plan, or any other agreement or instrument between the Debtor or the Reorganized Debtor and the Asbestos Trust. For a description of the Asbestos Permanent Channeling Injunction and the Section 105 Injunction, *see* Section V.H., entitled, **“THE PLAN OF REORGANIZATION -- Discharge of Debtor, the Asbestos Permanent Channeling Injunction and the Section 105 Injunction.”** For a more detailed explanation of the Asbestos Trust, the Asbestos Trust Agreement, and the claims resolution and payment procedures provided for therein, *see* Section VI, entitled, **“THE ASBESTOS TRUST.”**

Under the Plan, the Asbestos Trust will be entitled, on the Effective Date, to the Asbestos Trust’s Pro Rata Share of the Distribution Value. (A projection of the Distribution Value as of the Effective Date is attached hereto as Exhibit “B”.) This Pro Rata Share will be determined based upon the Asbestos Trust Liability in the amount of \$2.02 billion, and the Asbestos Trust will be funded with consideration consisting of cash and New Porter Common Stock.

Based upon the Committee’s best estimate of the ultimate amount of Allowed Claims, the Asbestos Trust ultimately will receive cash consideration with a present value of approximately \$92 million.

Based upon the estimates of the Committee’s expert finding that present Claims and future Demands constituting Asbestos Personal Injury Claims against the Asbestos Trust will number approximately 558,892 and that the total present value, assuming resolution of those Claims at or near the values set for the Expedited Payment Election, will be approximately \$2.02 billion, the Committee estimates that each holder of an Allowed Asbestos Personal Injury Claim should ultimately receive consideration from the Asbestos Trust having a value equal to approximately 5% of its Allowed Claim.

Class 5 Claims are impaired under the Plan. Pursuant to the Voting Procedures, each holder of a Class 5 Claim that filed, or was deemed to have filed, a proof of Claim by March 6, 1998 shall vote such Claim in the amount of \$1.00. In addition to the conditions to confirmation that are required by the Bankruptcy Code, the Plan imposes other conditions to confirmation that are required to preserve the effectiveness of the Asbestos Permanent Channeling Injunction. *See* Section V.H., entitled, **“THE PLAN OF REORGANIZATION -- Discharge of the Debtor, the Asbestos Permanent Channeling Injunction and the Section 105 Injunction.”** Among those Plan-imposed conditions to confirmation is the requirement that at least 75% of the Class 5 claimants that vote on the Plan vote in favor of

the Plan. Each holder of an Asbestos Personal Injury Claim that agrees to accept the Plan, or his authorized representative, also agrees to the affirmative release set forth on the Class 5 special ballot.

**7. Class 6: Non-Asbestos Lung Disease Claims**

“Non-Asbestos Lung Disease Claims” consists of Claims for personal injury on account of lung disease (other than as asbestos-related disease) resulting from exposure to non-asbestos containing products, materials or ingredients sold or supplied or produced or manufactured or used in processes controlled by or employed by Porter or its predecessors.

The holders of Class 6 Claims shall, by virtue of the Confirmation of the Plan, be granted relief from the automatic stay imposed by section 362 of the Bankruptcy Code on the Effective Date to pursue their Claims against the Debtor, but only to the extent necessary to assert a right of recovery under or from the Reorganized Debtor’s interest in the Non-Asbestos Lung Disease Insurance Policies identified on Exhibit “1.1.57” to the Plan. A holder of a Class 6 Claim who obtains an earlier judgment will have earlier access to the available, unexhausted insurance, if any. The potential exists that all applicable insurance coverage may be exhausted for holders of Class 6 Claims obtaining later judgments. The holders of the Class 6 Claims shall not be entitled to seek any other recourse or receive any other distribution from the Debtor and each holder of a Non-Asbestos Lung Disease Claim that agrees to accept the Plan, or his authorized representative, agrees to the specific release set forth on the Class 6 special ballot. The holders of Class 6 Claims should take note that suits may need to be filed against the Debtor within thirty (30) days of notice of the Confirmation Order, to the extent any applicable statute of limitations under non-bankruptcy law would have expired during the pendency of the Chapter 11 Case. (See section 108(c) of the Bankruptcy Code.) Class 6 is impaired under the Plan.

**8. Class 7: Unsecured Claims**

An “Unsecured Claim” is any Claim that is not an Administrative Expense, a Priority Claim, Asbestos Claim, Retiree Claim, Connors Disability Retiree Claim, Non-Asbestos Lung Disease Claim, or Subordinated Shareholder Claim. The Unsecured Claims consist mainly of unpaid pre-petition legal fees incurred by the Debtor in litigating Asbestos Claims, certain environmental Claims described in Section IV.F.5 hereof, and other miscellaneous Claims, the most significant of which are described in Section IV.F, entitled, “**THE CHAPTER 11 CASE -- Resolution of Significant Claims.**” The Committee estimates that the total amount of Allowed Unsecured Claims in Class 7 will be approximately \$34 million. On the Initial Distribution Date, each holder of an Allowed Claim in Class 7 shall receive its Pro-Rata Share of the Distribution Value.

Based upon the Debtor’s existing estimate of the aggregate amount of Claims against its estate, and assuming the aggregate Distribution Value is approximately \$93 million, the Committee expects that each holder of an Allowed Unsecured Claim in Class 7 will receive consideration under the Plan having a value equal to approximately 5% of its Allowed Claim. (A projection of Distribution Value as of the Effective Date is attached hereto as Exhibit “B”.) In addition, the holder of each Allowed Unsecured Claim in Class 7 will

receive its Pro Rata Share of any recoveries from the Porter-Retained Insurance Policies and the Tobacco Contribution Action.

**9. Class 8: Subordinated Shareholder Claims**

A "Subordinated Shareholder Claim" is a Claim arising out of the failure of any Entity to tender its shares of Porter stock or their election to pursue rights as Dissenting Shareholders arising out of the merger transactions by which Porter became privately held in August of 1987. Those Claims were equitably subordinated to all other Claims pursuant to section 510(c) of the Bankruptcy Code, and it is therefore not anticipated that holders of Class 8 Claims will receive any distribution under the Plan. Class 8 is impaired, and the holders of Class 8 Claims are deemed to have rejected the Plan.

**10. Class 9: Equity Interests**

Class 9 consists of the Equity Interests of the holders of shares of Existing Porter Common Stock, who will receive no distribution or retain any interest or property under the Plan. On the Effective Date, the certificates that previously evidenced ownership of Existing Porter Common Stock shall be canceled and, thereafter, shall be null and void. The Equity Interests are impaired, and the holders of Class 9 Interests are deemed to have rejected the Plan.

**11. Special Note Regarding Asbestos-Related Demands**

As required by section 524(g) of the Bankruptcy Code, the Plan provides for future asbestos claims or "Demands", which it defines as post-confirmation demands for payment that were not asbestos claims in the Chapter 11 Case, that arise out of the same or similar conduct or events that gave rise to the asbestos claims and that are to be paid by the Asbestos Trust. Property Damage Demands are subsumed within Class 4, while Asbestos Personal Injury and Codefendant Demands are included in Class 5.

Under the Plan, all Demands will be fully satisfied as against the Debtor on the Effective Date by virtue of the transfer to the Asbestos Trust of the Property Damage Insurance Policies, by virtue of the obligation to transfer to the Asbestos Trust the Pro Rata Share of Distribution Value, and by virtue of the obligation of the Reorganized Debtor to make future transfers to the Asbestos Trust based on payments received under the Evans Settlement, for the benefit of all holders of Asbestos Claims and Demands pursuant to the terms of the Asbestos Trust documents. All Demands shall be channeled to the Asbestos Trust and paid pursuant to the terms, provisions and procedures set forth in the Asbestos Trust documents. The sole recourse of the holder of a Demand shall be against the Asbestos Trust and, pursuant to the Asbestos Permanent Channeling Injunction, all actions for the purpose of, directly or indirectly, collecting, recovering or receiving payment of, Demands from the Reorganized Debtor, the Evans Defendants, and other third parties included within the scope of the Asbestos Permanent Channeling Injunction -- other than actions brought to enforce any right or obligations under the Plan, any Exhibits to the Plan or the Disclosure Statement, or any other agreement or instrument between the Debtor or Reorganized Porter and the Asbestos Trust -- are expressly prohibited and permanently and forever enjoined.

[See Section V.H and VI.A re: Permanent Channeling Injunction; Description of Asbestos Trust]

Because the holders of Demands are unknown and therefore unidentifiable, they are not able to vote to accept or reject the Plan. The Personal Injury Futures Representative, the Co-Defendant Futures Representative and the Property Damage Futures Representative were appointed to represent their interests in the Chapter 11 Case.

## **B. Conditions to Confirmation**

The Plan shall not be confirmed, and the Confirmation Order shall not be entered until and unless certain specified conditions have been satisfied or waived by the Settling Parties. The majority of the conditions precedent are designed to ensure that the Asbestos Permanent Channeling Injunction will be effective, binding, and enforceable. They are as follows:

1. The following findings will be contained in the Confirmation Order to be signed by the District Court:

- The Asbestos Permanent Channeling Injunction is to be implemented in connection with the Asbestos Trust.
- At the time of the order for relief with respect to Debtor, the Debtor had been named as a defendant in personal injury, wrongful death, and property damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products.
- The Asbestos Trust, as of the Effective Date, will assume the liabilities of the Debtor with respect to asbestos-related Claims and Demands within the meaning of the Bankruptcy Code, including, without limitation, section 524(g).
- The Asbestos Trust is to be funded in whole or in part by securities of the Reorganized Debtor and by the obligation of the Reorganized Debtor to make future payments.
- The Asbestos Trust is to own a majority of the voting shares of the Debtor.
- The Reorganized Debtor is likely to be subject to substantial Demands for payment arising out of the same or similar conduct or events that gave rise to the Asbestos Claims and Demands that are addressed by the Asbestos Permanent Channeling Injunction.
- The actual amounts, numbers, and timing of such Demands cannot be determined.

- Pursuit of such Demands outside the procedures prescribed by the Plan is likely to threaten the Plan's purpose to deal equitably with Claims and Demands.
- The terms of the Asbestos Permanent Channeling Injunction, including any provisions barring actions against the Protected Parties pursuant to section 524(g)(4)(A), are set forth herein and in the Plan.
- The Plan establishes, in Class 4 and Class 5, separate classes of claimants whose Claims are to be addressed by the Asbestos Trust.
- Class 4 and Class 5 claimants have each voted, by at least 75 percent (75%) of those voting, in favor of the Plan and in favor of releasing the Evans Defendants.
- Pursuant to court orders or otherwise, the Asbestos Trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present Claims and Demands, or other comparable mechanisms, that provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, present Claims and Demands that involve similar Claims in the same manner.
- The Futures Representatives were appointed as part of the proceedings leading to the issuance of the Asbestos Permanent Channeling Injunction for the purpose of protecting the rights of persons that might subsequently assert Demands of the kind that are addressed in the Asbestos Permanent Channeling Injunction and transferred to the Asbestos Trust.
- Protecting each Protected Party in the Asbestos Permanent Channeling Injunction is fair and equitable with respect to persons that might subsequently assert Demands against each such Protected Party, in light of the benefits provided, or to be provided, to the Asbestos Trust by or on behalf of any such Protected Party.
- The terms of the Evans Settlement are in the best interests of the Debtor's bankruptcy estate, and the Evans Defendants have demonstrated their present ability to timely perform all of their obligations arising out of the Evans Settlement.
- The Asbestos Trust is to use its assets or income to pay asbestos-related Claims and Demands.

2. The Voting Procedures Order shall have been signed by the Bankruptcy Court and duly entered on its Docket.

3. The Confirmation Order shall have been signed by the District Court, be duly entered on its Docket, and be in a form reasonably acceptable to the Evans Defendants and consistent with the Evans Settlement.

4. The Evans Settlement shall have been approved by the District Court as part of the Confirmation Order.

5. The District Court shall have entered an Order establishing the Asbestos Permanent Channeling Injunction, which shall have been entered on the Docket.

6. The Confirmation Order shall be, in form and substance, acceptable to the Committee.

**C. Conditions Precedent to the Effective Date under the Plan**

The “effective date of the plan,” as used in section 1129 of the Bankruptcy Code, will not occur, and the Plan will be of no force and effect, until the Effective Date. The “Effective Date” will occur on the first Business Day after the following conditions precedent are satisfied or waived:

- The Confirmation Order has become a Final Order.
- There is no stay in effect with respect to the Confirmation Order.
- The Confirmation Order shall establish the Asbestos Permanent Channeling Injunction and, to the extent permitted by law, the Section 105(a) Injunction.
- The Confirmation Order, the Asbestos Permanent Channeling Injunction, and, to the fullest extent permitted by law, the Section 105(a) Injunction shall be in full force and effect.
- The Trustee of the Asbestos Trust shall have accepted his appointment as Trustee and shall have executed the Asbestos Trust Agreement.
- The Evans Defendants shall have performed all of their *current* obligations under the Evans Settlement that are due on the Effective Date.
- There is no judicial decision issued by any court which, if applied to the Asbestos Permanent Channeling Injunction, would deprive any of the Evans Defendants (other than Kirkpatrick & Lockhart, LLP) of its protections.
- The payment of the Cash and delivery of the Note, the Allonge and the Letter of Credit, all as defined in the Evans Settlement, to the Debtor on behalf of the Evans Defendants has occurred.

The written consent of the Settling Parties is needed to waive the occurrence of any of these conditions precedent or to modify any of such conditions precedent. Any such waiver of a condition precedent hereof may be effected at any time, without notice, without leave or Order of the Bankruptcy Court, and without formal action other than proceeding to consummate the Plan. Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If any one of the foregoing conditions cannot be satisfied and the occurrence of such condition is not waived by the Settling Parties, then any Settling Party shall file a notice of failure of Effective Date with the District Court, at which time the Plan and the Confirmation Order shall be deemed null and void.

**D. Description of the Plan Consideration**

The consideration to be distributed in connection with Classes 4 through 7 of the Plan consists of (i) the Distribution Value, (ii) the Property Damage Insurance Policies and (iii) the Non-Asbestos Lung Disease Insurance Policies and (iv) the recovery from the Porter-Retained Insurance Policies and/or Tobacco Contribution Action, if any.

Distribution Value will be calculated on the last day of the month in which the Effective Date occurs. Based upon the assumption that the Effective Date will occur on June 30, 1998, the Debtor, after retaining \$5 million in working capital for operating purposes, expects to have approximately \$101,095,000.00 in cash on such date, (including approximately \$27 million in the Qualified Settlement Fund, \$20 million in cash from the Evans Settlement, plus the \$11 million Note from the Evans Defendants provided for in the Evans Settlement). Of this, the Committee estimates that \$8 million will be used to pay Allowed Administrative Expenses and Allowed Priority Claims. The estimated balance of \$93,065,000.00 will constitute the Distribution Value. Distribution Value will also take into account the amounts the Debtor has already paid into the Qualified Settlement Fund and an appropriate credit will be made in the Pro-Rata Share of the Distribution Value payable to the Asbestos Trust.

**E. Executory Contracts and Unexpired Leases**

To the extent that any of the Property Damage Insurance Policies, Non-Asbestos Lung Disease Insurance Policies, or Porter-Retained Insurance Policies are executory, those policies will be deemed assumed on the Effective Date. All other executory contracts will be deemed rejected unless specifically assumed by an Order of Court entered pursuant to an assumption motion filed prior to the Effective Date. In addition, the Debtor's obligations in the post-petition severance agreements with Kenneth McCarthy and Janet McQuillan shall continue after the Effective Date.

