

January 17, 2019

NOTICE REGARDING POSTING NARCO TRUST DIRECTIVES RELATED TO EXPOSURE

In April 2016, the NARCO Trust issued Directives Related to Exposure to its claims processor. Those Directives with their exhibits (redacted as appropriate) are attached, as amended. The claims processor is instructed to process claims in accordance with these and other instructions and the TDP. The Trust's processing instructions to DCPF change from time to time and may be amended by the NARCO Trust without further update or notice to claimants. In the event of any inconsistency between an instruction and the TDP, the TDP controls.

The attached are provided for your information only and do not guarantee the payment of any claim.

NARCO Trust Directives Related to Exposure – As of January 2019

These directives address exposure issues only. In every case, all medical and other requirements under the TDP must also be met before any recommendation for payment is made. As set forth in the TDP, all claimants must submit competent evidence that he or she worked on a regular basis with a NARCO asbestos containing product or worked on a regular basis in close proximity to workers engaged in the activities set forth in Section 4.7(b)(2)(a) through (c) of the TDP. Claimants that meet that threshold have demonstrated exposure, and claimants that do not should be issued applicable deficiencies. Claims can always be escalated to higher levels of review if there are any questions regarding interpretation of the TDP.

1. Communications between claims processor and a claimant's law firm on a platform other than Trust Online should be linked to the individual claim in its Trust Online file as appropriate, or, if of a general nature, maintained separately on Trust Online with a NARCO designation.
2. The directives in this paragraph 2 apply to "NARCO Presumptive Claims" only, *i.e.* where claimants submitted claim forms showing that the injured party worked in an industry and occupation designated on the "Presumptive NARCO Chart" (available on the Trust website) at an Approved Worksite during the stipulated time frame:
 - (a) If the exposure evidence submitted shows both presumptive and non-presumptive occupations in the same line-item for the injured party's work history, and the dates for that entry fall entirely within the stipulated time frame for the identified Approved Worksite, the claim should be recommended for payment.
 - (b) If the exposure evidence submitted shows both presumptive and non-presumptive occupations in the same line-item for the injured party's work history, but the dates for that entry extend beyond the stipulated time frame for the identified Approved Worksite, issue deficiency code **739NARCO**.
. Where the duration of the employment date range falling outside the stipulated time frame is minimal (*e.g.* 2 out of 20 years are beyond the stipulated time frame for the identified Approved Worksite) the claim should be recommended for payment.
 - (c) If the exposure evidence submitted separately lists non-presumptive occupations and/or nonqualified worksites for date ranges that overlap with the date range for the presumptive pairing, the claim should be recommended for payment (*e.g.*, a union laborer who worked in a presumptive industry and occupation in multiple locations, as long as at least one of the jobs was at an Approved Worksite during the stipulated time frame).
 - (d) The industry/occupation pairings designated on the Presumptive NARCO Chart satisfy the TDP's exposure requirement only if the injured party worked on an Approved Worksite during the stipulated time frame (the "NARCO Presumptive Stipulation").

3. Newport News Shipyard (“NNS”). No inferences will be drawn of the requisite exposure to a NARCO asbestos-containing product based solely on the injured party’s having worked in, with, or near the boiler rooms, engine rooms, machinery spaces, steam pipes, and/or other high-heat areas on commercial ships that were constructed, refurbished or repaired at NNS.

Despite this, however, the requisite inference of exposure to a NARCO ACP can be drawn at NNS provided that a claimant submits competent evidence stating that the injured party (a) worked at NNS between January 1, 1961 and March 31, 1967 and (b) during that time, worked on a regular basis in the engine rooms, boiler rooms, machinery spaces, or other high heat areas of: (i) the following commercial ships: Pioneer Moon, American Challenger, Atlantic Prestige, Esso Houston and Esso New Orleans; and (ii) any other commercial ship where the Trust obtains and/or discovers competent evidence of the presence of a NARCO ACP (which evidence the Trust shall provide to Honeywell thirty (30) days before adding any other commercial ships to the list).

4. Prior to making a recommendation for payment of any individual claim, the reviewer must determine that the claim is supported by competent and credible exposure evidence.
5. Competent evidence of exposure means evidence that is relevant and reliable, and includes, without limitation, the types of evidence identified in section 4.7(b)(3) of the TDP. For an affidavit of a non-injured party to be competent, such affidavit must describe the basis of the affiant’s personal knowledge of the facts he alleges, (*e.g.* the injured party told me that he regularly breathed asbestos dust while on the job). Members of the injured party’s immediate family or household are presumed to have personal knowledge of certain information, including but not limited to the injured party’s worksites, dates of employment, job titles, day-to-day duties, and working conditions.
6. Credible evidence of exposure means evidence that is believable based on a review of the evidence submitted as a whole.
7. The following examples represent evidence that raises competence and/or credibility concerns:
 - (a) The claims reviewer shall not consider exposure allegations that use only conditional language (*e.g.* “could,” “should,” or “may” have been exposed) to describe the injured party’s exposure. [*See, e.g.*, the highlighted allegations in the exposure affidavits attached hereto as Exhibit C].
 - (b) The claims reviewer shall not consider allegations of exposure to a NARCO-asbestos containing product that use a “check-the- box” format substantially similar to the language highlighted in the exposure affidavit(s) attached hereto as Exhibit D. However, the claims reviewer may consider exposure allegations in “check-the-box” format to determine if a claimant has established Significant Occupational Exposure (if applicable).

