

**RESTATED POLICIES RELATING TO THE  
EXPOSURE REQUIREMENTS OF  
CLAIMS RESOLUTION PROCEDURES  
NGC BODILY INJURY TRUST  
[Revised October 30, 2014]**

**Background**

The NGC Bodily Injury Trust (the “Trust”) has been receiving and paying claims since 2004. On a periodic basis since 2004, the Trustees have evaluated the operation of the Trust and the performance of Trust Services, Inc. (the Trust’s “Claims Facility”). The most obvious example is the evaluation of the technology infrastructure used to process the Trust’s claims that led to the selection of a highly regarded contractor that designed and completed the Trust’s new state-of-the-art claims processing system. This has allowed the Trust to process claims more efficiently and to provide better service to law firms.

The policies adopted by the Trust for the Claims Facility to use when reviewing claims were first formulated in 2003-04 and have evolved since then on an issue-by-issue basis. Some time ago, the Trustees selected the policies relating to the exposure requirements of the Claims Resolution Procedures (the “CRP”) as the next topic for a thorough periodic evaluation. The Trustees’ decision was based on the review of data concerning the number, type, and quality of claims filed, changes in the mix of claimants’ occupations, issues arising from the everyday work of the Claims Facility staff, and consultation with members of the Trust Advisory Committee (the “TAC”) and the Legal Representative concerning exposure requirements.

Analysis Research Planning Corporation (“ARPC”) was engaged to bring an external point of view to the claims process by reviewing the Trust’s policies and practices relating to exposure requirements. It was agreed that for confidentiality reasons, ARPC would not comment on or make comparisons to any specific trust.

The evaluation process was completed, and the Trustees, after consultation with the members of the TAC and the Legal Representative, adopted a set of Restated Policies Relating to the CRP Exposure Requirements (the “Restated Exposure Policies”). The Restated Exposure Policies carried forward, with modest refinement, much of the Trust’s former policies and the customary practice of the analysts, but also include newly adopted changes in certain exposure policies.

The Restated Exposure Policies were distributed on September 5, 2012 (the “Implementation Date”). In October and November 2012, the Trust conducted three rounds of training webinars and responded to inquiries from claimant representatives. The Trust began accepting claims on December 10, 2012. Since then the Trustees carefully reviewed the information and suggestions made to the Trust by claimants representatives during the implementation process. After consultation with members of the TAC and the Legal Representative, the Trustees adopted revisions of the September 5, 2012 version of the Restated Exposure Policies that are intended to make the process of proving an Injured Party’s exposure to asbestos-containing material manufactured, sold or distributed by the National Gypsum Company (“NGC ACM”) more efficient.

The keys to proving exposure to NGC ACM are (i) establishing installation of NGC ACM Product or Product Type, and (ii) describing the Injured Party's exposure to NGC ACM through an NGC ACM-specific affidavit, deposition or other sworn testimony. See Section C. below – Documenting NGC ACM Exposure.

### **Summary of the Restated Exposure Policies**

Section 3.10 of the CRP provides in part as follows:

For all disease categories other than mesothelioma, the evidence of such exposure [to NGC ACM] must be sufficient to show exposure to the asbestos or asbestos-containing product

- on a regular basis
- over some extended period of time
- in proximity to where the exposed person actually worked, or an equivalent exposure secondary to occupational or avocational exposure.

The Restated Exposure Policies discussed below elaborate on how a claimant fulfills the requirements of §3.10.

The Non-Mesothelioma claim of an Injured Party must demonstrate a minimum of five (5) years exposure on a regular basis to **any** asbestos-containing product(s), including at least six (6) months of exposure on a regular basis to NGC ACM. The Mesothelioma claim of an Injured Party must demonstrate exposure on a regular basis to NGC ACM, but the period of exposure to NGC ACM may be less than 6 months.

#### **A. Exposure to NGC ACM**

The term “NGC ACM” refers to asbestos-containing materials and products sold by the National Gypsum Company under its name or its Gold Bond brand. Some NGC ACM is friable even after installation, but most NGC ACM is not friable once installed unless disturbed during removal, rip-out, or other disturbances of the NGC ACM. Under the Restated Exposure Policies, claimants may consult the NGC ACM Product List on the Trust's website ([www.ngcbitrust.org](http://www.ngcbitrust.org)) to determine whether the NGC ACM for which the claimant claims exposure was friable or non-friable.