**F. Provisions for Treatment of Disputed Claims**

The Reorganized Debtor may file objections to the allowance of Unsecured Claims. All such objections must be served and filed no later than 90 days after the Effective Date. No distribution shall be made with respect to all or any portion of any Disputed Claim pending the resolution thereof.

**G. Amendment and Restatement of the Debtor's Articles of Incorporation**

The Articles of Incorporation shall be amended and restated as of the Effective Date in substantially the form of the Amended and Restated Articles of Incorporation (Plan Exhibit "1.1.6"), *inter alia*, (a) to prohibit the issuance of nonvoting equity securities as required by section 1123(a)(6) of the Bankruptcy Code, subject to further amendment of such Amended and Restated Articles of Incorporation as permitted by applicable law, (b) to authorize the cancellation of the Existing Porter Common Stock and the creation of shares of New Porter Common Stock, which shares shall be issued to the Asbestos Trust and shall not be transferable for a period of twenty-five months after the Effective Date, and (c) to otherwise effectuate the provisions of the Plan.

Any distribution to be made by the Reorganized Debtor pursuant to the Plan shall be deemed to have been timely made if made within ten (10) days after the time therefor specified in the Plan.

Unless the Entity receiving a payment agrees otherwise, any payment in cash to be made by the Reorganized Debtor shall be made, at the election of the Reorganized Debtor, by check drawn on a domestic bank or by wire transfer from a domestic bank.

**H. Discharge of the Debtor, the Asbestos Permanent Channeling Injunction, and the Section 105 Injunction**

The rights afforded in the Plan and the treatment of the Claims and Equity Interests therein will be in exchange for and in complete satisfaction, discharge, and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued thereon from and after the Petition Date, against the Debtor, its estate, properties, or interests in property. Except as otherwise provided in the Plan, upon the Effective Date, all such Claims and Equity Interests in the Debtor will be deemed satisfied, discharged, and released in full. Pursuant to the Plan and the Confirmation Order, all parties will be precluded from asserting against the Reorganized Debtor, its successors, or their assets, properties, or interests in property any other or further Claims or Equity Interests based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Confirmation Date.

In addition, the Confirmation Order will contain, *inter alia*, the Asbestos Permanent Channeling Injunction and the Section 105 Injunction. Pursuant to the Asbestos Permanent Channeling Injunction and/or the Section 105 Injunction, any Entity will be forever stayed, restrained, and enjoined from taking certain actions for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to any Asbestos Claims



or any Settlement Claim (other than pursuant to the provisions of the Asbestos Trust Agreement or to enforce the provisions of the Plan) against any Protected Party or his, her, or its property.

A Protected Party is any of the following: the Debtor; the Reorganized Debtor; any Affiliates; any Entity that, pursuant to the Plan or after the Effective Date becomes a direct or indirect transferee of, or successor to, any assets of any of the Debtor, the Reorganized Debtor, or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason of its becoming or being such a transferee or successor); any Entity that, pursuant to the Plan or after the Effective Date, makes a loan to the Reorganized Debtor or the Asbestos Trust or to a successor to, or transferee of, any assets of the Debtor, the Reorganized Debtor, or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason of its becoming or being such a lender or to the extent any pledge of assets made in connection with such a loan is sought to be upset or impaired); any Entity to the extent he, she, or it is alleged to be directly or indirectly liable for the conduct of, Claims against, or Demands on the Debtor, the Reorganized Debtor, or the Asbestos Trust on account of Asbestos Claims or by reason of one or more of the following: (i) such Entity's ownership of a financial interest in the Debtor or the Reorganized Debtor, a past or present Affiliate of the Debtor or the Reorganized Debtor, or predecessor in interest of the Debtor or the Reorganized Debtor, (ii) such Entity's involvement in the management of the Debtor or the Reorganized Debtor or any predecessor in interest of the Debtor or the Reorganized Debtor, (iii) such Entity's service as an officer, director, or employee of the Debtor or the Reorganized Debtor, any past or present Affiliate of the Debtor or the Reorganized Debtor, (iv) such Entity's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition of the Debtor or the Reorganized Debtor. Each of the Evans Defendants is hereby specifically identified as included in this definition as a Protected Party.

The following actions, if taken for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to any Asbestos Claim or any Settlement Claim (other than pursuant to the provisions of the Asbestos Trust Agreement or to enforce the provisions of the Plan) are enjoined pursuant to the Asbestos Permanent Channeling Injunction and/or the Section 105 Injunction:

- commencing, conducting, or continuing in any manner, directly or indirectly, any action or proceeding against or affecting any Protected Party, or any property or interests in property of any Protected Party;
- enforcing or in any way seeking to recover any judgment, award, decree, or other order against any Protected Party or any property or interests in property of any Protected Party;
- creating, perfecting, or in any way enforcing any Encumbrance against any Protected Party or any property or interests in property of any Protected Party;

- in any way seeking to offset, recoup, or recover any amount against any liability owed to any Protected Party; and
- proceeding in any manner in any place with regard to any matter that is subject to resolution pursuant to the Asbestos Trust, except in conformity and compliance therewith.

Nothing contained in the Asbestos Permanent Channeling Injunction or the Section 105 Injunction shall be deemed a waiver of any claim, right, or cause of action that the Debtor, the Reorganized Debtor or the Asbestos Trust may have against any Entity other than an Evans Defendant in connection with or arising out of an Asbestos Claim.

In 1994, the Bankruptcy Code was amended to add, *inter alia*, new subsections (g) and (h) to section 524, which validate existing injunctions similar to the Asbestos Permanent Channeling Injunction (such as those used in the chapter 11 cases of Johns-Manville Corporation and UNR Corporation) and codify a court's authority to issue a permanent injunction to supplement the existing injunctive relief afforded by section 524 of the Bankruptcy Code in asbestos-related reorganizations under chapter 11. The section now provides that, if certain defined conditions are satisfied, a court may issue a supplemental permanent injunction, such as the Asbestos Permanent Channeling Injunction, barring claims and demands against the reorganized company and channeling those Claims and Demands to an independent trust. To qualify under the statute, a trust must have certain characteristics, which are specified in section 524(g). The Committee will seek the issuance of the Asbestos Permanent Channeling Injunction pursuant to section 524(g) and any other applicable provision of the Bankruptcy Code.

To ensure that the Asbestos Trust meets the standards of section 524(g) of the Bankruptcy Code, the Committee has made compliance with these conditions a condition precedent to confirmation of the Plan. *See* Section V.B, entitled, "**THE PLAN OF REORGANIZATION -- Conditions to Confirmation.**" For a description of the Asbestos Trust, the Asbestos Trust Agreement, and the Asbestos Claims Resolution Procedures provided therein, *see* Section VI, entitled, "**THE ASBESTOS TRUST.**"

#### **I. Amendment of the Plan**

The Committee may alter, amend, or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date so long as the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code and remains consistent with the terms of the Evans Settlement.

#### **J. Revocation or Withdrawal of the Plan**

The Committee may revoke or withdraw the Plan at any time prior to the Confirmation Date, subject to the terms of the Evans Settlement. In such event the Plan shall be deemed null and void.

**K. Termination of Futures Representatives and Dissolution of the Committees**

The existence of the Futures Representatives and the Committee of Unsecured Creditors and their professionals, the rights of the Futures Representatives and the Committee of Unsecured Creditors to ongoing reimbursement of expenses and the right of their professionals to ongoing compensation and reimbursement of expenses shall continue after the Effective Date only for the limited purposes set forth in the Trust Agreement and the annexes thereto, and shall otherwise terminate on the Effective Date. The existence of the Retirees' Committee and its professionals, the right of the Retirees' Committee members to ongoing reimbursement of expenses and the right of its professionals to ongoing compensation and reimbursement of expenses, shall continue after the Effective Date only for the limited purposes set forth in the Retiree Settlement, and shall otherwise terminate on the Effective Date.

**L. Dismissal of Declaratory Judgment Action and Test Objections**

The treatment of Class 5 Claims provided for by this Plan constitutes a complete and final settlement and compromise of the Declaratory Judgment Action and the Test Objections (described more particularly in Section IV.E.3, entitled, "THE CHAPTER 11 CASE -- Significant Events During Case -- Post-Petition Asbestos Claims and Future Asbestos Claims"), and therefore, on the Effective Date, the Declaratory Judgment Action and the Test Objections shall be deemed dismissed as moot.

**M. Exculpation**

In accordance with the Plan, none of the Debtor, the Reorganized Debtor, the Committee, the Futures Representatives or the Retiree Committee, nor any of their respective members, officers, directors, employees, advisers, counsel or agents will have or incur any liability to any Entity for any act or omission in connection with, or arising out of the Case, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence, and in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**N. Release and Indemnification Re: Pre-Confirmation Matters**

The Confirmation Order shall, on the Effective Date, act as a full and complete release and discharge by the Debtor and its estate, and by any and all third parties including, without limitation, Creditors, and any other party in interest, of the Futures Representatives, the members of the Committee or the Retirees' Committee, and all professionals whose engagement was approved by the Bankruptcy Court during the Case, from any further obligation and from any and all manner of action, causes of action, claims, obligations, suits, debts, sums of money, accounts, reckonings, covenants, contracts, controversies, agreements, promises, damages, judgments and demands whatsoever, whether in law or in equity, which the Debtor, its estate or any such third parties had, may in the future have, or now has, whether known or unknown, contingent or absolute arising from any actions taken or not taken in such capacity, including any merely negligent action or inaction, in

connection with the Case, except for willful misconduct or gross negligence. Notwithstanding this release, and in addition thereto, the beneficiaries hereof shall be defended, indemnified, and held harmless by the Reorganized Debtor if such beneficiary was or is a party or is threatened to be made a party to any pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such beneficiary is or was one of the Futures Representatives, a member of the Committee, a member of the Retirees' Committee, or a professional engaged by any of them or by the Debtor during the Case, against all costs and expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such beneficiary in connection with such action, suit or proceeding or the defense or settlement thereof of any claim, issue or matter therein, to the fullest extent.

#### **O. General Indemnification**

The Reorganized Debtor shall indemnify and hold harmless any Entity who was or is a party or is threatened to be made a party to any pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such Entity is or was the Trustee, a member of the Committee of Unsecured Creditors, one of the Futures Representatives or an agent (professional or otherwise) of the Trustee, the TAC (as defined in the Asbestos Trust Agreement), or after the Confirmation Date, the Reorganized Debtor, against all costs, expenses, judgments, fines and amounts paid in settlement actually and reasonable incurred by such Entity in connection with such action, suit or proceeding or the defense or settlement thereof of any claim, issue or matter therein, to the fullest extent except to the extent attributable to willful misconduct or gross negligence. Costs or expenses incurred by any such Entity in defending any such action, suit or proceeding may be paid by the Reorganized Debtor in advance of the institution or final disposition of such action, suit or proceeding, if authorized by the Trustee and TAC. The Trustee may in his discretion purchase and maintain insurance on behalf of any Entity who is or was a beneficiary of this provision. (See also the indemnification provisions relating to the Evans Defendants as provided in the Evans Settlement as described herein in Section IV.E.5., entitled, "THE CHAPTER 11 CASE -- Significant Events During Case -- Evans Litigation and Evans Settlement.")

### **VI. THE ASBESTOS TRUST**

The following summarizes the terms of the Asbestos Trust Agreement and the Asbestos Claims Resolution Procedures. It is intended only to be a summary, and interested parties should review the Asbestos Trust Agreement and the Asbestos Claims Resolution Procedures. The following summary is qualified in its entirety by such documents.

#### **A. General Description of the Asbestos Trust**

##### **1. Purposes of the Asbestos Trust**

The Asbestos Trust will be established pursuant to the Asbestos Trust Agreement, a copy of which is attached to the Plan as Exhibit "1.1.14." The purposes of the Asbestos

Trust are (a) to assume any and all liabilities of the Debtor, its successors in interest, or its Affiliates with respect to Asbestos Claims; (b) to use the Asbestos Trust's assets and income to pay holders of valid Asbestos Claims in such a way that holders of similar Asbestos Claims are paid in substantially the same manner; and (c) to comply in all respects with the requirements set forth in section 524(g)(2)(B)(i) of the Bankruptcy Code.

## **2. The Trustee**

The Trustee under the Asbestos Trust Agreement is Mark M. Gleason.

Mr. Gleason is the Managing Director of Gleason & Associates, P.C. Mr. Gleason is a CPA with experience in a full range of accounting, tax and consulting services and with a specialized focus in the areas of financial reorganizations, business valuations and litigation support cases.

The Trustee shall serve until the Trustee's death, resignation, removal, or the termination of the Asbestos Trust. The TAC, as defined below, may remove the Trustee for good cause by majority vote. In the event of a vacancy in the Trustee position, the vacancy will be filled by a majority vote of the TAC.

The Trustee will be entitled to receive compensation on an hourly basis at the initial rate of \$150.00 per hour, as well as reimbursement of out-of-pocket costs and expenses. The Trustee may from time to time seek reasonable increases in his hourly rate, subject to the approval of the TAC.

The Trustee may sit on the Board of Directors of the Reorganized Debtor, but cannot receive additional compensation for his service on such board over and above the compensation received as Trustee. Subject to a number of limitations set forth in the Asbestos Trust Agreement and the Asbestos Claims Resolution Procedures, the Trustee has the power to take any and all actions that are necessary to fulfill the purposes of the Asbestos Trust and need not obtain Bankruptcy Court approval to do so, but is, in certain circumstances, required to obtain the approval of the TAC.

## **3. The Trustee's Advisory Committee**

The Asbestos Trust Agreement provides for the establishment of a Trustee's Advisory Committee (the "TAC"). Philip Pahigian, Brent Rosenthal and Perry Weitz will be the initial TAC members. Philip Pahigian shall serve as Chairperson of the TAC for as long as he is a member. Each of the initial TAC members has significant experience in the representation of Asbestos Personal Injury Claimants and has served on the Committee of Unsecured Creditors in this Chapter 11 Case.

Each member of the TAC shall serve for the duration of the Asbestos Trust or until his death, resignation, or removal. Removal of a TAC member requires the unanimous consent of the remaining TAC members. In the event of a vacancy caused by resignation, the vacancy will be filled by an individual nominated by the resigning TAC member and approved by the unanimous vote of all TAC members. In the event of a vacancy other than

one caused by resignation, the vacancy shall be filled by the unanimous vote of the remaining TAC members.

The TAC shall consent to the appointment of any successor Trustee and the Trustee is required to consult with the TAC and be subject to Article 3.2 of the Asbestos Claims Resolution Procedures regarding the implementation and administration of the Asbestos Claims Resolution Procedures. The Trustee is required to consult with the Co-Defendant Representative on the implementation and administration of the Asbestos Claims Resolution Procedures as they impact Co-Defendant Claims. The Trustee is required to consult with the Property Damage Futures Representative on the implementation and administration of the Asbestos Claims Resolution Procedures as they impact Property Damage Claims. The Trustee must obtain the consent of a majority of TAC members to make material amendments to the Asbestos Claims Resolution Procedures, to merge or participate with other claims resolution facilities, to amend the Asbestos Trust's TAC provisions, and to terminate the Asbestos Trust under certain conditions specified in the Asbestos Trust Agreement.

Each TAC member will be entitled to receive as compensation \$2,500.00 per meeting plus out-of-pocket costs and expenses. The TAC members' compensation will be adjusted for inflation pursuant to the terms of the Asbestos Trust.

