

Attorney's Guide to Independent Review Option ("IRO")
Version 67, Effective Date: ~~February 14~~ August 30, 2024

I. Purpose

- a. The Independent Review Option ("IRO") provides Direct Abuse Claimants ("Claimants") with the opportunity to have an independent, neutral third party, selected from a panel of retired judges with tort experience maintained by the Settlement Trust, make a Settlement Recommendation (the "Settlement Recommendation") to the Settlement Trustee. The Settlement Recommendation is intended to replicate, to the extent possible, the amount a reasonable jury might award for the particular Direct Abuse Claim, taking into account the relative shares of fault that may be attributed to any parties potentially responsible for the Direct Abuse Claim "under applicable law and applying the same standard of proof that would apply under applicable law." *TDP Article XIII A.*
- b. The purpose of the IRO is consistent with that of the Trust Distribution Procedures ("TDP"), which is to achieve maximum fairness and efficiency in resolving Abuse Claims by applying the following guiding principles:
 - i. objective claim eligibility criteria;
 - ii. clear and reliable proof requirements;
 - iii. administrative transparency;
 - iv. a rigorous review and evidentiary process that requires the Settlement Trustee to determine Allowed Claim Amounts in accordance with applicable law;
 - v. prevention and detection of fraud; and
 - vi. independence of the Settlement Trust and the Settlement Trustee. *TDP Article I B.*
- c. The IRO is described in Article XIII of the TDP, which can be found at this [link](#).

II. Definitions¹

- a. **"Claims Administrator"** means the Hon. Michael J. Reagan (Ret.), or any other person acting on behalf of the Settlement Trust, to oversee the IRO Process and the Claims processed through it.
- b. **"Complaint"** means the pleading filed² by the Claimant setting forth the claims on which a Settlement Recommendation shall be made by the Neutral following the IRO Hearing.

¹ Capitalized terms not defined in the Attorney's Guide to IRO shall have the same meaning ascribed to them in the TDP.

² When a pleading or other document is required to be "filed" in accordance with the terms of the Attorney's Guide to IRO, the filing is to occur in the Claimant's Portal. Filing instructions are available on Settlement Trust website.

- c. **“IRO”** means the Independent Review Option.
- d. **“IRO Hearing”** means the virtual or in-person evidentiary hearing conducted by the Neutral through which the Claimant’s claims are determined. In order to minimize Claimants’ travel costs, virtual IRO Hearings are recommended by the Settlement Trust. In-person IRO Hearings will be conducted in the county of residence of the Neutral.
- e. **“IRO Process”** means the entire hearing process involving a Claimant electing the IRO.
- f. **“Initial Submission Date”** means the date on which the Claimant and Responsible Insurers must file their initial evidentiary submissions in cases where the Claimant has elected to proceed solely on the written record.
- g. **“Neutral”** means an independent, neutral third party, selected from a panel of retired judges with tort experience maintained by the Settlement Trust, who will preside over the IRO Process.
- h. **“Party”** means any individual or entity making an appearance in the IRO Process, including, without limitation, the Claimant, and the Responsible Insurer(s).
- i. **“Proceeding on the Written Record”** means the Claimant’s claim will be presented to and determined by the Neutral by the submission of documentary and/or electronic evidence in lieu of an in-person, virtual, or hybrid hearing.
- j. **“Trust Claims Questionnaire”** means the questionnaire that must be submitted by the Claimant in the claims processing portal in order to initiate a Claim against the Settlement Trust.