Under the Restated Exposure Policies, if a claimant was exposed to non-friable NGC ACM, the claimant must prove the exposure occurred during the installation of the non-friable NGC ACM or during the removal, rip-out or other disturbance of the non-friable NGC ACM prior to 1982. The period of installation, removal, rip-out or other disturbance is limited to the period of time (days, weeks or months) during which the non-friable NGC ACM was in its friable state emitting asbestos fibers into the air. On the other hand, if a claimant is exposed to friable NGC ACM, the claimant must prove the exposure occurred at any time from installation until January 1, 1982<sup>1</sup>.

**B. NGC ACM Product List**

The NGC ACM Product List, which includes a listing of NGC ACM, the years during which the product was sold and a designation of whether the product was friable or non-friable, is available to registered law firms on the Trust’s website ([www.ngcbitrust.org](http://www.ngcbitrust.org)). Under the Restated Exposure Policies, the name or type of the NGC ACM must be provided to the Trust to satisfy the exposure requirement. If a claimant is asserting exposure during installation of NGC ACM, the installation period must end no later than the end of the year following the final year of sale for the NGC ACM which exposure is claimed as shown on the NGC ACM Product List.

**C. Documenting NGC ACM Exposure**

General Requirements. The current claim form requires the claimant to identify the jobsite where the Injured Party was exposed to NGC ACM. To establish the Injured Party’s exposure to NGC ACM at those jobsites, a claimant or claimant representative must submit an affidavit, deposition or trial testimony or other sworn statement of the claimant, a co-worker or the claimant representative to establish the “who, what, when, where and how” of the Injured Party’s exposure to NGC ACM (“Exposure Testimony”). The Exposure Testimony may be supplemented by one or more of the following documents: (i) verified work history, (ii) verified answers to interrogatories, (iii) annotated Social Security records, or (iv) union records.

The Restated Exposure Policies, which are set forth in the table below, specify what the Exposure Testimony and optional supporting documents must cover for a claimant to establish the “who, what, when, where and how” of the Injured Party’s exposure to NGC ACM.

Exposure Testimony. Exposure testimony to establish the exposure of an Injured Party to NGC ACM should (i) provide the name or type of NGC ACM to which the Injured Party was exposed, (ii) specify the period(s) of exposure to NGC ACM, (iii) describe the Injured Party’s contact with and proximity to NGC ACM, (iv) provide the Injured Party’s occupation and industry during the NGC ACM exposure period, and (v) specify the number of years of general asbestos exposure.

	<b>Friable NGC ACM</b>	<b>Non-Friable NGC ACM</b>
<b>Who</b>	<b><i>Exposed Person.</i></b> The testifying party must testify as the Injured Party or if not the Injured Party, he/she must state the basis for knowledge of how he/she is able to affirm the required exposure information.	<b><i>Exposed Person.</i></b> The testifying party must testify as the Injured Party or if not the Injured Party, he/she must state the basis for knowledge of how he/she is able to affirm the required exposure information.
<b>What</b>	<b><i>Product Identification.</i></b> The NGC ACM must be identified by either the name of the product (e.g. Gold Bond Sprayolite) or the type of the product (e.g. NGC acoustical plaster). Merely referring to “NGC asbestos-containing products” or “Gold Bond asbestos-containing products” is not adequate.	<b><i>Product Identification.</i></b> The NGC ACM must be identified by either the name of the product (e.g. Gold Bond All-Purpose Joint Compound) or the type of the product (e.g. NGC joint compound). Merely referring to “NGC asbestos-containing products” or “Gold Bond asbestos-containing products” is not adequate.