#### **4. Transfer of Certain Property to the Asbestos Trust**

On the Effective Date or as soon thereafter as is practicable, the Reorganized Debtor will transfer and assign, or cause to be transferred and assigned, to the Asbestos Trust all books and records of the Debtor that pertain directly to Asbestos Claims that have been asserted against the Debtor. The Committee will request that the District Court, in the Confirmation Order, rule that such transfer does not result in the destruction or waiver of any applicable privileges pertaining to such books and records. If the District Court does not so rule, at the option of the Committee, the Reorganized Debtor will retain the books and records and enter into arrangements to permit the Asbestos Trust to have access to such books and records. The Property Damage Insurance Policies will also be transferred to the Asbestos Trust on the Effective Date. In addition, on the Initial Distribution Date, the Reorganized Debtor will be obligated to pay to the Asbestos Trust its Pro Rata Share of the Distribution Value and will have a continuing obligation to assign to the Asbestos Trust its Pro Rata Share of any additional money received by the Reorganized Debtor through the Tobacco Contribution Action and the Porter-Retained Insurance Policies. In the event that the Reorganized Debtor determines, in its sole discretion, that any Porter-Retained Insurance Policy is of no value to the Reorganized Debtor, it may permit holders of Allowed Asbestos Personal Injury Claims to sue Porter, provided that any recovery shall be limited to a recovery from the proceeds of the subject policy.

#### **5. Ownership and Transfer of New Porter Common Stock by the Asbestos Trust.**

The Asbestos Trust is to own all the outstanding voting shares of the Reorganized Debtor. In exercising his duty to fulfill the purpose of the Asbestos Trust, the Trustee may

vote the New Porter Common Stock and exercise all rights with respect thereto. However, pursuant to the Amended and Restated Articles of Incorporation, the Trustee shall not be permitted to sell, exchange, transfer, or otherwise dispose of any New Porter Common Stock, or any other interest in the Reorganized Debtor that is treated as "stock" for purposes of section 382 of the Internal Revenue Code, for a period of at least twenty-five (25) months from the Effective Date.

#### **6. Asbestos Trust Termination Provisions**

The Asbestos Trust is irrevocable, but will terminate ninety (90) days after the first of any of the following events occurs:

- Subject to the consent of the TAC, the Trustee, in his discretion, decides to terminate the Asbestos Trust because (i) all Asbestos Claims duly filed with the Asbestos Trust have been liquidated and satisfied, (ii) twelve (12) consecutive months have elapsed during which no new Asbestos Claims have been filed with the Asbestos Trust, and (iii) the Trustee determines that it is unlikely that any new Asbestos Claims will be filed against the Asbestos Trust;
- Subject to the consent of the TAC, if the Trustee has procured and has in place irrevocable insurance policies and has established claims handling agreements and other necessary arrangements with suitable third parties adequate to discharge all expected remaining obligations and expenses of the Asbestos Trust in a manner consistent with the Asbestos Trust Agreement and the Asbestos Claims Resolution Procedures, the date on which the Bankruptcy Court enters an Order approving such insurance and other arrangements and such Order becomes final;
- in the judgment of the Trustee, with the consent of the TAC, the continued administration of the Asbestos Trust is uneconomic or inimical to the best interests of the persons holding Asbestos Claims, and the termination will not expose or subject the Reorganized Debtor or any successor to any increased or undue risk of having any Asbestos Claims asserted against it or them or in any way jeopardize the validity or the enforceability of the Asbestos Permanent Channeling Injunction; or
- 21 years less 91 days pass after the death of the last survivor of all of the descendants of Joseph P. Kennedy, Sr., of Massachusetts, living on the date of the establishment of the Asbestos Trust.

After payment of all the Asbestos Trust's liabilities has been provided for, and after the Asbestos Trust terminates, all funds remaining in the Asbestos Trust shall be transferred to charitable organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. These tax-exempt organizations shall be selected jointly by the

Trustee and the TAC, but shall be unrelated to the Reorganized Debtor and, if practicable, shall be related to the treatment of asbestos-caused disorders. The Committee believes that the likelihood of any funds remaining in the Asbestos Trust after the Asbestos Trust terminates is extremely remote.

## **7. Ability to Amend Asbestos Trust Documents**

The Trustee, subject to the TAC's consent, may modify or amend certain provisions of the Asbestos Trust Agreement or any document annexed thereto. Certain Asbestos Trust provisions, however, are not subject to amendment under any conditions.

### **B. Asbestos Personal Injury Claims Resolution Procedures**

The Trustee will implement and administer the Asbestos Claims Resolution Procedures, which are attached to the Asbestos Trust Agreement as Annex "A." The Asbestos Claims Resolution Procedures are designed to provide fair, reasonable and prompt payment to similar Asbestos Personal Injury Claims (which, by definition, include future Demands) in substantially the same manner. Asbestos Personal Injury Claims will be processed and paid in an order that the Trustee will devise based on a first-in, first-out ("FIFO") principle. In order to reduce transaction costs, however, the Trustee may process, liquidate, and pay valid Asbestos Personal Injury Claims in groups of claims or otherwise, provided that such payment is consistent with section 524(g)(2)(B)(ii)(V) of the Bankruptcy Code. A brief summary of the principal features of the Asbestos Claims Resolution Procedures is set forth below; however, for a more detailed analysis, reference should be made directly to the procedures document itself.

#### **1. Payment Percentage**

There is inherent uncertainty regarding the Debtor's total liability to holders of Asbestos Personal Injury Claims and/or Asbestos Co-Defendant Claims as well as the total value of the assets available to pay valid such Claims. Consequently, there is inherent uncertainty regarding the amounts that such Claimants will receive. To ensure substantially equivalent treatment of all present and future valid Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims, prior to making distributions to claimants, the Trustee must determine the percentage of full liquidated value that valid Asbestos Personal Injury Claims and/or Asbestos Co-Defendant Claims would likely receive (the "Payment Percentage"). The Trustee must base his determination, on the one hand, on estimates of the number, types, and values of present and future Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims and, on the other hand, on the value of the Asbestos Trust's assets, the liquidity of those assets, the Asbestos Trust's expected future expenses for administration and legal defense, and other material matters that are reasonably likely to affect the sufficiency of funds to pay a comparable distribution to all holders of Asbestos Personal Injury Claims and Asbestos Co-Defendant Claims. At present, based upon the facts known to date, the Committee believes that it is likely that the Payment Percentage will be approximately 5%; however, such estimate shall not be binding on the Trustee. The Trustee, at yearly intervals, shall review his determination of the Payment Percentage to assure that it is based on accurate, current information and may, after such review, change the Payment Percentage, if



necessary. When making these determinations, the Trustee shall exercise common sense and flexibly evaluate all relevant factors, including the practical limitations imposed by the inability to predict with precision the future assets and liabilities of the Asbestos Trust, the costs involved in preparing such evaluations, and any other factors the Trustee considers to be relevant. In the event the Trustee determines to lower the Payment Percentage, the Trustee shall not attempt to recover from any paid claimant any amount received in excess of the new prevailing Payment Percentage. In the event that the revised Payment Percentage is greater than that previously paid to claimants, the Trustee may make additional payments to those claimants previously paid, unless he determines that the administrative burden or cost associated with making such additional payments does not justify making the payments. In the event that the Trust receives significant additional funds that materially increase the Payment Percentage, the Trustee shall make such additional payments.

## **2. Claims Materials, Claims Evaluation, and Payment Procedures**

As soon as reasonably practical, but not later than six (6) months following the Effective Date, the Trustee shall make available Claims Materials (as such term is defined in the Asbestos Claims Resolution Procedures) to each person who has filed a proof of Claim with the Bankruptcy Court, is listed on Bankruptcy Schedules, who has a pending lawsuit against the Debtor, or who otherwise has been identified to the Trustee, except that the Asbestos Trust need not provide Claims Materials to holders of Prepetition Liquidated Claims (as defined below) or to an Asbestos Personal Injury Claimant for whom an Expedited Payment Election has been made (as those terms are defined in the Asbestos Claims Resolution Procedures). For any person holding an Asbestos Personal Injury Claim who is first identified to the Debtor or Trustee anytime subsequent to the Effective Date, Trustee shall make available the Claims Materials no later than six (6) months following such identification, and it shall include an offer to the claimant to elect expedited payment. The Asbestos Trust may send Claims Materials to a claimant in care of an attorney representing the claimant. The Claims Materials will include descriptions of the Asbestos Claims Resolution Procedures, instructions, and a claim form.

The Asbestos Claims Resolution Procedures establish four procedural claims categories: Prepetition Liquidated Claims; Expedited Payment Election; Non-Expedited Payment; and Extreme Hardship Claims.

### **a. Prepetition Liquidated Claims**

“Prepetition Liquidated Claims” are Asbestos Personal Injury Claims that were liquidated either by settlement agreement entered into prior to the Petition Date, or by judgment that became final and non-appealable prior to the Petition Date. Unless not feasible after every reasonable effort, these Claims will be paid no later than 90 days after the Effective Date. These Claims will be paid based on FIFO principles and should not require any processing other than verification of the holder’s identity, payment of the Claim, and release of the Asbestos Trust. The liquidated value of such Claims is the amount awarded in the prepetition settlement or judgment, and holders of Prepetition Liquidated Claims shall be paid the appropriate Payment Percentage based upon that liquidated value.

**b. Expedited Payment Election**

The Plan provides for an “Expedited Payment Election” that may be exercised at the time the eligible holders of Asbestos Personal Injury Claims vote to accept or reject the Plan, which election may be made by marking the appropriate box on the Plan Ballot. Those holders of valid Asbestos Personal Injury Claims who so elect shall make a full and final settlement with the Asbestos Trust (except as otherwise provided in the Asbestos Claims Resolution Procedures) in exchange for a single cash payment equal to the Payment Percentage of the amounts shown below for each disease category (the “Expedited Payment”):

Mesothelioma	\$20,000
Lung Cancer	\$12,000
Other Cancer	\$7,500
Non-malignancy	\$3,750

This Expedited Payment Election is designed, in part, for claimants who can be determined by the Asbestos Trust to have valid Asbestos Personal Injury Claims and who desire to have a fixed and certain payment made expeditiously rather than wait for payment after the non-expedited process. The Committee estimates that the payment percentage of these amounts will be approximately 5%. Guidelines to be provided to the Trustee by the Committee of Unsecured Creditors may decrease these amounts in instances where exposure criteria is not required of a Claimant.

All holders of valid Asbestos Personal Injury Claims whose Claims were scheduled by the Debtor in its Amended Schedules filed on or about March 16, 1992, and who do not elect Non-Expedited Payment in connection with the balloting for the Plan and other reasonable notice shall be conclusively presumed to have chosen the Expedited Payment Election.

Unless not feasible after every reasonable effort, no later than 180 days after the Effective Date the Trustee shall process and pay the holders of Asbestos Personal Injury Claims who elect to receive an Expedited Payment in an order to be determined by the Trustee based on a FIFO principle. The Committee of Unsecured Creditors shall provide to the Trustee Expedited Payment Election guidelines for establishing exposure and other liability criteria for payment of Asbestos Personal Injury Claims, and the Trustee shall follow such guidelines.

The holder of a valid Asbestos Personal Injury Claim based upon a non-malignant asbestos injury or condition who elects to receive an Expedited Payment as provided herein may file a new Asbestos Personal Injury Claim for an asbestos-related malignancy that is subsequently diagnosed, and any additional payments to which such claimant may be entitled shall not be reduced by the amount of the Expedited Payment.

Holders of Asbestos Personal Injury Claims who receive an Expedited Payment shall execute and deliver to the Trustee a general release in a form satisfactory to the Trustee and may not thereafter file a new Asbestos Personal Injury Claim based upon the same disease.

A Claimant with an Asbestos Personal Injury Claim based upon a non-malignant asbestos injury or condition who receives an Expedited Payment shall execute and deliver a limited release that shall reserve to such Claimant the right to submit a Claim for an asbestos malignancy that is subsequently diagnosed.

The Trustee's decision that the holder of an Asbestos Personal Injury Claim should not receive an Expedited Payment is not reviewable. However, the holder of an Asbestos Personal Injury Claim whose Claim is denied an Expedited Payment may then elect Non-Expedited Payment.

It is impossible to determine at this date how many holders of Asbestos Personal Injury Claims will elect to treat their Claims as expedited election claims.

**c. Non-Expedited Payment**

A claimant (i) who initially elects Non-Expedited Payment, or (ii) whose Asbestos Personal Injury Claim is rejected by the Trustee for Expedited Payment and who then elects Non-Expedited Payment, shall have his or her Asbestos Personal Injury Claim reviewed, based upon an evaluation of exposure, medical evidence of injury and any other factors generally regarded as relevant under applicable tort law. The detailed examination and review for Non-Expedited Payment of Asbestos Personal Injury Claims is designed for claimants with serious or fatal asbestos-related injuries whose Asbestos Personal Injury Claims justify, the added expense of individualized examination.

The Asbestos Trust will categorize Asbestos Personal Injury Claims by injury and shall use these categories to resolve Asbestos Personal Injury Claims as expeditiously and economically as possible. For each category, the Asbestos Trust shall recognize maximum liquidated values as follows:

<b>Disease Category</b>	<b>Maximum Non-Expedited Claim Amount</b>
1. Asbestosis and non-malignancies	\$7,500.00
2. "Other" cancers	\$15,000.00
3. Lung cancer	\$24,000.00
4. Mesothelioma	\$40,000.00

Offers of payments to claimants shall be determined by assigning to their valid Asbestos Personal Injury Claim an appropriate value that does not exceed the maximum liquidated value and multiplying that value by the Payment Percentage. The Asbestos Trust shall not be required to recognize any minimum liquidated value.

Non-Expedited Payment Claims shall be processed and liquidated in the following order of priority:

(i) substantially all Asbestos Personal Injury Claims whose holders had filed lawsuits against Porter prior to February 15, 1991;

(ii) substantially all Asbestos Personal Injury Claims whose holders had not filed lawsuits against Porter prior to February 15, 1991, but whose holders had filed timely proofs of Claim or been scheduled by the Debtor as liquidated and undisputed in the Chapter 11 Case;

(iii) Asbestos Personal Injury Claims not described in subsections (i) and (ii) above shall be processed and liquidated as soon as possible in the order in which they are received but not before the Claims described in subsections (i) (ii) above.

While payments to holders of valid Asbestos Personal Injury Claims generally should be made in the same order in which Claims are liquidated, the Trustee shall have complete discretion to determine the timing and the appropriate method for making payments, provided he acts consistently with section 524(g)(2)(B)(ii)(V) of the Bankruptcy Code, but he may not use such discretion as a method of obtaining more favorable settlements with claimants. Such methods may include, in the discretion of Trustee, a method for payment on an installment basis, in which case any installment payment shall be subject to the Payment Percentage in effect at the time such installment payment is made.

Claimants who reject the Trustee's offer after Non-Expedited review and who wish to dispute their eligibility for payment, their categorization, or the amount of the Trustee's offer under Non-Expedited review, must proceed to mediation pursuant to procedures established by the Trustee pursuant to the Asbestos Claims Resolution Procedures. After such mediation claimants who still reject the Asbestos Trust's offer may file suit against the Asbestos Trust or, prior thereto, elect to go to binding or non-binding arbitration.