III. IRO Election and Payment of First \$10,000 Administrative Fee

- a. On or before February 16, 2024, at 5:00 pm ET, Claimant shall have:
 - i. submitted a completed Trust Claims Questionnaire with the IRO election box checked; and
 - ii. Paid \$10,000 to the Settlement Trust in the manner set forth on the Settlement Trust’s website.
- b. The Settlement Trustee has the authority to waive this administrative fee “in appropriate cases, based on the circumstances of the Direct Abuse Claimant.” *TDP Article XIII G(ii)*.
 - i. A separate fee waiver request, supported by another Affidavit and related financial information, will be needed to request a waiver of the second \$10,000 administrative fee.
 - ii. If the Claimant is dissatisfied with the Settlement Trustee’s decision on the requested waiver of the first \$10,000 administrative fee, the Claimant can request a review of this decision by the Bankruptcy Court. If the Bankruptcy Court waives the fee, the claim will proceed in the IRO Process without payment of the first \$10,000 administrative fee. If the Bankruptcy Court denies the fee waiver, the Claimant must pay the first \$10,000 administrative fee promptly after the denial or the Claimant will not be permitted to proceed further with the IRO Process.

IV. Filing of a Complaint

- a. Within 7 days of (1) the payment of the initial \$10,000 administrative fee to the Settlement Trust (or the waiver of such fee if it has been waived by either the Settlement Trustee or the Bankruptcy Court, but note the time has passed for a waiver of the first \$10,000 administrative fee) and (2) the submission of the Claims Questionnaire (whichever comes last), the Claimant shall file a Complaint that contains at least the following:
 - i. a clear, plain statement of the claims asserted;
 - ii. the facts alleged to support each pled claim, including the relevant dates of the acts supporting each pled claim;
 - iii. the entity or entities whom the Claimant alleges would be liable in the tort system for each pled claim; and
 - iv. any other specific requirements set forth in Article XIII, G of the TDP.
- b. If there are any inconsistencies between the Trust Claims Questionnaire and the Complaint, the Complaint shall be deemed the controlling document in the IRO Process.
- c. The Complaint shall also contain a statement either consenting to a virtual IRO Hearing or requesting an in-person IRO Hearing. Electing a virtual IRO hearing is irrevocable and cannot be converted to an in-person hearing since a neutral who accepts only virtual hearings may be assigned the IRO claim. Irrespective of whether an in-person or virtual hearing is elected, the Claimant may still elect to proceed solely on the written record as described in Section XVII of the Attorney's Guide to the Independent Review Option.
- d. Every Complaint must be accompanied by a completed IRO Complaint Cover Page Form, which is a fillable form that can be found at this [link](#).
- e. If a Claimant has previously filed a lawsuit in state or federal court asserting these claims, the Claimant may file the same complaint as his IRO Complaint, so long as it satisfies the requirements set forth in paragraph IV a above and is accompanied by a completed IRO Complaint Cover Page Form.

V. Notice to Chartered Organizations and Responsible Insurers

- a. Within 28 days of the filing of the Complaint, the Settlement Trust, acting through the Claims Administrator, shall provide written notice to the applicable Responsible Insurers that issued policies to the Debtors or Local Councils based upon the allegations set forth in the Complaint.
- b. Within 7 days of the filing of the Complaint, the Settlement Trust, acting through the Claims Administrator, shall (i) provide written notice to any applicable Chartered Organization that may have liability for the claim based upon the allegations set forth in the Complaint, and (ii) request that such Chartered Organization provide written notice to any applicable Responsible Insurer that issued policies directly to that Chartered Organization with 28 days of receiving such notice.

VI. Deferral Request by Claimant

- a. A Claimant's attorney (or an unrepresented Claimant) can request a deferral of the IRO Process after payment of the first administrative fee for good cause. Such deferral request shall be filed in the Claimant's Portal. In the case of a represented Claimant, no request for deferral should be made without the Claimant's consent

and the request shall include a representation that the Claimant agrees with the request.

- b. If a request for deferral is filed, the request must set forth, in detail, the factual basis upon which the Settlement Trust can determine if good cause has been shown. Any such facts shall be supported by written Declaration signed under penalty of perjury by the declarant. Upon the filing of a deferral request and supporting Declaration, all subsequent deadlines set forth herein shall be suspended until the request for deferral is determined by the Settlement Trust.
- c. The Settlement Trust will promptly consider requests for deferral and provide notice to the Claimant and any Responsible Insurers of the disposition of the deferral request by a filing in the Claimant's Portal.
- d. If a deferral is granted, all subsequent deadlines shall recommence immediately upon the conclusion of the deferral period.