<p><b>When</b></p>	<p><b>Product Exposure Dates.</b> The period(s) of exposure to NGC ACM from installation of the NGC ACM through 1981.</p> <p><b>Installation:</b> Installation Year(s) and Duration of NGC ACM Installation must be established by the claimant’s submission or by Common Exposure Location. The end of the installation period of the product must be before the end of the year following the final year of sale for the product that is shown on the NGC ACM Product List posted on the website (<a href="http://www.ngcbitrust.org">www.ngcbitrust.org</a>).</p> <p>Duration of NGC ACM Installation is the number of days, weeks or months during which the NGC ACM was actually being installed at the named jobsite.</p> <p><b>Extension of Exposure Period:</b> The established Exposure period is automatically extended beyond the Installation period through 1981, unless the product is earlier abated or removed.</p>	<p><b>Product Exposure Dates.</b> The periods of exposure to NGC ACM during installation or removal, rip-out or other disturbance of the NGC ACM prior to 1982<sup>1</sup>.</p> <p><b>Installation:</b> Installation Year(s) and Duration of NGC ACM Installation must be established by the claimant’s submission or by Common Exposure Location. The end of the installation period of the product must be before the end of the year following the final year of sale for the product that is shown on the NGC ACM Product List posted on the website (<a href="http://www.ngcbitrust.org">www.ngcbitrust.org</a>). Duration of NGC ACM Installation is the number of days, weeks or months during which the NGC ACM was actually being installed at the named jobsite.</p> <p><b>Removal, Rip-out or Other Disturbance:</b> Duration of NGC ACM removal, rip-out or other disturbance is the number of months during which the NGC ACM was actually being removed, ripped-out or otherwise disturbed at the named jobsite.</p>
<p><b>Where</b></p>	<p><b>Product Exposure Location.</b></p> <p><u>General Requirements - All Exposure Jobsites.</u> The jobsite, building name or address. If the jobsite has more than one building, the name, number, or other designation of the building where the Injured Party was exposed.</p> <p><u>Exposure After Completion of Original Construction.</u> If the Injured Party was exposed to NGC ACM after completion of the original construction of a building and (i) the building has multiple uses (for example, office and manufacturing), limited access (a multi-tenant office building), or (ii) there is a new installation of NGC ACM in the building, a testifying party should describe the location(s) or area(s) in the building where the NGC ACM was installed in support of describing how the Injured Party was exposed.</p>	<p><b>Product Exposure Location.</b></p> <p><u>General Requirements - All Exposure Jobsites.</u> The jobsite, building name or address. If the jobsite has more than one building, the name, number, or other designation of the building where the Injured Party was exposed.</p> <p><u>Exposure After Completion of Original Construction.</u> If the Injured Party was exposed to NGC ACM after completion of the original construction of a building and (i) the building has multiple uses (for example, office and manufacturing), limited access (a multi-tenant office building), or (ii) there is a new installation of NGC ACM in the building, a testifying party should describe the location(s) or area(s) in the building where the NGC ACM was installed, removed, ripped-out or otherwise disturbed in support of describing how the Injured Party was exposed.</p>

<b>How</b>	<b><i>Product Exposure Description.</i></b> The Injured Party’s exposure to NGC ACM must be established by describing the proximity to the installed NGC ACM and in what occupation the Injured Party was engaged during each exposure period. It is assumed that exposure occurs from installation through 1981, unless earlier abated, for those who worked in proximity to Friable NGC ACM.	<b><i>Product Exposure Description.</i></b> The Injured Party’s exposure to NGC ACM must be established by describing the proximity to the installed, removed, ripped-out or otherwise disturbed NGC ACM and in what occupation the Injured Party was engaged during each exposure period. It is assumed that exposure only occurs during installation or removal, rip-out or other disturbance of Non-Friable NGC ACM prior to 1982 <sup>1</sup> .
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Exhibit 1, which is titled Minimum Exposure Requirements, lists the specific elements that an affidavit, deposition or trial testimony or other sworn statement supporting a claim must cover to establish exposure to NGC ACM. The content of the affidavit, deposition or trial testimony or other sworn statement varies depending on the affiant’s knowledge of the installation of NGC ACM at one or more job sites and the exposure of the Injured Party to NGC ACM.