Holders of Asbestos Personal Injury Claims who receive a Non-Expedited Payment shall execute and deliver to the Trustee a general release in a form satisfactory to the Trustee and may not thereafter file a new Asbestos Personal Injury Claim based upon the same disease. A Claimant with an Asbestos Personal Injury Claim based upon a non-malignant asbestos injury or condition who receives a Non-Expedited Payment shall execute and deliver a limited release that shall reserve such Claimant the right to submit a claim for an asbestos malignancy that is subsequently diagnosed.

#### **d. Exigent Health Claims**

At any time, the Trustee may individually evaluate Exigent Health Claims. These Claims may be considered separately no matter what the order of processing otherwise would have been.

A Claim qualifies as an Exigent Health Claim if the claimant provides: (i) documentation that a physician has diagnosed the claimant as having an asbestos-related

illness and (ii) a declaration or affidavit made under penalty of perjury by a physician who has examined the claimant within one hundred twenty (120) days of the date of the declaration or affidavit in which the physician states, that due to an asbestos disease, there is substantial medical doubt that the claimant will survive beyond six (6) months from the date of the declaration or affidavit.

### **3. Miscellaneous Provisions for Asbestos Personal Injury Claims Procedures**

#### **a. Elements of Proof**

In order to establish a valid Asbestos Personal Injury Claim, a claimant must submit at least one medical report from a qualified physician who has actually examined the Claim holder that contains a diagnosis of asbestos-related injury. This proof of disease may be satisfied, in the Trustee's discretion, by medical reports accepted by another asbestos claims resolution facility. The Trustee may require additional submissions to support such Claim. The Trustee may require such evidence of exposure to Porter products or may apply such presumptions based on job-site, occupation, dates of employment and other factors as the Trustee in his discretion may from time-to-time determine to be appropriate to balance the goal of paying only claimants with exposure to Porter asbestos-containing product with the goal of preventing excessive expenditure on Claim processing.

The Trustee may from time-to-time review the nature of the documentation and other evidence the Trust will require to establish a Claim under each disease category and in the exercise of his discretion modify such requirements.

Notwithstanding any provision of the Asbestos Claims Resolution Procedures to the contrary, the Trustee shall always give appropriate consideration to the cost of investigating and uncovering invalid Asbestos Personal Injury Claims so that the payment of valid Asbestos Personal Injury Claims is not further impaired by such processes.

#### **b. Alternative Dispute Resolution**

The Trustee shall establish an appropriate alternative dispute resolution process so that the claimants and the Asbestos Trust shall have a full range of alternative dispute resolution devices available for their use in the Non-Expedited Payment process, including reviews by specialized panels, mediation and arbitration.

Settlements shall be favored over all other forms of Claim resolution, mediation shall be favored over arbitration and litigation, and arbitration shall be favored over litigation and the lowest feasible transaction costs for the Asbestos Trust shall be incurred in order to conserve resources and insure the availability of funds to pay all valid Asbestos Personal Injury Claims.

Holders of Asbestos Personal Injury Claims may elect to submit their Claims to binding or non-binding arbitration only after other alternative dispute resolution procedures established by the Trustee have failed. If arbitration becomes necessary, the arbitrators must return awards that do not exceed the maximum liquidated amounts for the injury category in

which the Asbestos Personal Injury Claim properly falls. An award from binding arbitration, and a non-binding arbitration award accepted by the Claimant, will be multiplied by the Payment Percentage to determine the Claimants' payment amount.

**c. Trial**

A holder of an Asbestos Personal Injury Claim who, in accordance with the Asbestos Claims Resolution Procedures elects to resort to the tort system and obtain a final judgment for money damages, shall have a Claim with a liquidated value equal to the judgment amount, less the amount of any prejudgment interest or any non-compensatory punitive damages contained therein, and no post-judgment interest shall accrue on such judgment amount. The statute of limitations will be tolled as of the earlier of the date the Claim was filed with the Asbestos Trust or the date the Claimant filed a complaint against the Debtor.

**C. Asbestos Co-Defendant Claims Resolution Procedures**

Article III, Section 8 of the Asbestos Claims Resolution Procedures is devoted to the treatment of Asbestos Co-Defendant Claims (including Demands) arising out of asbestos personal injury litigation. Pursuant to the procedures, Asbestos Co-Defendant Claims are divided into two categories: Those arising pre-Effective Date ("Pre-Effective Date Claims") and those arising post-Effective Date ("Post-Effective Date Claims").

Pre-Effective Date Claims, which are to be filed within ninety (90) days of the Effective Date, are to be paid from a segregated interest bearing account which will be established and which shall meet the requirements of a qualified settlement fund. The fund shall consist of \$750,000.00 cash plus the first \$1 million after taxes recovered from the Porter Retained Insurance Policies and/or the Tobacco Contribution Action. The process for holding and allocating the fund shall, in all material respects, follow the principles set forth in *Findley v. Falise*, 878 F.Supp. 473, 601-606 (E. & S.D.N.Y. 1995) (setting forth Distribution Principles for Contribution Claim Fund in Manville Personal Settlements Trust Restructure), except for specific dates, deadlines and fund amounts, which are particular to this case. The proceeds of the segregated fund shall be allocated among Asbestos Co-Defendant Claimants against whom compensatory verdicts or judgments were returned or entered in favor of an individual asbestos claimant prior to the Effective Date, based upon each Co-Defendant's proportionate share of the total of such compensatory verdicts and judgments. The procedures provide for a calculation of the total compensatory verdicts and judgments based upon various factors including the time of the entry and payment of the judgment. (See Section 8.2.b. of the Asbestos Claims Resolutions Procedures for more detail.) The initial distribution to Asbestos Co-Defendant Claimants on account of timely filed Pre-Effective Date Claims shall be within one hundred eighty (180) days of the Effective Date. Thereafter, distributions will be made when the fund administrators determine further distributions are warranted. The segregated fund shall be administered by counsel for the present Asbestos Co-Defendant Claimants and the Co-Defendant Representative. The Co-Defendant Representative shall be Courtney Horrigan, Esquire, of the law firm of Reed, Smith, Shaw & McClay having an address of 2500 One Liberty Place, Philadelphia, PA 19105-7301. Additionally, it is anticipated that Mark Peterson will serve as a special advisor to resolve any fund allocation disputes.

As to Post-Effective Date Claims, the procedures provide that the Asbestos Co-Defendant Claimant must advise the Asbestos Trust within 90 days of the entry of a judgment or verdict against it or shall waive any claim it may have against the Asbestos Trust. Upon payment to the underlying or "Direct Claimant", the Asbestos Co-Defendant Claimant shall stand in the stead of the Direct Claimant and shall be permitted to pursue such Claim against the Asbestos Trust. In the event the direct claimant is paid by the Asbestos Trust, any co-defendant liability to the Direct Claimant shall be reduced or offset by the amount actually paid by the Trust to the Direct Claimant. For more detail with respect to Post-Effective Date Claims, please see Sections 8.3 and 8.4 of the Asbestos Claims Resolution Procedures.

#### **D. Asbestos Property Damage Claims Resolution Procedures**

Article IV of the Asbestos Claims Resolution Procedures addresses the Asbestos Trust treatment of Asbestos Property Damage Claims (including Demands). The procedures provide that any holder of an Asbestos Property Damage Claim may sue the Asbestos Trust based upon such Claim. (See discussion in Section V.A.5. hereof regarding impact of section 108(c) of the Bankruptcy Code on statute of limitation.) In the event any holder of an Asbestos Property Damage Claim obtains a judgment against the Asbestos Trust, such holder's sole recourse to having the judgment satisfied or paid is by way of a recovery under the coverage provided by the Property Damage Insurance Policies and the liability of the Asbestos Trust shall be limited to the applicable, unexhausted and available coverage limits of the Property Damage Insurance Policies.

Once suit is commenced against the Asbestos Trust by any holder(s) of an Asbestos Property Damage Claim, the Trustee shall be obligated to promptly give notice to the insurance companies who have a duty to defend and/or a duty to indemnify pursuant to the Property Damage Insurance Policies. Additionally, the Trustee shall cooperate with such companies in the defense and/or trial of any Asbestos Property Damage Claims.

The liability of the Asbestos Trust shall be limited to the duties to give notice and to cooperate with the insurance companies and to the applicable, unexhausted and available coverage limits of the Property Damage Insurance Policies.

### **VII. CONFIRMATION AND CONSUMMATION PROCEDURE**

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

#### **A. Solicitation of Votes**

In accordance with sections 1125, 1126 and 1129 of the Bankruptcy Code, the Claims in each of Classes 2, 3, 4, 5, 6 and 7 of the Plan are impaired, and the holders of Claims in each of such Classes are entitled to vote to accept or reject the Plan in the manner and to the extent set forth in section 1126 of the Bankruptcy Code and the Voting Procedures Order (See description of Voting Procedures Order below). Any claimant holding a Claim in an impaired class under the Plan may vote on the Plan so long as such Claim has not been disallowed and is not the subject of an objection pending as of the date of the order approving this Disclosure

Statement by the Bankruptcy Court - May 7, 1998. Nevertheless, if a Claim is the subject of such an objection, the holder thereof may vote if such holder obtains an order of the Bankruptcy Court, or the Bankruptcy Court approves a stipulation between the Debtor and such holder fully or partially allowing such Claim, whether for all purposes or for voting purposes only.

Claims in Class 1 are unimpaired. The holders of Allowed Claims in such class are conclusively presumed to have accepted the Plan, and the solicitation of acceptances with respect to such Class is not required under section 1126(f) of the Bankruptcy Code. The Plan provides that the holders of Subordinated Shareholder Claims in Class 8 and Equity Interests in Class 9 are impaired and will not receive any distributions of property or retain any interest in the Debtor. In accordance with section 1126(g) of the Bankruptcy Code, such classes of Subordinated Shareholder Claims and Equity Interests are conclusively presumed to have rejected the Plan.

As to classes of Claims entitled to vote on a plan, the Bankruptcy Code defines acceptance of a plan by a class of creditors as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of the claims of that class that have timely voted to accept or reject a plan.

The Bankruptcy Court Order of January 27, 1998 entered at Motion No. SCBS-195 provides, *inter alia*, certain special rules establishing solicitation and voting procedures for Asbestos Claims. The Voting Procedures apply exclusively to Asbestos Claims and provide as follows:

Each entity holding a Claim which has been timely filed and is classified under the Plan in a class consisting of Asbestos Claims against the Debtor shall, solely for the purpose of voting on the Plan, be entitled to cast one vote in the amount of \$1.00, without prejudice to the determination of the amount of such entity's Claim for distribution purposes. The Ballots with respect to the voting of Asbestos Claims, which have been provided along with copies of this Disclosure Statement and the Plan, shall be utilized by any asbestos claimant wishing to vote on the Plan. Separate Ballot forms have been approved by the Court for Asbestos Personal Injury Claims and Asbestos Co-Defendants Claims; Asbestos Property Damage Claims; and Non-Asbestos Lung Disease Claims. Any Ballot cast by an asbestos claimant or lung disease claimant that is not substantially in the form of the approved Ballot shall be void. Counsel to holders of Asbestos Claims are authorized to vote a single Ballot on behalf of multiple clients, provided that such counsel have been properly authorized by their clients to vote the Claims of their clients, and provided further that counsel comply with the certification procedure identified on the Asbestos Claims Ballots. The form of certification to be utilized by counsel casting an Asbestos Claim Ballot on behalf of multiple claimants is attached to the form of the Ballot.



The Plan provides for the Asbestos Permanent Channeling Injunction to be issued pursuant to section 524(g) of the Bankruptcy Code. The Court may only grant such injunction if 75% of those claimants voting in Class 4 and Class 5 vote to accept the Plan. The Plan as proposed will not be confirmed unless the Asbestos Permanent Channeling Injunction is granted. The Ballots further provide that acceptance of the Plan by a Creditor will constitute an express consent to the release of the Evans Defendants by that Creditor. In addition, the Ballots permit each claimant to make an election to accept the Plan and to choose the Expedited Payment Election as further described in the Asbestos Claims Resolution Procedures or to accept the Plan and to choose Non-Expedited Payment as set forth in the Asbestos Claims Resolution Procedures.

By Order dated April 24, 1998, the Court approved the forms of Ballots for Classes 2, 3 and 7. The Ballots provided that acceptance of the Plan by a Creditor will constitute an express consent to the release of the Evans Defendants by that Creditor.

A ballot will *not* be counted if a Claim has been disallowed or an objection is pending to the Claim, and the claimant has not obtained, on or before the approval of the Disclosure Statement, a Bankruptcy Court order allowing such Claim, either in whole or in part, for all purposes or for voting purposes only. **A BALLOT WILL NOT BE COUNTED IF IT IS NOT RECEIVED AT THE ADDRESS PROVIDED FOR BELOW BY THE VOTING DEADLINE -- 5:00 P.M. EASTERN STANDARD TIME ON WEDNESDAY, JUNE 17, 1998. PLEASE FOLLOW THE INSTRUCTIONS ON YOUR BALLOT FOR RETURNING THE BALLOT.** In addition, a vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

All Creditors should vote and return their Ballot(s) to the following address:

**Campbell & Levine, LLC  
1700 Grant Building  
Pittsburgh, PA 15219**

**If you have any questions about these instructions, please call Philip E. Milch, Esquire at (412) 261-0310.**

#### **B. The Confirmation Hearing**

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a confirmation hearing. Since the jurisdiction of the Bankruptcy Court to issue the Asbestos Permanent Channeling Injunction under section 524(g) is unclear, the Debtor and the Committee have requested the District Court to withdraw the reference to the Bankruptcy Court of the Porter case, solely as to Plan confirmation, which withdrawal motion was filed by the Committee on May 7, 1998 at Motion No. C&L94 and which motion was assigned to the Honorable Gustave Diamond, United States District Court Judge. The parties are advised that an Order granting the limited withdrawal of the reference will be entered in advance of the Confirmation Hearing. The parties have further requested that the Honorable Gustave

Diamond of the United States District Court for the Western District of Pennsylvania and the Honorable Warren W. Bentz, United States Bankruptcy Judge for the Western District of Pennsylvania, preside jointly over the confirmation hearing in respect of the Plan, which has been scheduled for Thursday, June 25, 1998 at 1:30 p.m. o'clock in Courtroom No. 2, located at the 8th Floor, United States Post Office and Courthouse, Seventh Avenue and Grant Street, Pittsburgh, PA 15219. The confirmation hearing may be adjourned from time to time by the District Court without further notice, except for announcement of the adjourned date made at the confirmation hearing.

Any objection to confirmation must be made in writing and must specify in detail the name and address of the objector, all grounds for the objection, and the amount and class of the Claim or number of shares of stock held by the objector. Any such objection must be filed with the District Court and served so that it is received by the District Court and the persons on the Official Service List No. 7 on or before Wednesday, June 17, 1998, at 4:30 p.m., Eastern Standard Time. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

### **C. Confirmation**

At the confirmation hearing, the District Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of the Plan are that the Plan is accepted by all impaired classes of Claims and Equity Interests or, if rejected by an impaired class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such class.

#### **1. Acceptance**

Classes 2, 3, 4, 5, 6 and 7 of the Plan are impaired under the Plan and are entitled to vote to accept or reject the Plan. Class 1 is unimpaired and is conclusively deemed to have voted to accept the Plan. Classes 8 and 9 are conclusively deemed to have voted to reject the Plan. Since Classes 8 and 9 are deemed to have rejected the Plan, the Committee intends to seek non-consensual confirmation of the Plan under section 1129(b) of the Bankruptcy Code. In addition, the Committee reserves the right to seek non-consensual confirmation of the Plan with respect to any class of Claims that is entitled to vote to accept or reject the Plan, if such class votes to reject the Plan.