VII. Selection of, and Communications with, the Neutral

- a. Within 14 days following the provision of notice of the filing of the Complaint to the applicable Responsible Insurers, the Settlement Trust shall select the Neutral. If, for any reason, the Neutral who is selected is unable to fulfill the Neutral's duties, a successor Neutral will be assigned by the Settlement Trust.
- b. Upon the Neutral's selection, the Settlement Trust, acting through the Claims Administrator, shall provide written notice to the Claimant and the Responsible Insurers of the Neutral's name.
- c. All communications to the Neutral by a Party, and from the Neutral to a Party, shall be via the Claimant's Portal and shall be available for viewing by any other Party participating in the IRO Process. *Ex parte* communications outside of the Claimant's Portal is prohibited.
- d. If an in-person IRO Hearing was requested in the Complaint, the Claims Administrator will provide the location where it will be held through the Claimant's Portal prior to the Virtual IRO Scheduling Conference (*see* section XI, below).
- e. If a Party believes the Neutral is not qualified to serve as the Neutral or should be disqualified from serving as the Neutral, a challenge to the Neutral shall be filed within 7 days following the later of (i) the deadline to file the Notice of Intent to Participate, Answer or other responsive pleading by the Responsible Insurers, or (ii) the provision of notice in the Claimant's portal of the selection of the Neutral.
 - i. A challenge to the Neutral shall:
 - 1. state the specific grounds justifying the challenge, and
 - 2. be supported by a factual Declaration signed under penalty of perjury establishing the facts underlying the grounds for the challenge.
 - ii. Any other Party may join in the challenge or oppose the challenge by filing a written statement in support of, or opposition to, the challenge within 7 days following the filing of the challenge.
 - iii. The Settlement Trust shall consider the issues raised by the challenge and either confirm the Neutral's appointment or appoint a successor Neutral to preside over the IRO Process within 14 days from the filing of the initial challenge.

- iv. Any challenge not made in accordance with this section shall be deemed waived.

VIII. Notice of Intent to Participate, Answer, or Other Responsive Pleading by Responsible Insurers

- a. If a Responsible Insurer elects to participate in the IRO Process, it must file either:
 - (i) a notice of intent to participate in the IRO Process;
 - (ii) an answer to the Complaint, or
 - (iii) some other responsive pleading to the Complaint (a “**Responsible Insurer Filing**”) within 21 days of it being put on notice of the filing of the Complaint. To the extent its Responsible Insurer Filing is an answer or other responsive pleading, the Responsible Insurer shall assert substantive defenses that would otherwise be available in the tort system to the pled claims.
- b. To the extent possible, Responsible Insurers shall file joint or consolidated responses or other pleadings where their interests are aligned throughout the IRO Process.
- c. If the Responsible Insurer(s)’s defenses rely on or intend to rely on evidence not produced by the Claimant, the Claimant may take discovery related to any such supporting evidence in accordance with Section XII.

IX. Statement of Other Issues by the Claims Administrator

- a. In the absence of a Responsible Insurer Filing, the Claims Administrator shall file a statement of the issues that may affect the Neutral’s Settlement Recommendation within 28 days after the Responsible Insurers were put on notice of the filing of the Complaint. Each such issue shall be considered by the Neutral in formulating her Settlement Recommendation.
 - i. Issues that may be identified by the Claims Administrator in his statement of the issues include, without limitation, standing, statute of limitations, prior settlements with other parties, relative liability of other non-settling parties, and any other issue identified for consideration by the Neutral in the TDP.
 - ii. To be clear, this statement is intended to highlight issues that must be addressed by the Neutral in her Settlement Recommendation, not to influence the outcome of the IRO Hearing.
- b. If a Responsible Insurer Filing is filed, the Claims Administrator may still file a statement of the issues he believes should be addressed by the Neutral in formulating her Settlement Recommendation, and each such issue shall be so considered. This statement, if filed, shall be filed within 7 days of the deadline for the Responsible Insurers to file the Responsible Insurers Filing.