Exhibit 2, which is titled Exemplar Forms of Affidavit, is a description of the eight forms of affidavit provided to assist law firms in acquiring, organizing and presenting the information needed to establish installation of and/or exposure to NGC ACM by affidavit. The Exemplar Forms of Affidavit are available on the Trust’s website ([www.ngcbitrust.org](http://www.ngcbitrust.org)). Claimants are not required to use the forms of affidavit, but may wish to use these as a template for NGC-specific affidavits. Exemplar Forms of Affidavit are drafted for affiants who (i) installed NGC ACM or (ii) were exposed to NGC ACM (x) during the installation of NGC ACM, (y) after the installation of Friable NGC ACM, or (z) after the installation of Non-Friable NGC ACM. Each is drafted separately for claimants with mesothelioma and non-mesothelioma diseases. These forms are designed to be illustrative guides for how to provide the information required to satisfy the Restated Exposure Policies.

**D. Common Exposure Locations**

A law firm may document the existence of NGC ACM at a site and have that site approved by the Trust as a Common Exposure Location (“CEL”). Once the site has CEL status, claimants need only demonstrate that they worked at the CEL in proximity to the installed friable NGC ACM during the period from first installation through 1981 and for non-friable NGC ACM during the period of actual installation or removal, rip-out or other disturbance prior to 1982. The previously submitted documentation to obtain approval of Pre-Implementation Date CEL status may or may not be adequate to satisfy the Restated Exposure Policies. Accordingly, all currently established CELs are invalid for claims filed after the Implementation Date. CELs must be resubmitted for approval under the requirements of the Restated Exposure Policies.

Some law firms that established CELs elected to have one or more of their CELs placed on the NGC Public Site List which was posted on the Trust’s website and available for all registered law firms to inspect and use to support claims. As of the Implementation Date, all CELs were removed from the NGC Public Site List. In the future, no CELs will be placed on the NGC Public Site List. Only the law firm or law firms that establish or reestablish a site as a CEL may use that CEL.

After the Implementation Date, the NGC Public Site List will include only the NGC Property Damage Sites and NG Manufacturing Facility Sites.

Any claim filed on or before the Implementation Date that was not in disallowed or closed status as of the Implementation Date or not in withdrawn status as of April 1, 2013 will have the benefit of the previously established CELs and other Pre-Implementation Date policies and practices. Those claims filed, disallowed or closed after the Implementation Date or those in withdrawn status on or after April 1, 2013 will not. In addition, where a claim was allowed and paid based on a Pre-Implementation Date CEL and that claim is re-filed after the Implementation Date claiming a new and more severe asbestos disease (a disease upgrade), the claimant's exposure to NGC ACM will be treated as already established based on the earlier allowance of the claim.

#### **E. Exposure Presumption**

The Exposure Presumption is available when the Injured Party is deceased or incompetent and the Injured Party was exposed to asbestos or asbestos-containing products while working in one of four specific Presumptive Occupations for at least five (5) years on a regular basis. The presumption is that during the qualifying employment period, the Injured Party was regularly exposed to NGC ACM. Credible evidence of the Injured Party's employment in the Presumptive Occupations must be provided to qualify for the Exposure Presumption.

The Claimant Representative, through Exposure Testimony and supporting documentation, must provide evidence of:

- A minimum of five years of employment in one or more of the Presumptive Occupations prior to 1982;
- The state(s) where primary exposure occurred;
- Employer(s), while employed in any of the Presumptive Occupations, supported by one or more of the following: (i) verified work history, (ii) verified answers to interrogatories, (iii) deposition or trial testimony, (iv) annotated Social Security records, or (v) union records.

Time of NGC ACM exposure will be calculated as 100% of the exposure time allowed while the Injured Party was employed in any of the Presumptive Occupations. For Example: If the Injured Party worked as a drywaller for 10 years, the NGC ACM exposure would be 10 years.

For purposes of this policy, a "Presumptive Occupation" is any one of the following occupations:

1. Acoustics Worker (NGC Code 1),
2. Drywaller/Sheetrocker (NGC Code 23),
3. Lather (NGC Code 42),
4. Plasterer (NGC Code 61).

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<sup>1</sup> The Trust will consider evidence of exposure to NGC ACM after 1981 in appropriate circumstances