#### **2. Unfair Discrimination and Fair and Equitable Tests**

To obtain non-consensual confirmation of the Plan, it must be demonstrated to the Bankruptcy Court that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to each impaired, non-accepting Class. The Bankruptcy Code provides the following non-exclusive definition of the phrase "fair and equitable," as it applies to unsecured creditors and equity holders:

(a) *Unsecured Creditors.* Either (i) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim,

or (ii) the holders of claims and interests that are junior to the claims of the rejecting class of unsecured creditors will not receive or retain any property under the plan.

(b) *Equity Interests.* Either (i) each holder of an equity interest will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled, or the value of the interest, or (ii) the holder of an interest that is junior to the non-accepting class will not receive or retain any property under the plan.

The Committee believes that the Plan and the treatment of all classes of Claims and Equity Interests under the Plan satisfy the foregoing requirements for non-consensual confirmation of the Plan. Specifically, no class that is junior to Class 8 (Subordinated Shareholder Claims) or Class 9 (Equity Interests) is receiving or retaining any property under the Plan. Likewise, the Committee believes that it will be able to establish that the Plan is fair and equitable as to any other class that may vote to reject the Plan.

### **3. Feasibility**

The Bankruptcy Code requires that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization. For purposes of determining whether the Plan meets this requirement, the Committee has analyzed the Debtor's ability to meet its obligations under the Plan. Typically, a part of this analysis is the preparation by the Debtor of extensive projections of its financial performance for the next several years. These projections are unnecessary in this case, as the Reorganized Debtor will be in the business of managing money and making the required payments to the Asbestos Trust. It is not anticipated that the Reorganized Debtor will have significant ongoing expenses. In addition, the Reorganized Debtor anticipates that it will have regular income on its investments, and it will receive payments as provided under the Evans Settlement with the Evans Defendants. Notwithstanding the Reorganized Debtor's obligation to pay to the Asbestos Trust its Pro Rata Share of the Distribution Value, the Reorganized Debtor shall not be obligated to make payments to the Asbestos Trust if such payments will either (i) leave the Reorganized Debtor with less than a net worth of \$5 million within a period of five years from the Effective Date or (ii) if the Debtor lacks sufficient cash to make such payments. A Pro-Forma of the Reorganized Debtor's Balance Sheet as of the Effective Date is attached hereto as Exhibit "C".

### **4. Best Interest Test**

With respect to each impaired class of Claims and Equity Interests, confirmation of the Plan requires that each holder of a Claim or Equity Interest either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. This requirement is referred to as the "best interest test." To determine what holders of Claims and Equity Interests of each impaired class would receive if the Debtor was liquidated under chapter 7, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the Debtor's assets and properties in the context of a chapter 7 liquidation case. The cash amount that would be available for satisfaction of Claims and Equity Interests would consist of the proceeds resulting from the

disposition of the unencumbered assets of the Debtor, augmented by the unencumbered cash held by the Debtor at the time of the commencement of the liquidation case. Such cash amount would be reduced by the amount of the costs and expenses of the liquidation and by such additional Administrative and Priority Claims that may result from the termination of the Debtor's business and the use of chapter 7 for the purposes of liquidation.

The Debtor's costs of liquidation under chapter 7 would include the fees payable to a trustee in bankruptcy, as well as those that might be payable to attorneys and other professionals that such a trustee may engage. The foregoing types of claims and other claims that may arise in a liquidation case or result from the pending Chapter 11 Case, including any unpaid expenses incurred by the Debtor during the Chapter 11 Case, such as compensation for attorneys, financial advisers, and accountants, would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay prepetition Claims.

To determine if the Plan is in the best interest of each impaired class, the present value of the distributions from the proceeds of the liquidation of the Debtor's unencumbered assets and properties, after subtracting the amounts attributable to the foregoing Claims, are then compared with the value of the property offered to such classes of Claims and Equity Interests under the Plan.

After considering the effects that chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Chapter 11 Case, including (i) the increased costs and expenses of liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisers to such trustee, (ii) the increased expense in handling the liquidation of Asbestos Claims which likely have to be tried in the District Court on a case-by-case basis, and (iii) a possible diminution in value of the estate if settlement with the Evans Defendants is not effectuated through a confirmed Plan, the Committee has determined that confirmation of the Plan will provide each holder of an Allowed Claim or Equity Interest with a recovery that is not less than such holder would receive pursuant to a liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

The Committee also believes that the value of any distributions to each class of Allowed Claims in a chapter 7 case would be less than the value of distributions under the Plan because such distributions in a chapter 7 case would not occur for a substantial period of time. It is likely that distribution of the proceeds of a chapter 7 case could be delayed a number of years in order to resolve claims and prepare for distributions. In the likely event litigation was necessary to resolve claims asserted in the chapter 7 case, the delay could be prolonged.

#### **D. Consummation**

The Plan will be consummated approximately 90 days from the Effective Date. For a more detailed discussion of the conditions precedent to the Plan and the impact of the failure to meet such conditions, *see* Section V.C, entitled, "**THE PLAN OF REORGANIZATION -- Conditions Precedent to the Effective Date Under the Plan.**"

The Plan is to be implemented pursuant to the provisions of the Bankruptcy Code.

## VIII. MANAGEMENT OF THE REORGANIZED DEBTOR

As of the Effective Date, the management, control, and operation of the Reorganized Debtor will become the general responsibility of the Board of Directors.

### A. Board of Directors and Management

#### 1. Composition of the Board of Directors

On the Effective Date, the Board of Directors shall consist of the same individuals who sit on the Board of Directors on the day immediately preceding the Effective Date. Each member of such Board of Directors shall serve until the first annual meeting of stockholders of the Reorganized Debtor, or his or her earlier resignation or removal in accordance with the Amended and Restated Articles of Incorporation or the By-Laws of the Debtor. Currently, the following individuals are Directors of Debtor: Kenneth B. McCarthy and Janet M. McQuillan.

#### 2. Identity of Officers

The officers of the Debtor immediately prior to the Effective Date shall serve as the officers of the Reorganized Debtor on and after the Effective Date in accordance with any employment agreement with the Reorganized Debtor and applicable non-bankruptcy law. The individuals currently serving as officers of the Debtor are: Kenneth B. McCarthy, President and Janet M. McQuillan, Secretary.

### B. Compensation of Executive Officers

The officers receive the following compensation:

Kenneth B. McCarthy	\$6,650.00 per month
Janet M. McQuillan	\$3,183.00 per month

### C. Severance Agreements

On or about November 15, 1996, Debtor entered into separate severance agreements with Kenneth B. McCarthy and Janet M. McQuillan ("Severance Agreements"). The terms of both agreements are identical in that they both provide that the Debtor shall give the employee no less than 30-days notice of its intention to terminate his or her employment. In consideration of the employee's continued employment and their foregoing other employment opportunities while continuing in their employ of the Debtor, upon the effective date of his or her termination, Debtor shall make a lump-sum severance payment in an amount equal to five months of his or her then current salary. Any medical benefits provided to the employee shall terminate on the date on which his or her termination of employment becomes effective. In the event that either employee breaches the agreement by leaving the Debtor's employ prior to receiving notice of termination, the severance benefits set forth in the Severance Agreement shall not be paid. The Severance Agreements shall be binding on the Reorganized Debtor after confirmation of the Plan.

## **IX. EXEMPTION FROM REGISTRATION OF SECURITIES**

### **A. Issuance**

With respect to the New Porter Common Stock to be issued under the Plan, the Reorganized Debtor intends to rely upon the exemption provided by section 1145(a)(1) of the Bankruptcy Code from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”), and of equivalent state securities or “blue sky” laws. Generally, section 1145(a)(1) of the Bankruptcy Code exempts the issuance of securities from the registration requirements of the Securities Act and equivalent state securities and “blue sky” laws if the following conditions are satisfied: (i) the securities are issued by a debtor (or its successor) under a plan of reorganization; (ii) the recipients of the securities hold a claim against, an interest in, or a claim for an administrative expense against the debtor; and (iii) the securities are issued entirely in exchange for the recipient’s claim against or interest in the debtor, or are issued “principally” in such exchange and “partly” for cash or property. The Committee believes that the issuance of the New Porter Common Stock to the Asbestos Trust will satisfy these requirements.

### **B. Subsequent Resale**

The New Porter Common Stock may be resold by the holder thereof subject to the following restrictions: (i) no transfer of any kind can occur before twenty-five (25) months after the Effective Date, (ii) such holder is not an “underwriter” with respect to such securities, as defined in section 1145(b)(1) the Bankruptcy Code and as discussed further below, and (iii) such holder complies with all federal and state securities laws applicable to such transfer. Generally, section 1145(b)(1) of the Bankruptcy Code defines an “underwriter” as any person who (i) purchases a claim against, or interest in, a debtor in a bankruptcy case, with a view towards the distribution of any security to be received in exchange for such claim or interest, (ii) offers to sell securities issued under a plan of reorganization on behalf of the holders of such securities, (iii) offers to buy securities issued under a plan of reorganization from persons receiving such securities, if the offer to buy is made with a view towards distribution of such securities, or (iv) is an issuer as contemplated by section 2(11) of the Securities Act.

Although the definition of the term “issuer” appears in section 2(4) of the Securities Act, the reference (contained in section 1145(b)(1)(D) of the Bankruptcy Code) to section 2(11) of the Securities Act purports to include as “underwriters” all persons who, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, an issuer of securities. “Control” (as such term is defined in Rule 405 of Regulation C under the Securities Act) means the possession, direct or indirect, of the power to direct or cause the direction of the policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Accordingly, an officer or director of a reorganized debtor (or its successor) under a plan of reorganization may be deemed to be a “control person,” particularly if such management position is coupled with the ownership of a significant percentage of the debtor’s (or successor’s) voting securities. Moreover, the legislative history of section 1145 of the Bankruptcy Code suggests that a creditor who owns at

least 10% of the securities of a Reorganized Debtor may be presumed to be a “control person.”

Thus, since the Asbestos Trust is the owner of 100% of the New Porter Common Stock, it may be deemed a “control person” and therefore an underwriter. If the Asbestos Trust is an underwriter then in any instance in which the Asbestos Trust attempts to sell any of the New Porter Common Stock it will either have to register such stock under the applicable federal and state securities laws or utilize an appropriate exemption.

**WHILE A HOLDER OF NEW PORTER COMMON STOCK POSSESSES THE RIGHT TO TRANSFER SUCH STOCK, SUBJECT TO THE RESTRICTIONS DISCUSSED HEREIN, SUCH HOLDER OF NEW PORTER COMMON STOCK IS SOLELY RESPONSIBLE FOR COMPLYING WITH ALL APPLICABLE FEDERAL AND STATE SECURITIES LAWS PRIOR TO ANY SUCH TRANSFER.**

All certificates and instruments evidencing New Porter Common Stock will bear a legend substantially in the form below:

**THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE SOLD, OFFERED FOR SALE, OR OTHERWISE TRANSFERRED UNLESS REGISTERED OR QUALIFIED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAWS OR UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH REGISTRATION OR QUALIFICATION IS NOT REQUIRED.**

**THE FOREGOING SUMMARY DISCUSSION IS GENERAL IN NATURE AND HAS BEEN INCLUDED IN THIS DISCLOSURE STATEMENT SOLELY FOR INFORMATIONAL PURPOSES. THE COMMITTEE MAKES NO REPRESENTATIONS CONCERNING, AND DOES NOT HEREBY PROVIDE ANY OPINION OR ADVICE WITH RESPECT TO, THE SECURITIES LAW AND BANKRUPTCY LAW MATTERS DESCRIBED ABOVE. IN LIGHT OF THE COMPLEX AND SUBJECTIVE INTERPRETIVE NATURE OF WHETHER A PARTICULAR RECIPIENT OF NEW PORTER COMMON STOCK MAY BE DEEMED TO BE AN “UNDERWRITER” WITHIN THE MEANING OF SECTION 1145(b)(1) OF THE BANKRUPTCY CODE AND/OR AN “AFFILIATE” OR “CONTROL PERSON” UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS AND, CONSEQUENTLY, THE UNCERTAINTY CONCERNING THE AVAILABILITY OF EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND EQUIVALENT STATE SECURITIES AND “BLUE SKY” LAWS, THE COMMITTEE ENCOURAGES EACH CLAIMANT TO CONSIDER CAREFULLY, AND**

**CONSULT WITH HIS, HER, OR ITS OWN LEGAL ADVISERS, WITH RESPECT TO SUCH (AND ANY RELATED) MATTERS.**

**X. RESTRICTIONS ON TRANSFERS OF CORPORATE SECURITIES AND CERTAIN CLAIMS**

**A. Restrictions on Corporate Securities**

**1. Charter Restrictions**

The Amended and Restated Articles of Incorporation provided for in the Plan shall contain restrictions on the transfer of shares of New Porter Common Stock. The restrictions are being implemented to permit the continued utilization of any net operating loss carryovers, capital loss carryovers, general business credit carryovers, alternative minimum tax carryovers, foreign tax credit carryovers and any net unrealized built-in losses (collectively, "Tax Benefits") to which the Reorganized Debtor is or may be entitled.

**2. Certain Transfers Void**

The Amended and Restated Articles of Incorporation shall provide that, at any time during the twenty-five (25) month period after the Effective Date, any attempted sale, purchase, transfer, assignment, conveyance, pledge or other disposition of any share or shares of New Porter Common Stock ("Transfer") shall be void *ab initio* and shall not be effective to Transfer any of such shares. Any Transfer at any time by a transferor who directly or indirectly owns (or is treated as owning within meaning of the attribution rules under section 382 of the Internal Revenue Code) five percent (5%) or more of the outstanding shares of any class of New Porter Common Stock shall be void *ab initio* and shall not be effective to Transfer any of such shares to the purported Transferee. Similarly, any attempted Transfer of New Porter Common Stock to a holder of an Asbestos Claim shall be void *ab initio* and shall not be effective to Transfer any of such shares to the purported Transferee.

**3. Recovery of Prohibited Transfers**

If the Board of Directors determines that a Transfer of New Porter Common Stock constitutes a Transfer prohibited by the foregoing rules ("Prohibited Transfer") then, upon written demand by the Reorganized Debtor, the purported Transferee shall transfer or cause to be transferred any certificate or other evidence of ownership of New Porter Common Stock that are the subject of the Prohibited Transfer ("Prohibited Securities"), together with any dividends or other distributions that were received by the Transferee from the Reorganized Debtor with respect to such Prohibited Securities ("Prohibited Distributions"), to an agent designated by the Board of Directors (the "Agent"). The Agent shall thereupon sell, but not before 25 months after the Effective Date, to an appropriate buyer or buyers the Prohibited Securities transferred to it. If the purported Transferee has resold the Prohibited Securities before receiving the Reorganized Debtor's demand to surrender the Prohibited Securities to the Agent, the purported Transferee shall be deemed to have sold the Prohibited Securities for the Agent and shall be required to transfer to the Agent any Prohibited Distributions and the



proceeds of such sale. If the purported Transferee fails to surrender the Prohibited Securities, or the proceeds of a sale thereof, and any Prohibited Distributions to the Agent within thirty (30) business days from the date on which the Reorganized Debtor makes a demand for such surrender, then the Reorganized Debtor shall institute legal proceedings to compel surrender.