X. Deferral Request by Responsible Insurer

- a. A Responsible Insurer may seek a deferral of the IRO Process for good cause following its Responsible Insurer Filing. Such deferral request shall be filed in the Claimant’s Portal and supported by a written Declaration (signed under penalty of perjury) setting forth the factual basis for the requested deferral.
- b. Upon the filing of a deferral request and supporting Declaration, all subsequent

deadlines set forth herein shall be suspended until the request for deferral is determined by the Settlement Trust.

- c. The Claimant shall have 7 days to respond to the deferral request by a filing in the Claimant's Portal.
- d. The Settlement Trust will promptly consider requests for deferral and provide notice to the Claimant, the Neutral, and all Responsible Insurers of the disposition of the deferral request by a filing in the Claimant's Portal.
- e. If a deferral is granted, all subsequent deadlines shall recommence immediately upon the conclusion of the deferral period.
- f. All Responsible Insurers are expected to adequately staff their participation in the IRO Process so that deferral requests are not based upon counsel unavailability except under extraordinary circumstances.

XI. Virtual IRO Scheduling Conference

- a. Within 14 days after the deadline for the filing of a statement of the issues by the Claims Administrator, the Neutral shall hold a virtual scheduling conference with the Claimant, the participating Responsible Insurers, and the Claims Administrator (if the Claims Administrator chooses to participate) addressing:
 - i. Discovery must be conducted in compliance with the terms of the Document Appendix, which does NOT allow the service of discovery requests upon the Trust. must be conducted in compliance with the terms of the Document Appendix, which does NOT allow the service of discovery requests upon the Trust.
 - ~~i.~~ii. Timing and logistics of the IRO Hearing or cases submitted on the written record; and
 - ~~ii.~~iii. Any other issue raised by a Party or the Neutral.
- b. Following the conclusion of the Scheduling Conference, the Neutral will enter a scheduling order, in the form approved by the Trustee.
- c. If the Hearing in an IRO case or the Initial Submission Date in a case to be submitted on the written record is changed, Claimant's counsel shall upload a notice in the Claimant's portal as follows:
 - i. i. "The [IRO Hearing Date] [Initial Submission Date] has been changed to MM/DD/YYYY"

XII. Discovery

- a. Discovery in the IRO Process is governed by the Document Appendix. *TDP Article XIII H*. For more information on the Document Appendix and supplemental discovery, please refer to Section 12, *Discovery, Document Requests, and the Document Appendix*, within the Frequently Asked Questions on the Scouting Settlement Trust website.
- b. Except as set forth below, all discovery shall be completed within 90 days of the conclusion of the IRO Scheduling Conference (the "Discovery Period").
 - i. Upon the reasonable request of a Responsible Insurer or in the discretion of the Neutral, a Claimant "shall be subject to up to a single sworn six-hour interview, mental health examination, or supplemental signed and dated interrogatory responses." *TDP Article XIII G (vii)*. Only one of these

methods of Claimant discovery is allowed even if multiple Responsible Insurers are participating in the IRO process. The interview of the Claimant may be recorded stenographically, by videography, or both, subject to objection to be considered by the Neutral.