- (c) The claims reviewer shall not consider exposure allegations that check off every single NARCO product, including ones where the dates of the use of the asbestos containing product clearly fall outside the dates of the claimant's exposure.
 - (d) The claims reviewer shall not consider exposure allegations made by an injured party in an affidavit executed after a documented diagnosis of dementia.
 - (e) The claims reviewer shall not consider exposure allegations that only copy, word for word, full exposure criteria phrases set forth in the claim form and/or the TDP. The claims reviewer may rely on an assertion in the evidence that the injured party worked "on a regular basis" with the NARCO asbestos containing product or "in close proximity to workers" who worked with a NARCO asbestos containing product, to satisfy such requirements in the TDP. Such phrases need not be paraphrased to be credible. Nor do such phrases automatically satisfy any TDP requirements. Exposure allegations must always make sense in the context of each individual claim.
8. Where the Trustees have directed that certain exposure evidence not be considered, the claim shall be evaluated on the basis of any remaining competent and credible evidence of exposure, whether in the claim file, in other claim files, elsewhere in Trust Online, or in the Trust's files. Evidence relied upon in review of each particular claim shall be linked to such claim's file.
 9. Subject to the NARCO Presumptive Stipulation, any claims recommended for payment that do not identify a specific NARCO asbestos containing product by name (if not on an Approved Worksite) or a NARCO product generally (if on an Approved Worksite) shall be forwarded to the Trust along with the exposure documentation submitted in support of such claim highlighted to show the relevant portions relied upon by the reviewer.
 10. Exposure to "Raw Asbestos"/"Asbestos Fibers". Each claim must be supported by requisite evidence of exposure to a specific asbestos-containing product manufactured, sold, or distributed by NARCO or its predecessors. This standard applies to injured parties who worked on a regular basis in close proximity to workers engaged in the activities set forth in Section 4.7(b)(2)(a)-(c).
 11. "Regular basis" as used in the TDP means that the injured party's job duties routinely required them to either work directly with the NARCO asbestos containing product or in close proximity to workers engaged in the activities set forth in Section 4.7(b)(2)(a) through (c). For example, an insulator's job duties would bring him into contact with asbestos containing products, whereas a typical office worker's job duties would not.
 12. If the filing date of a lawsuit entered in Trust Online by the claimant does not match the date reflected on the supporting file-stamped copy of the complaint or other pleading, the claims processor shall use the date that is reflected in the file-stamped document.
 13. When a reviewer marks a claim as "peer reviewed," the reviewer shall note the name of the peer and the section or sections of the file that were peer reviewed.

14. No claim shall be recommended for payment unless or until the claims processor has reviewed the entire claim file. If deposition transcripts or interrogatory responses were provided, the claims processor must (i) make sure that the claimant provided the entire transcript and/or set of interrogatory responses, and (ii) read the entire transcript and/or set of interrogatory responses.
15. If the injured party worked on an Approved Worksite but did not submit competent evidence that he worked there during the stipulated time frame, then the claims processor shall process the claim in the same manner as if the injured party did not work on an Approved Worksite, and to the extent such claim otherwise qualifies for payment (through circumstantial or direct evidence) the claim shall be recommended for payment and the underlying evidence that supports exposure shall be forwarded to the Trust.
16. The following further directives apply to review of exposure allegations
 - (a) The claims reviewer should process the claim as if the form affidavit were not part of the claim file, except to the extent that a material inconsistency between the form affidavit and the rest of the exposure evidence undermines the credibility of the non-form evidence.
 - (b) The claims reviewer must review the exposure allegations in a form affidavit to determine if that evidence satisfies the TDP's exposure criteria if:
 - i. exposure occurred on an Approved Worksite during the stipulated time frame, or
 - ii. exposure occurred on an Approved Worksite after the stipulated time frame, and the affiant was an eyewitness of the exposure, or
 - iii. exposure occurred on a non-qualified site or on an Approved Worksite before the stipulated time frame, and the affiant was an eyewitness of the exposure, and the injured party had an SOE presumptive occupation when exposed.
 - (c) If none of the foregoing exposure allegation criteria apply, the claims reviewer shall:
 - i. issue a deficiency directing the claimant to supplement his or her claim if there is no exposure evidence in the claim file other than a form affidavit; or
 - ii. refer the claim to Trust counsel if the claimant submits both a form affidavit and additional non-form exposure evidence, but such additional non-form exposure evidence on its own does not satisfy the TDP's exposure criteria.