#### **4. Treatment of Prohibited Transfers**

No employee or agent of the Reorganized Debtor shall record any Prohibited Transfer, and the purported Transferee shall not be recognized as a shareholder of the Reorganized Debtor for any purpose whatsoever in respect of the Prohibited Securities. Until the Prohibited Securities are acquired by another person in a Transfer that is not a Prohibited Transfer, the purported Transferee shall not be entitled with respect to such Prohibited Securities to any rights of shareholders of the Reorganized Debtor, including, without limitation, the right to vote such Prohibited Securities and to receive dividend distributions, whether liquidating or otherwise, in respect thereof, if any. Once the Prohibited Securities have been acquired in a Transfer that is not a Prohibited Transfer, the New Porter Common Stock shall cease to be Prohibited Securities.

#### **5. Proceeds of Sale of Prohibited Securities**

The Agent shall apply any proceeds of a sale by it of Prohibited Securities and, if the purported Transferee had previously resold the Prohibited Securities, any amounts received by it from a purported Transferee, as follows: (i) first, such amount shall be paid to the Agent to the extent necessary to cover its costs and expenses incurred in connection with its duties hereunder; (ii) second, any remaining amounts shall be paid to the purported Transferee, up to the amount paid by the purported Transferee for the Prohibited Securities, which amount shall be determined in the discretion of the Board of Directors; and (iii) third, any remaining amounts shall be paid to one or more organizations selected by the Board of Directors qualifying under section 501(c)(3) of the Internal Revenue Code.

#### **6. Legend on Certificates**

In addition to the legend referred to in Section IX, entitled, "Exemption From Registration of Securities," all certificates reflecting New Porter Common Stock issued by the Reorganized Debtor on or after the Effective Date shall bear a conspicuous legend in substantially the following form:

**THE TRANSFER OF THE SECURITIES REPRESENTED  
HEREBY IS SUBJECT TO RESTRICTION PURSUANT TO  
THE AMENDED AND RESTATED ARTICLES OF  
INCORPORATION OF THE REORGANIZED DEBTOR, H.  
K. PORTER COMPANY, INC., A COPY OF WHICH IS ON  
FILE WITH THE SECRETARY OF THE COMPANY AND  
IS AVAILABLE UPON WRITTEN REQUEST.**

## **7. Necessity of Restrictions**

As indicated above, the stock transfer restrictions apply to any Transfer during the first 25 months after the Effective Date and to any Transfers at any time by a 5% or more transferor. The twenty-five (25) month restriction on stock transfers is needed for purposes of avoiding a reduction in the Reorganized Debtor's Tax Benefits to zero under section 382(1)(5)(D) of the Internal Revenue Code. Such a restriction, however, is insufficient to prevent a significant limitation on the Tax Benefits as a result of an ownership change that may occur more than twenty-five (25) months after the Effective Date. Therefore, an absolute prohibition on Transfers by 5% shareholders is necessary to ensure that Transfers to a disparate group of individuals, each of whom is less than a 5% shareholder, will not be treated under the section 382 aggregation/segregation rules as a Transfer to a public group (which group in the aggregate will be treated as a 5% shareholder for purposes of section 382) and therefore an ownership change that could result in the significant limitation of the Reorganized Debtor's ability to utilize certain of its Tax Benefits.

## **XI. CERTAIN RISK FACTORS TO BE CONSIDERED**

**HOLDERS OF CLAIMS AGAINST THE DEBTOR SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HEREWITH AND/OR INCORPORATED BY REFERENCE), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.**

### **A. Overall Risks to Recovery by Holders of Claims**

The ultimate recoveries under the Plan to holders of Claims depend upon the realizable value of the Tobacco Litigation, if any, future insurance recoveries, if any, and whether or not any amounts payable to the Reorganized Debtor pursuant to the Evans Settlement are reduced by indemnification claims by the Evans Defendants against the Reorganized Debtor. Each of the foregoing are subject to a number of material risks, including, but not limited to, those specified below, which assume that the Plan is confirmed by the District Court and that the Effective Date occurs on or about June 30, 1998. Prior to voting on the Plan, each holder of a Claim should consider carefully the risk factors specified or referred to below, including the Exhibits referenced herein, as well as all of the information contained in the Plan.

#### **1. Total Cash Value of Estate**

The Debtor and the Committee estimate that the present value of the Debtor's Estate, as of the Effective Date, will be approximately \$100 million. That value assumes that all of the payments that the Evans Defendants are obligated to make pursuant to the Evans Settlement are made, and that the Evans Defendants assert no indemnification claims. As the obligation to provide indemnification to the Evans Defendants may extend for 20 years from the Effective

Date, it is impossible to project with any degree of certainty regarding whether any indemnification claims will be made or the amounts of such claims if made. The value of the Debtor's estate may also be enhanced by additional recoveries made by the Reorganized Debtor in litigation of coverage issues with respect to pre-petition insurance contracts. Finally, the value of the Debtor's estate may be further enhanced by recoveries from the litigation instituted by the Debtor against various tobacco manufacturers. Whether litigation will be successful, and if so, the amount of any recovery likely to be received is very difficult to predict with any degree of certainty.

## **2. Certain Tax Risks**

The implementation and funding of the Asbestos Trust has been crafted in such a fashion so as to take advantage of certain tax deductions believed to be available to the Debtor and the Reorganized Debtor. There is some risk that the Internal Revenue Service and/or the Pennsylvania Department of Revenue will take an adverse position. For a more complete discussion of the tax aspects of this Plan, please *see* Section XII, entitled, "CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN."

## **3. Estimation of Asbestos Liability**

Since the Plan provides for the inclusion of Demands in the Asbestos Trust and such Demands are subject to the Asbestos Permanent Channeling Injunction, the value of such Demands must be estimated. The Committee has retained Mark A. Peterson, CPA, CVA of Gleason & Associates, P.C. to assist it in the estimation of claims. The results of Mr. Peterson's analysis, including the process utilized, will become a part of the record of this Case. Notwithstanding the fact that the Committee believes Mr. Peterson's analysis to represent the best available information, there is some risk that the ultimate number of Demands to be asserted against the Asbestos Trust will be different from that projected by Mr. Peterson.

## **4. Asbestos Property Damage Insurance and Non-Asbestos Lung Disease Insurance**

The Debtor shall assign to the Asbestos Trust certain insurance policies identified on Exhibit "1.168" to the Plan for the benefit of those claimants asserting Asbestos Property Damage Claims or Demands. The Debtor believes those policies to be available for Asbestos Property Damage Claims or Demands, as the policies do not contain express exclusion of such Claims. Notwithstanding, no judicial determination has been sought regarding whether such claims are covered by the policies, and the Debtor makes no guarantee or warranty regarding the availability of such coverage.

Likewise, the Debtor believes the policies identified on Exhibit "1.1.56" to the Plan are available for the benefit of Non-Asbestos Lung Disease Claims. Notwithstanding, no judicial determination has been sought regarding whether such Claims are covered by the policies, and the Debtor makes no guarantee or warranty regarding the availability of such coverage.

It is anticipated that some or all of the companies that issued the above liability insurance policies will rely upon policy provisions and applicable state law to contend that the Property Damage and/or Non-Asbestos Lung Disease Claimants may not access alleged insurance coverage under the policies. Thus, there is the possibility that property damage and/or non-asbestos lung disease claimants may not recover under the insurance policies.

#### **B. The Asbestos Permanent Channeling Injunction**

The Asbestos Permanent Channeling Injunction, which bars the assertion of Asbestos Claims against the Debtor and other Protected Parties, is the cornerstone of the Plan. In 1994, the United States Congress added subsections (g) and (h) to section 524 of the Bankruptcy Code in order to confirm the authority of the Bankruptcy Court, subject to the conditions specified therein, to issue injunctions such as the Asbestos Permanent Channeling Injunction with respect to present and future Asbestos Personal Injury Claims and Demands. Although the Plan, the Asbestos Trust Agreement, and the Asbestos Claims Resolution Procedures all have been drafted with the intention of complying with section 524(g)-(h) of the Bankruptcy Code, and satisfaction of the conditions imposed by section 524(g)-(h) is a condition precedent to confirmation of the Plan, there is no guarantee that the validity and enforceability of the Asbestos Permanent Channeling Injunction or section 524(g)-(h) or the application of the Asbestos Permanent Channeling Injunction to Asbestos Personal Injury Claims will not be challenged, either before or after confirmation of the Plan. Although the Committee believes adequate bases exist for the courts to uphold section 524(g)-(h) and the Asbestos Permanent Channeling Injunction, there can be no assurance that, in the future, courts might not invalidate all or a portion of section 524(g)-(h) or the Asbestos Permanent Channeling Injunction.

#### **C. Section 105 Injunction**

As a supplement to the Asbestos Permanent Channeling Injunction, the Plan provides for a separate injunction to be issued pursuant to Section 105 of the Bankruptcy Code which will bar the assertion of claims rising out of Porter's activities, including but not limited to Asbestos Claims against the Reorganized Debtor and other Protected Parties. Although the Section 105 Injunction has been drafted with the intention to comply with the Bankruptcy Code, there is no guarantee that the validity and enforceability of the Section 105 Injunction will not be challenged, either before or after confirmation of the Plan. Although the Committee believes that adequate grounds exist for Courts to uphold the Section 105 Injunction, there can be no assurance that, in the future, Courts might not invalidate all or a portion of the Section 105 Injunction.

#### **D. Qualified Settlement Fund**

The Qualified Settlement Fund established by the Debtor (*See* Section IV.E. entitled, "THE CHAPTER 11 CASE -- Significant Events During Case -- Qualified Settlement Fund") is intended to comply with the regulations under §468B of the Internal Revenue Code and was created pursuant to the advice of the Debtor's tax accountant advisors. However, neither the Debtor, nor the Committee on behalf of the Debtor, sought a Revenue Ruling from the Internal Revenue Service concerning such compliance. In addition, the Asbestos Trust is

also intended to be a qualified settlement fund under §468B. Nothing in the Plan or the Asbestos Trust requires the Trustee of the Asbestos Trust to seek a Revenue Ruling as to the compliance of the Asbestos Trust with §468B. While the Committee believes it to be unlikely, if either of the Qualified Settlement Fund or the Asbestos Trust is deemed not to qualify as a qualified settlement fund under the regulations to §468B, the deductions taken for payments to either such account by the Debtor could be disallowed or deferred.

## **XII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

**THE FOLLOWING DISCUSSION IS A SUMMARY OF CERTAIN OF THE SIGNIFICANT FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO THE DEBTOR AND TO HOLDERS OF CLAIMS AND EQUITY INTERESTS. NO RULINGS HAVE BEEN REQUESTED FROM THE IRS. MOREOVER, NO LEGAL OPINIONS HAVE BEEN REQUESTED FROM COUNSEL WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN. HOLDERS OF A CLAIM OR EQUITY INTEREST ARE URGED TO CONSULT THEIR OWN TAX ADVISERS FOR THE FEDERAL, STATE, LOCAL, AND OTHER TAX CONSEQUENCES PECULIAR TO THEM UNDER THE PLAN.**

**THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES OF THE PLAN TO THE HOLDERS OF CLAIMS AND EQUITY INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. IN ADDITION, THIS DISCUSSION DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO THE DEBTOR OR HOLDERS OF ALLOWED CLAIMS OR EQUITY INTERESTS, NOR DOES THE DISCUSSION DEAL WITH TAX ISSUES PECULIAR TO CERTAIN TYPES OF TAXPAYERS (SUCH AS DEALERS IN SECURITIES, S CORPORATIONS, LIFE INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, TAX EXEMPT ORGANIZATIONS, AND FOREIGN TAXPAYERS). NO ASPECT OF FOREIGN, STATE, LOCAL, OR ESTATE AND GIFT TAXATION IS ADDRESSED. THEREFORE, THE FOLLOWING SUMMARY IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR EQUITY INTEREST.**

**THIS SUMMARY IS BASED ON THE INTERNAL REVENUE CODE, TREASURY REGULATIONS PROMULGATED AND PROPOSED THEREUNDER, JUDICIAL DECISIONS AND PUBLISHED ADMINISTRATIVE RULES, AND PRONOUNCEMENTS OF THE IRS AS IN EFFECT ON THE DATE HEREOF. CHANGES IN SUCH RULES OR NEW INTERPRETATIONS THEREOF MAY HAVE RETROACTIVE EFFECT AND COULD, THEREFORE, SIGNIFICANTLY AFFECT THE TAX CONSEQUENCES DESCRIBED BELOW.**

## **A. Consequences of Debtor**

### **1. Discharge-of-Indebtedness Income Generally**

In general, the discharge of a debt obligation by the obligor for an amount less than that debt gives rise to cancellation-of-indebtedness (“COD”) income, which must be included in the obligor’s income for federal income tax purposes, unless, in accordance with section 108(e)(2) of the Internal Revenue Code, payment of the liability would have given rise to a deduction. Examples of payments that would give rise to such deductions are payments to holders of environmental Claims and to holders of most other Unsecured Claims. COD income is not recognized by a taxpayer that is a debtor in a title 11 case if a discharge is granted by the Court or pursuant to a plan approved by the Court (the “bankruptcy exclusion rules”).

Pursuant to the Plan, Administrative Expenses and Priority Claims generally will be paid in full and, therefore, treatment of such Claims should not give rise to COD income. With respect to all other Claims, the Debtor anticipates that, as a result of the application of the stock-for-debt exception, if available to the Debtor, and section 108(e)(2) of the Internal Revenue Code, the satisfaction of such Claims under the Plan should not give rise to a significant amount of COD income.

### **2. Attribute Reduction**

The relief accorded to COD income by the bankruptcy exclusion rules is not without potential cost. If a taxpayer excludes COD income because of the bankruptcy exclusion rules, it is required to reduce prescribed tax attributes in the following order: (1) net operating losses (“NOLs”) for the taxable year of the discharge and NOL carryovers to such taxable year, dollar for dollar; (2) general business credit carryovers, 33-1/3 cents for each dollar of excluded income; (3) the minimum tax credit available under section 53(b) of the Internal Revenue Code as of the beginning of the taxable year immediately following the taxable year of the discharge, 33-1/3 cents for each dollar of excluded income; (4) capital losses for the taxable year of the discharge and any capital loss carryover to such taxable year, dollar for dollar; (5) the basis of the taxpayer’s assets, dollar for dollar, but the basis cannot be reduced below an amount based on the taxpayer’s aggregate liabilities immediately after the discharge; (6) passive activity loss or credit carryovers of the taxpayer under section 469(b) of the Internal Revenue Code from the taxable year of the discharge, dollar for dollar in the case of loss carryovers and 33-1/3 cents for each dollar of excludible income in the case of credit carryovers; and (7) foreign tax credit carryovers, 33-1/3 cents for each dollar of excluded income. However, the taxpayer may elect to avoid the prescribed order of attribute reduction and instead reduce the basis of depreciable property first, without regard to the “aggregate liabilities” limitation. The Debtor does not currently have a material amount of any of the attributes listed above. If all of its remaining attributes are reduced to zero, any remaining COD income is in effect extinguished and not recognized.

### **3. Stock-for-Debt Exception**

A major exception to the attribute reduction rules provides that certain stock issued by a corporate debtor in a title 11 case is deemed to satisfy fully any indebtedness for which it is

issued, even if the stock has a value less than the amount of the indebtedness (the “stock-for-debt exception”). If the stock-for-debt exception applies, a corporate debtor is not required to reduce its tax attributes in accordance with section 108(b) of the Internal Revenue Code. Although the stock-for-debt exception was repealed by the Revenue Reconciliation Act of 1993, the exception may still be available to the Debtor because its Chapter 11 Petition was filed on or before December 31, 1993.