- c. Only the Neutral, for good cause shown, may extend the Discovery Period.
 - i. Any party may seek an extension of the Discovery Period by filing a written motion prior to the expiration of the Discovery Period and it shall be supported by a factual Declaration (signed under penalty of perjury) establishing the required “good cause” for the requested extension.
 - ii. Within 7 days of the filing of such motion, any party or the Claims Administrator may file a written response supporting or objecting to the requested extension.
 - iii. The Neutral shall issue a decision granting or denying the requested extension within 7 days following the deadline for the filing of any party’s or the Claims Administrator’s response.
 - iv. To the extent the extension of the Discovery Period causes the date for the IRO Hearing to be rescheduled, the Neutral shall announce the new IRO Hearing date when issuing the discovery extension decision.
- d. To the extent discovery is sought from a Local Council or Chartered Organization in accordance with the provisions of the Document Appendix, the Discovery Period will be extended for a reasonable period of time determined by the Settlement Trust, acting through the Claims Administrator, in order to account for any delays associated with compliance with the terms of the Document Appendix.
 - i. The Settlement Trust shall give notice to all Parties of the length of the initial extension in the Claimant’s Portal. Further extensions may be granted by the Settlement Trust as reasonably necessary to permit the requested discovery to be completed. Notice of any further extension shall be given to all Parties in the Claimant’s Portal.
 - ii. To the extent this extension(s) of the Discovery Period causes the date for the IRO Hearing to be rescheduled, the Settlement Trust shall consult with the Neutral and a new IRO Hearing date will be established with notice provided to all Parties in the Claimant’s Portal.
- e. Following the close of the Discovery Period, the Claimant has the option of electing to proceed with a hearing or to submit solely on the written record.
- f. After pursuing discovery, the Claimant can elect not to have the Neutral review his claim under the IRO process and may switch to the Trust Distribution (“Matrix”) process. *TDP Article XIII G(ii)*. At that point the Claimant’s order of claim processing will be based on the date he informed the Trust of his decision to switch to the Matrix process.
 - i. If the Claimant chooses to switch to the Matrix process, he does not need to pay the second \$10,000 administrative fee. The first \$10,000 administrative fee remains non-refundable.

~~XIII. —Pre-IRO Hearing Briefing~~

- ~~a. The Claimant shall file a brief addressing each pled claim at least 14 days in~~

~~advance of the commencement of the IRO Hearing.~~

~~i. Briefing shall include, without limitation:~~

- ~~1. A discussion of the elements of each pled claim, the applicable burden of proof, and the governing law;~~
- ~~2. The evidence expected to be admitted during the IRO Hearing establishing each element of each pled claim; and~~
- ~~3. Responsive argument(s) to any defenses raised by either a Responsible Insurer or the Claims Administrator.~~

~~b. A Responsible Insurer may file a brief responding to the issues raised in the Claimant's brief and supporting its defenses no later than 7 days following the filing of the Claimant's brief. If there are multiple Responsible Insurers, they shall file a consolidated brief unless leave to file separate briefs is given by the Neutral upon a showing of good cause.~~

~~c. The Claimant may file a reply brief no later than 5 days following the filing of a Responsible Insurer brief.~~

~~d. No brief shall exceed 14 pages in length absent leave from the Neutral in advance of the filing of the required brief. Good cause must be shown in order for leave to be granted.~~

~~e. Determination of Responsible Insurers' Defenses.~~

- ~~i. Responsible Insurers' defenses will not be ruled upon prior to the commencement of the IRO Hearing or, if Claimant elects to proceed solely on the written record, the submission of the written materials. Instead, Responsible Insurers' defenses will be considered in the Neutral's Settlement Recommendation following the IRO Hearing or, if Claimant elects to proceed solely on the written record, the submission of the written materials.~~

XIV.XIII. Payment of Second \$10,000 Administrative Fee

a. Unless the fee has been waived by either the Settlement Trustee or the Bankruptcy Court, the Claimant shall pay the second \$10,000 Administrative Fee to the Settlement Trust no later than 5:00 pm ET 14 days in advance of the initial setting of the IRO Hearing or the Initial Submission Date if proceeding on the written record. The fee shall be paid to the Settlement Trust in the manner set forth on the Settlement Trust's website or in an email from the Settlement Trust's administrator reminding counsel of the due date. Failure to timely pay the fee may result in a cancellation fee charged by the Neutral and a transfer of the claim to the matrix procedure.