To satisfy the stock-for-debt exception, (i) the stock issued to creditors must not be “disqualified stock” (stock with a stated redemption price that may be called by the issuer or put to the issuer by the holder, or which has a fixed redemption date), (ii) the stock issued to creditors must not be “nominal or token,” and (iii) with respect to an unsecured creditor, the ratio of the value of the stock received by such unsecured creditor to the amount of its indebtedness that is canceled or exchanged for stock in the workout must not be less than 50% of a similar ratio computed for all unsecured creditors participating in the workout.

The Debtor believes that the New Porter Common Stock issued under the Plan will satisfy these three tests as to all Asbestos Personal Injury Claims, but may not comply with the third requirement as to the other Unsecured Claims. Consequently, as a result of the application of either the stock-for-debt exception or section 108(e)(2) of the Internal Revenue Code, there should not be a significant amount of attribute reduction (if any) under section 108(b) of the Internal Revenue Code as a result of the transfer of the New Porter Common Stock to the Asbestos Trust in satisfaction of the Asbestos Claims.

#### **4. Deduction of Amounts Transferred to Satisfy Claims**

##### **a. Cash and New Porter Common Stock.**

To the extent distributions under the Plan: (i) of cash and New Porter Common Stock to the Asbestos Trust satisfy Asbestos Claims and (ii) of cash to satisfy Unsecured Claims with respect to which the Debtor otherwise would be entitled to a federal income tax deduction for the payment thereof, the Reorganized Debtor should be entitled to current federal income tax deductions for such distributions. Moreover, since the Asbestos Trust is a qualified settlement fund pursuant to the regulations under section 468(B) of the Internal Revenue Code, the Debtor will be entitled to a current federal income tax deduction for all transfers of cash and New Porter Common Stock to the Asbestos Trust. The amount of the aggregate deduction to which the Reorganized Debtor will be entitled shall equal the sum of the amount of cash and the fair market value of the New Porter Common Stock transferred to the Asbestos Trust and transferred to satisfy Claims the payment of which would otherwise give rise to a deduction.

It should be noted, however, that the current deduction for transfers to the Asbestos Trust will only be allowed to the extent that the transferred amounts do not represent amounts received from the settlement of an insurance claim that are excludable from the gross income of the Reorganized Debtor. If the settlement of an insurance claim of the Debtor, if any, occurs after the transfer of assets to the Asbestos Trust or and after the Reorganized Debtor has taken a deduction with respect to such transfer, the Reorganized Debtor must include in income the amounts received from the settlement of the insurance claim to the extent of the deduction.

The Debtor currently does not have any NOL carryovers but does have significant built-in loss carryovers, which for the purposes of section 382 are treated the same as net operating losses. The Debtor believes that these built-in losses should not be materially limited by section 382 of the Internal Revenue Code because of the Debtor's reliance on the bankruptcy exception contained in section 382(1)(5). However, the IRS has promulgated a regulation under section 269 of the Internal Revenue Code, which arguably impairs the Debtor's right to utilize those built-in losses. Section 382 specifically states that in meeting the (1)(5) exception requirements, a Debtor is exempted from the continuity of business requirement contained in section 382. Nevertheless, the IRS in the regulations to section 269 has stated that notwithstanding such exemption, it takes the position that a Debtor must conduct more than an insignificant amount of an active trade or business. Treas. Reg. §1.269-3(d). First, this regulation completely contradicts the express statutory language in section 382(1)(5) that the continuity of business requirement is not applicable. Furthermore, the Reorganized Debtor will in fact be conducting a significantly active trade or business in the management of millions of dollars, which is the same business it was conducting prior to the section 382 ownership change.

#### **5. Utilization of Net Operating Loss Carryovers**

In general, whenever there is a 50% ownership change of a debtor corporation during a three-year period, the ownership change rules in section 382 of the Internal Revenue Code limit the utility of NOLs on an annual basis to the product of the fair market value of the corporate equity immediately before the ownership change, multiplied by a hypothetical interest rate published monthly by the IRS called the "long-term tax-exempt rate." In any given year, this limitation may be increased by certain built-in gains realized after, but accruing economically before, the ownership change and the carryover of unused section 382 limitations from prior years.

The harsh effects of the ownership change rules can be ameliorated by an exception that applies in the case of federal bankruptcy reorganizations. Under the so-called "section 382(1)(5) bankruptcy exception" to section 382 of the Internal Revenue Code, if the reorganization results in an exchange by qualifying creditors and stockholders of their claims and interests for at least 50% of the debtor's stock (in vote and value), then the general ownership change rules will not apply. Instead, the debtor will be subject to a different tax regime under which the NOLs are not limited on an annual basis but are reduced by (i) the amount of interest deductions claimed during the three (3) taxable years preceding the date of the reorganization, and during the part of the taxable year prior to and including the reorganization, in respect of debt converted into stock in the reorganization, and (ii) the amount of COD income (discussed *supra*). Moreover, if the section 382(1)(5) bankruptcy exception applies, any further ownership change of the debtor within a two-year period will result in forfeiture of all of the Debtor's NOLs incurred prior to the date of the second ownership change.

If the debtor otherwise would qualify for the section 382(1)(5) bankruptcy exception, but the NOL reduction rules mandated thereby would seriously reduce the NOL, the debtor may elect instead to be subject to the annual limitation rules of section 382 of the Internal Revenue Code, but is permitted to value the equity of the corporation for purposes of applying



the formula by using the value immediately after the ownership change (by adding the value of the old loss corporation resulting from any surrender or cancellation of creditors' claims) instead of immediately before the ownership change (the "section 382(1)(6) limitation"). Based on the ongoing obligations of the Reorganized Debtor to the Asbestos Trust, the value of the New Porter Common Stock will not be significant, which would cause the section 382(1)(6) limitation to correspondingly be low. Thus, it is in the Debtor's best interest to qualify under the section 382(1)(5) exception in order to maximize its use of carryover attributes.

## **6. Alternative Minimum Tax**

A corporation is required to pay alternative minimum tax to the extent that 20% of "alternative minimum taxable income" ("AMTI") exceeds the corporation's regular tax liability for the year. AMTI is generally equal to regular taxable income with certain adjustments. For purposes of computing AMTI, a corporation is entitled to offset no more than 90% of its AMTI with NOLs (as computed for alternative minimum tax purposes).

### **B. Taxation of the Asbestos Trust.**

The Debtor has not obtained a ruling from the IRS providing that the Asbestos Trust will constitute a "qualified settlement fund" under section 1.468B-1 of the Treasury Regulations, but does have an Order of the Bankruptcy Court to that effect. As a qualified settlement fund, the Asbestos Trust generally will be subject to federal income taxation as a corporation, except that its taxable income will be taxed at the maximum rate applicable to trusts and estates (currently 39.6%). In determining the taxable income of the Asbestos Trust, (i) amounts transferred by the Debtor to the Asbestos Trust should be excluded from its income; (ii) the adjusted tax basis in the hands of the Asbestos Trust of New Porter Common Stock should be equal to the fair market value of such stock on the date of transfer; (iii) any distribution of property from the Asbestos Trust will result in the realization of gain or loss by the Asbestos Trust in an amount equal to the difference between the fair market value of the property on the date of distribution and the Asbestos Trust's adjusted tax basis in such property; and (iv) administrative costs (including state and local taxes) incurred by the Asbestos Trust should be deductible.

### **C. Tax Consequences of Distributions to Creditors**

The distribution of cash or property to a Creditor by the Reorganized Debtor could give rise to tax consequences to such Creditor. Each Creditor's situation is unique and the Debtor is not making any representation as to the tax effects of any distribution to a Creditor.

**THE FOREGOING IS INTENDED ONLY AS A SUMMARY OF CERTAIN FEDERAL INCOME TAX ASPECTS OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF AN ALLOWED CLAIM OR EQUITY INTEREST. CREDITORS SHOULD CONSULT WITH THEIR OWN TAX ADVISORS AS TO THE TAX CONSEQUENCES ASSOCIATED WITH THE RECEIPT OF ANY DISTRIBUTION FROM THE REORGANIZED DEBTOR.**

### **XIII. COMPARISON TO A CHAPTER 7 LIQUIDATION**

#### **A. Added Expense**

Converting the Case to a chapter 7 would greatly increase the administrative expenses to the estate and, therefore, decrease the amount of funds available for distribution to Creditors. In addition to the ordinary administrative expenses associated with any chapter 7 case, there would likely be significant expenses associated with the Claims allowance process. Even though the Debtor, through the Claims Quantification Process, was able to schedule over 120,000 Claims in the Chapter 11 case, once a chapter 7 is filed all Creditors would be required to file proofs of Claim. There is no guarantee that the Creditors would again agree to limit their claims to the amounts provided for in the Claims Quantification Process. Thus, the Trustee could spend a significant amount of time and estate assets in negotiating and litigating Claims that have already been scheduled in the Case.

#### **B. Effect on the Evans Settlement**

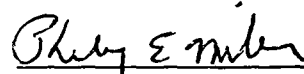
Two of the primary components of the Evans Defendant's agreement to pay \$31 million into the estate in settlement of the Fraudulent Conveyance Action are that the Debtor obtain a discharge and that the Debtor obtain the Asbestos Permanent Channeling Injunction provided for in the Plan. In a chapter 7, the Debtor could not satisfy either of these important conditions to the Evans Settlement. A corporate debtor does not receive a discharge in a chapter 7, and the protections of section 524(g) are only available in connection with a chapter 11 plan of reorganization. Thus, in a chapter 7, the best case scenario would be that the distributions to the Creditors would be reduced and likely delayed as the result of a smaller, renegotiated settlement with the Evans Defendants. The worst case, and more likely scenario, would be that the entire \$31 million Evans Settlement would be nullified by the Debtor's inability to provide section 524(g) protection to the Evans Defendants, and the Trustee would be forced to either forego any recovery, or proceed with expensive, protracted litigation.

### **XIV. CONCLUSION AND RECOMMENDATION**

The Committee believes that confirmation and implementation of the Plan is preferable to a conversion of the Case to a chapter 7, because it will provide greater recoveries to holders of Claims than they would receive in a chapter 7. In addition, a chapter 7 would involve significant delay, uncertainty, and substantial additional administrative costs. **The Committee recommends holders of impaired Claims entitled to vote on the Plan to vote to accept the Plan and to evidence such acceptance by returning their Ballots so that they will be received by Campbell & Levine, LLC no later than 5:00 p.m., Eastern Standard Time, on Wednesday, June 17, 1998.** The Committee also recommends that all holders of

**Asbestos Personal Injury Claims exercise the Expedited Payment Election by so indicating on the enclosed Ballot.**

DATED: May 6, 1998



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Douglas A. Campbell, Esquire  
PA ID No. 23143  
Philip E. Milch, Esquire  
PA ID No. 53519  
Campbell & Levine, LLC  
1700 Grant Building  
Pittsburgh, PA 15219  
(412) 261-0310  
Counsel to the Committee of Unsecured  
Creditors of H. K. Porter Company, Inc.

# EXHIBIT C

## UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:	)	Case No. 91-00468 JCM
	)	
H.K. PORTER COMPANY, INC.,	)	Chapter 11
	)	
Debtor.	)	Doc. No. _____
_____	)	
MARK M. GLEASON, as Trustee of the H.K. Porter Company, Inc. Asbestos Settlement Trust,	)	Related to Document No. _____
	)	
Movant,	)	
	)	
v.	)	
	)	
NO RESPONDENTS.	)	
	)	

### DECLARATION OF MARK M. GLEASON IN SUPPORT OF MOTION FOR DECLARATORY JUDGMENT

I, Mark M. Gleason (the “Trustee”), declare that the following is true to the best of my knowledge, information, and belief.

1. I am over the age of 18 and competent to testify and make this declaration (“Declaration”).

2. I submit this Declaration in support of the relief requested in the Motion for Declaratory Judgment (“Motion for Declaratory Judgment”) filed in the above-captioned matter by me in my capacity as Trustee of the H.K. Porter Company, Inc. Asbestos Settlement Trust (the “Asbestos Trust”).<sup>1</sup>

3. Except as otherwise indicated, all statements in this Declaration are based on: (a) my personal knowledge and views; (b) my review of relevant documents; (c) information provided

<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning provided to them in the Motion for Declaratory Judgment.

to me by employees of Gleason & Associates, P.C., working under my supervision; (d) information provided to me by, or discussions with, consultants retained by the Asbestos Trust for purposes of claims projections and estimation; and (e) my opinion based upon my professional experience in accounting, finance, and trust management and administration.

### QUALIFICATIONS

4. I am the founder, president, and managing director of Gleason & Associates, P.C., with offices located at One Gateway Center, Suite 525, 420 Ft. Duquesne Blvd., Pittsburgh, PA 15222.

5. I received my B.A. in Economics in 1972 from the University of Pittsburgh and my M.B.A. in Finance and Accounting in 1973 from the University of Pittsburgh in 1973.

6. I have over 35 years of experience in areas of accounting, finance, business planning, financial reorganizations, litigation support, fraud investigations, and business valuations.

7. I have provided expert testimony in various federal and state courts, as well arbitration proceedings.

8. I also have extensive experience working with a variety of trusts in all areas of trust management, frequently serving in a fiduciary capacity. The management services that Gleason & Associates provides to trusts include claims review, audit, and analysis; claims processor review, evaluation, and oversight; budgeting, cash flow, and variance analysis; payment percentage evaluation; coordination of financial statement audits and tax return review; claims database analysis and management; document management and information security; insurance recovery; and general administration.

### THE ASBESTOS TRUST

9. The Asbestos Trust was formed in 1998 to assume liability for and pay *bona fide* Asbestos Personal Injury Claims (“Asbestos PI Claims”) against H.K. Porter Company, Inc. (“Porter”) pursuant to and in accordance with: (a) the *Fourth Amended Creditors’ Committee Plan of Reorganization for H.K. Porter Company, Inc. (with modifications as of April 27, 1998)* (the “Plan”); (b) the *H.K. Porter Company, Inc. Asbestos Trust Agreement* (the “Trust Agreement”); and (c) the *H.K. Porter Company, Inc. Asbestos Claims Resolution Procedures* (the “Asbestos Claims Procedures”). A true and correct copy of the Plan is attached to the Motion for Declaratory Judgment.

10. The Plan was confirmed pursuant to the *Order Confirming Plan* jointly entered on June 25, 1998 (the “Confirmation Order”) by the United States District Court for the Western District of Pennsylvania and the United States Bankruptcy Court for the Western District of Pennsylvania. The Confirmation Order, Plan, Trust Agreement, and Asbestos Claims Procedures are collectively referred to as the “Trust Documents”.

11. At the time the Trust was formed, the Creditors’ Committee’s experts projected a total of approximately 560,000 compensable Asbestos Personal Injury Claims (“Asbestos PI Claims”) to be filed with the Asbestos Trust and that holders of such claims would receive approximately 5% of their allowed claim. *See Disclosure Statement to Accompany Fourth Amended Creditors’ Committee Plan of Reorganization for H.K. Porter Company, Inc. Dated February 27, 1998 (Modified as of May 6, 1998)* (the “Disclosure Statement”). A true and correct copy of the Disclosure Statement, without exhibits, is attached to the Motion as **Exhibit B**.

### **TRUST ADMINISTRATION**

12. I was appointed as the initial Trustee for the Asbestos Trust and have continuously served in that capacity through the present day.

13. The Trust Agreement also provides for the creation of a Trust Advisory Committee (“TAC”) and directs the Trustee to consult with the TAC on administration and implementation of the Asbestos Claims Procedures and “any matter materially affecting the Asbestos Trust.” See Trust Agreement, §6.1.

14. The TAC attends regularly scheduled meetings with the Trustee and effectively acts as a representative body for the beneficiaries of the Trust. *Id.*

15. I filed the Motion for Declaratory Judgment after consulting with the TAC and obtaining the unanimous approval of its members. Currently, the following members comprise the TAC: Philip Pahigian, Brent Rosenthal, and Perry Weitz.

### **PROCESSING AND PAYMENT OF ASBESTOS PI CLAIMS**

16. The Asbestos Claims Procedures creates four (4) disease levels for Asbestos PI Claims compensable by the Asbestos Trust. Ranging in severity from the most severe to the least, these four disease levels are: Mesothelioma, Lung Cancer, Other Cancers, and Non-malignancy. Non-malignancy claims represent approximately 78% of all asbestos claims filed with the Asbestos Trust.

17. Through August 2024, the Asbestos Trust has received over 792,000 Asbestos PI Claims.

18. As of August 31, 2024, the Asbestos Trust has disbursed \$160.8 million on account of 547,989 of allowed Asbestos PI Claims.

19. One of the stated purposes of the Trust is “to pay holders of valid Asbestos Claims in such a way that holders of similar Asbestos Claims are paid in substantially the same manner.” Trust Agreement, § 2.2.

20. In order to fulfill this purpose, the Asbestos Trust pays every claimant a set percentage of the full value<sup>2</sup> of his or her claim (the “Payment Percentage”). See Asbestos Claims Procedures, § 4.1.

21. In my capacity as Trustee, I set the Payment Percentage from time to time after consultation with (a) financial experts who forecast investment returns and administrative expenses and (b) actuarial experts who forecast the number and value of future claims based on several factors, including established epidemiological studies on asbestos diseases and actual claim filings with the Asbestos Trust.

22. Based upon these historical projections, the Payment Percentage has fluctuated over the years. The table set forth below shows the history of the Payment Percentages applied by the Asbestos Trust since its formation.

<b>Years</b>	<b>Payment Percentage</b>
Formation - 2009	4.6%
2010 - 2011	6.3%
2012 - 2013	4.0%
2014 - Present	3.0%

23. The value payable on account of an allowed Asbestos PI Claim depends on whether the claimant opts for an “Expedited Payment Election” that pays a scheduled value for compensable claims at a lower rate but on an expedited basis. See Asbestos Claims Procedures, §

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<sup>2</sup> The “full value” of a claim is set forth in the Trust Agreement, based upon the claimant’s disease level.



5.2(a). Alternatively, a claimant can elect a Non-Expedited Review process that may result in a greater recovery but that requires additional time, expense, and evidence. *See* Asbestos Claims Procedures, § 5.3. Historically, over 95% of the Claimants have opted for the Expedited Payment Election.

24. Under the current Payment Percentage of 3%, the amounts payable by the Asbestos Trust on account of allowed Asbestos PI Claims utilizing the scheduled values for Expedited Payment Election, are:

<b>Value Received at 3% Payment Percentage</b>	
Non-Malignancy	\$112.50
Other Cancers	\$225.00
Lung Cancer	\$360.00
Mesothelioma	\$600.00

#### **THE 2024 ASBESTOS PI CLAIM PROJECTION**

25. Following my most recent periodic re-evaluation of the projected number of Asbestos PI Claims to be filed with the Trust and the funds available to pay those claims (the “2024 Projection”),<sup>3</sup> I commenced a review of the Payment Percentage to determine if it needs to be adjusted below 3% to pay all projected present and future Asbestos PI Claims in substantially the same manner.

26. Reducing the Payment Percentage by just half of a percent to 2.5%, however, results in (a) less than \$100 payable to holders of non-malignant Asbestos PI Claims and, (b) within in a few years, the projected annual trust administration costs begin to exceed the aggregate annual value paid to claimants.

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<sup>3</sup> 2024 Projection utilizes actual activity through August 31, 2024.

27. I have met regularly with the TAC to review the 2024 Projection and the consequences of reducing the applicable Payment Percentage.

28. In consultation with the TAC, I have considered alternatives to amending Section 4.1 of the Asbestos Claims Procedures, including paying only allowed mesothelioma Asbestos PI Claims. This alternative scenario, however, involves a more fundamental restructuring of how the Asbestos Trust operates since this Asbestos Trust has historically compensated holders of claims in any of the four (4) disease levels required to be paid under the Asbestos Claims Procedures.

29. I believe it is in the best interest of claimants not to reduce the Payment Percentage below 3% and to amend Section 4.1 of the Asbestos Claims Procedures to give the Trustee express authority not to adjust the Payment Percentage downward if it results in *de minimis* payments to a holder of an Asbestos PI Claim at any disease level. *Id.* The TAC informed me that it agrees with this proposed amendment to the Asbestos Claims Procedures.

30. As of August 31, 2024, the Asbestos Trust has paid 547,989 Asbestos PI Claims, which is nearly the same amount as the 560,000 claims projected at the 1998 Plan confirmation.

31. If the Payment Percentage remains at 3%, the 2024 Projection shows the Asbestos Trust will be in a position to receive and pay an additional \$12.6 million to 66,000 Asbestos PI Claims through February 2029, leaving approximately 47,000 future Asbestos PI Claims valued in the amount of \$8.4 million unpaid when the Asbestos Trust is expected to terminate pursuant to the provisions set forth in Section 7.2 of Trust Agreement.

32. While leaving any unpaid Asbestos PI Claims is not a desired result, as a practical matter, it is not possible to pay and treat all present and future allowable Asbestos PI Claims substantially the same *and* provide meaningful distributions.

33. The current estimated number of compensable Asbestos PI Claims exceeds the 1998 projection at Plan confirmation by over 100,000 (or approximately 18%), and no Payment Percentage figure will result in the payment of all present and projected future Asbestos PI Claims.

<b>Payment Percentage</b>	<b>Future Number of Estimated Claims to be Paid</b>	<b>Value of Claims to be Paid (Dollars in Millions)</b>	<b>Future Number of Unpaid Claims</b>	<b>Value of Unpaid Claims (Dollars in Millions)</b>	<b>Non-Malignant Asbestos PI Claim Payment per Claim</b>
3.0%	66,000	\$12.6	47,000	\$8.4	\$112.00
2.5%	73,000	\$11.6	40,000	\$6.0	\$93.75
2.0%	82,000	\$10.3	31,000	\$3.7	\$75.00
1.5%	93,000	\$8.7	20,000	\$1.8	\$56.25
1.0%	102,000	\$6.3	11,000	\$0.7	\$37.50
0.5%	108,000	\$3.4	5,000	\$0.1	\$18.75

34. By not reducing the Payment Percentage, the Asbestos Trust is maximizing the value paid to claimants.

35. With a 3% Payment Percentage and anticipated termination date in 2029, the Trustee projects the aggregate value to be paid to claimants from September 2024 through February 2029 to be \$12.6 million, and \$6.5 million to pay operating costs and wind down costs. Any decrease in the Payment Percentage would extend the anticipated termination date of the Trust beyond February 2029. However, the total dollars paid to claimants in the aggregate would decrease and the amount necessary to pay operating and wind down costs in future years would increase.

36. While there are provisions within the Trust Documents that support the Trustee's authority to amend Section 4.1 of the Asbestos Claims Procedures, there are other provisions within the Trust Documents that, if taken literally and to their logical extreme, provide conflicting direction.

37. Accordingly, on February 1, 2024, the Asbestos Trust suspended making new offers on account of Asbestos PI Claims while I, in consultation with the TAC, considered the Asbestos Trust's options, including obtaining instruction from this Court through this Motion for Declaratory Judgment.

38. By the Motion for Declaratory Judgment, I request instruction from this Honorable Court in the form of a declaratory judgment to remove any uncertainty regarding the scope of my authority, with the consent of the TAC, to amend Section 4.1 of the Asbestos Claims Procedures by adding the italicized sentence at the end of the section as follows:

4.1 Determination of Payment Percentage.

\*\*\*

At yearly intervals, the Trustee shall review his determination of the Payment Percentage to assure that it is based on accurate, current information and may, after such review, change the Payment Percentage, if necessary. When making these determinations, the Trustee shall exercise common sense and flexibly evaluate all relevant factors, including the practical limitations imposed by the inability to predict with precision the future assets and liabilities of the Asbestos Trust, the costs involved in preparing such evaluations, and any other factors the Asbestos Trust considers relevant. *The Trustee, however, is under no obligation to adjust the Payment Percentage downward if such reduction will result in payments of less than \$100 to claimants at any disease level. Such decision by the Trustee may result in the Asbestos Trust terminating pursuant to Section 7.2 of the Trust Agreement, or otherwise, without having paid all allowable Asbestos Personal Injury Claims.*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Dated:

November 20, 2024

Mark M. Gleason  
Mark M. Gleason, Trustee  
H.K. Porter Company, Inc. Asbestos  
Settlement Trust

**EXHIBIT D**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

In Re:	)	BK No.: 82-09841
UNR Industries, Inc. et al.	)	(Jointly Administered)
	)	Chapter: 11
	)	Honorable Eugene R. Wedoff
	)	
Debtor(s)	)	

**ORDER GRANTING MOTION FOR INSTRUCTION**

Upon the Motion of Michael E. Levine and Alison Overseth (collectively, the “Trustees”), as Trustees of the UNR Asbestos-Disease Claims Trust (the “Trust”), the Court orders and instructs as follows:

WHEREAS, the Trustees filed a Motion for Instruction on April 28, 2014 seeking an instruction concerning the early termination of the Trust (the “Motion for Instruction”) and a notice of hearing (the “First Notice of Hearing”),

WHEREAS, on June 11, 2014, the Trustees filed a copy of this Proposed Order (the “Proposed Order”) and a second notice of hearing (the “Second Notice of Hearing”);

WHEREAS, the Trustees have: (a) served a copy of the Motion for Instruction, the First Notice of Hearing, the Proposed Order and the Second Notice of Hearing on those parties upon whom the Trust is required to serve the Trust’s Annual Report, Summary of Claims Disposed, Financial Statements, and Account of the Trustees of the UNR Asbestos-Disease Claims Trust for each fiscal year; (b) served a copy of the Motion for Instruction, the First Notice of Hearing, the Proposed Order and the Second Notice of Hearing on any law firm that has filed a claim with the Trust on behalf of a claimant within the past three years; (c) posted a copy of the Motion for Instruction, the First Notice of Hearing, the Proposed Order and the Second Notice of Hearing on the UNR portion of the Claims Processing Facility web site (see <http://www.cpf-inc.com>); and (d) sent a preliminary notice concerning the Motion for Instruction to each law firm who has filed ten or more claims with the Trust on behalf of claimants in the past three years on April 1, 2014, and also posted the same preliminary notice on the UNR portion of the Claims Processing Facility web site;

WHEREAS, hearings on the Motion for Instruction and this Proposed Order were held on June 10, 2014 and June 25, 2014;

WHEREAS, no objections to the Motion for Instruction or to this Proposed Order have been filed with the Court;

WHEREAS, in accordance with the Third Amended and Restated UNR Asbestos-Disease Claims Trust Agreement (the “Trust Agreement”) and in consultation with the Trust Advisory Committee (the “TAC”), the Trustees have established Asbestos-Disease Claims Resolution Procedures (the “Procedures”) to pay UNR Asbestos-Disease Claims (“Claims”);

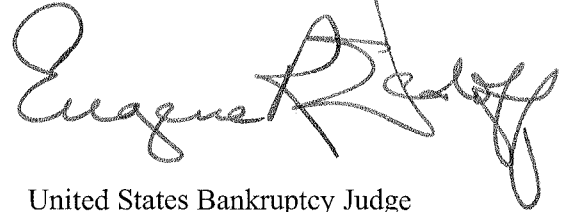
WHEREAS, section 3.01(c)(ix) of the Trust Agreement grants the Trustees the power and authority to amend the Procedures;

AND, after due deliberation and sufficient cause appearing therefore,

THE COURT FINDS that the Trustees have provided proper notice of the Motion for Instruction, the First Notice of Hearing, the Proposed Order, and the Second Notice of Hearing and

IT IS HEREBY ORDERED and the Trustees are instructed that with the required consent of the TAC they may amend the Procedures in any manner they deem appropriate to address the concerns raised in the Motion for Instruction.

Enter:



United States Bankruptcy Judge

Dated:

6/25/14

**Prepared by:**

Kevin E. Irwin (OH Bar #0021811, admitted pro hac vice)  
Benjamin G. Stewart (IL Bar #6279866)  
KEATING MUETHING & KLEKAMP, PLL  
One East Fourth Street, Suite 1400  
Cincinnati, Ohio 45202  
Phone: (513) 579-6400  
Fax: (513) 579-6457

Attorneys for UNR Asbestos-Disease Claims Trust

**UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In Re:	)	Case No. 91-20468-JCM
	)	
H.K. PORTER COMPANY, INC.,	)	Chapter 11
	)	
Debtor.	)	Doc. No. _____
_____	)	
MARK M. GLEASON, as Trustee of the H.K. Porter Company, Inc. Asbestos Settlement Trust,	)	Related to Document Nos. _____
	)	
Movant,	)	<u>Hearing Date &amp; Time:</u> December 18, 2024 at 1:30 p.m.
	)	
v.	)	<u>Response Deadline:</u> December 11, 2024
	)	
NO RESPONDENTS.	)	

**ORDER OF COURT**

AND NOW, on this the \_\_\_\_ day of \_\_\_\_\_, upon consideration of the Motion for Declaratory Judgment (“Motion for Declaratory Judgment”) filed in the above-captioned matter by Mark M. Gleason (the “Trustee”) in his capacity as Trustee of the H.K. Porter Company, Inc. Asbestos Settlement Trust (the “Asbestos Trust”),<sup>1</sup> any responses thereto and arguments of counsel, and finding due, proper, and sufficient notice of the Motion for Declaratory Judgment to have been provided on all necessary parties in interest, it is hereby ORDERED, ADJUDICATED, and DECREED that:

1. The Motion for Declaratory Judgment is GRANTED.
2. It is within the scope of the Trustee’s power to amend Section 4.1 of the Asbestos Claims Procedures to provide the Trustee with the express authority not to adjust the Payment

<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning provided to them in the Motion for Declaratory Judgment.

Percentage if doing so would result in *de minimis* distributions to claimants at any disease level; provided that, the TAC consents to such amendment. Specifically, it is hereby declared that the Trustee, with the consent of the TAC, has the authority to amend Section 4.1 of the Asbestos Claims Procedures by adding a sentence substantially in the form set forth below to the end of Section 4.1:

The Trustee, however, is under no obligation to adjust the Payment Percentage downward if such reduction will result in payments of less than \$100 to claimants at any disease level. Such decision by the Trustee may result in the Asbestos Trust terminating pursuant to Section 7.2 of the Trust Agreement, or otherwise, without having paid all allowable Asbestos Personal Injury Claims.

BY THE COURT:

Dated: \_\_\_\_\_

\_\_\_\_\_  
John C. Melaragno  
United States Bankruptcy Judge