- i. The Settlement Trustee has authority to waive this second \$10,000 Administrative Fee "in appropriate cases, based on the circumstances of the Direct Abuse Claimant." *TDP Article XIII G(ii)*. For fee waiver request instructions, please contact iro_support@scoutingsettlementtrust.com.
- ii. All fee waiver requests with supporting documentation must be submitted to the Trust no later than 30 days before the second \$10,000 Administrative Fee is due.
- iii. If the Claimant is dissatisfied with the Settlement Trustee's decision on the requested waiver of the second \$10,000 administrative fee, the Claimant can request a review of this decision by the Bankruptcy Court.

If the Bankruptcy Court waives the fee, the claim will proceed in the IRO Process without the payment of the second \$10,000 administrative fee. If the Bankruptcy Court denies the fee waiver, the Claimant must pay the second \$10,000 administrative fee promptly or the Claimant will not be permitted to proceed.

- iv. If (i) the Settlement Trustee has not decided a waiver request, or (ii) the Bankruptcy Court has not completed its review of a denial of a waiver request in time for a scheduled IRO Hearing to proceed, the Neutral shall have the discretion to continue the IRO Hearing for a reasonable time as determined by the Neutral after consultation with the Claims Administrator.

XIV. Pre-Briefing Requirements for IRO Hearings and Cases Submitted on the Written Record

- a. The Claimant shall file a brief addressing each pled claim at least 14 days before the commencement of the IRO Hearing or if the case is proceeding on the written record, the initial submission date
 - i. The briefing shall include, without limitation:
 - 1. A discussion of the elements of each pled claim, the applicable burden of proof, and the governing law;
 - 2. The evidence expected to be admitted during the IRO Hearing or Initial Submission Date if the case is proceeding solely on the written record, establishing each element of each pled claim;
 - 3. Responsive argument(s) to any defenses raised by either a Responsible Insurer or the Claims Administrator;
 - 4. Benchmark judgments or settlements relevant to the damages claimed. TDP Article XIII G(vi).
- b. A Responsible Insurer may file a brief responding to the issues raised in the Claimant's brief and supporting its defenses no later than 7 days following the filing of the Claimant's brief. If there are multiple Responsible Insurers, they shall file a consolidated brief unless leave to file separate briefs is given by the Neutral upon a showing of good cause.
- c. The Claimant may file a reply brief no later than 5 days following the filing of a Responsible Insurer brief.
- d. No brief shall exceed 14 pages in length absent leave from the Neutral in advance of the filing of the required brief. Good cause must be shown in order for leave to be granted.
- e. Determination of Responsible Insurers' Defenses.
 - i. Responsible Insurers' defenses will not be ruled upon prior to the commencement of the IRO Hearing or, if the Claimant elects to proceed solely on the written record, the submission of the written evidentiary materials. Instead, Responsible Insurers' defenses will be considered in the Neutral's Settlement Recommendation .

XV. Exchange of Witness Lists Requirements for IRO Hearings and Cases Submitted on the Written Record

- a. A list of witnesses the Claimant intends to ~~call live or through deposition testimony present~~ (including a short description of the expected testimony) at the IRO Hearing shall be filed 14 days prior to the commencement of the IRO Hearing.

or Initial Submission Date if proceeding solely on the written record. If a witness will testify through the submission of deposition testimony excerpts, the proposed deposition excerpts shall be provided to the participating Responsible Insurer(s) simultaneously with the filing of the witness list. ~~If in cases proceeding to hearing, if~~ the witness will testify live, it shall be so noted on the witness list.

- b. The participating Responsible Insurer(s) shall file its witness list (including a short description of the expected testimony and in cases proceeding to IRO Hearing, whether the witness will testify live, through deposition excerpts and/or declaration or affidavit) 7 days following the filing of the Claimant's witness list, along with any objections to the Claimant's proposed deposition excerpts or any cross-designations of deposition excerpts.
- c. If the participating Responsible Insurer(s) submits cross-designations of deposition excerpts, the Claimant shall have 2 days from receipt to object to them.
- ~~d. The Neutral shall determine the admissibility of the proffered deposition testimony at the IRO Hearing, along with the testimony of any witness who testifies live at the IRO Hearing.~~
- e.d. If a witness is testifying live at an IRO Hearing, upon receipt of the witness list described in Paragraph XV a and/or b above, the non-tendering party may request contact information for a particular witness, which must be immediately provided so that a voluntary interview or deposition can be scheduled prior to the IRO Hearing. If the witness refuses to submit to either a voluntary interview or deposition, the Neutral shall have the authority to exclude the witness testimony at the IRO Hearing or recess the IRO Hearing for a reasonable time to allow the non-tendering party adequate time to prepare for cross-examination.
- f.e. If a witness is providing direct testimony by affidavit or declaration, the proposed affidavit or declaration shall be provided to the non-tendering party at least 7 days in advance of the ~~hearing. Upon~~ IRO Hearing or 14 days in advance of the Initial Submission Date.
- g.f. In cases other than those submitted on the written record, upon request of the non-tendering party, the affiant or declarant shall be available for cross-examination and re-direct examination at the IRO Hearing, or by agreement, in a prehearing deposition, or the affidavit or declaration, absent extraordinary circumstances, will not be considered by the Neutral. If the parties have agreed to utilize a prehearing deposition, the non-tendering party may submit deposition excerpts at the hearing in lieu of live cross-examination.

XVI. — Pre-IRO Hearing Submission of Exhibits

In cases submitted on the written record, upon request of the non-tendering party, the affiant or declarant shall be made available for deposition prior to the Initial Submission Date and in sufficient time for the transcript to be available on the Initial Submission Date, or the affidavit or declaration, absent extraordinary circumstances, will not be considered by the Neutral.

XVI. Exchange of Exhibit Lists Requirements for IRO Hearings and Cases Submitted on the Written Record

- a. A list of exhibits the Claimant and the Responsible Insurer(s) intends to

introduce at the IRO Hearing, or Initial Submission Date if proceeding on the written record, shall be filed 14 days before the commencement of the IRO Hearing or Initial Submission Date.

- i. Materials used solely for impeachment on cross-examination are not subject to the 14-day disclosure requirement.
- ~~ii.~~ Electronic copies of all listed exhibits shall be provided to all non-tendering parties ~~and the Claims Administrator~~ within 24 hours of the filing of the Exhibit List.
- b. Any objection to any such exhibit shall be filed 7 days in advance of the commencement of the IRO Hearing or Initial Submission Date if proceeding on the written record.
- c. Any exhibit to which no objection was timely filed shall be provided to the Neutral by upload to the Claimant's Portal at least 2 days before the commencement of the IRO Hearing or Initial Submission Date if proceeding on the written record.
- d. There is a 2GB per upload limit to the Claimants portal but no limit on the aggregate number of uploads.
- ~~d.e.~~ The admissibility of an exhibit or deposition testimony to which an objection was lodged timely shall be determined by the Neutral at the IRO Hearing, along with the admissibility of any other written exhibit. If an objection is overruled, the introducing party must be prepared to provide an electronic copy of the exhibit to the Neutral by upload to the Claimant's Portal immediately following the Neutral's ruling. In cases submitted on the written record, the Neutral will rule on objections as part of the Settlement Recommendation.

~~XVII.—Proceedings on the Written Record~~

- ~~a.—If a Claimant elects to proceed solely on the written record, the participating Responsible Insurer(s) shall proceed solely on the written record as well.~~
- ~~b.—All other relevant provisions of the IRO Hearing contained in Section XVIII shall apply equally to the written submissions by the participating Parties.~~
- ~~c.—The Neutral shall make his or her Settlement Recommendation based upon the written submissions of the participating Parties.~~

XVIII.—IRO Hearing

~~XIX.~~XVII. Burden of Proof

- a. The burden of proof applies equally to cases involving an IRO Hearing as well as those proceeding on the written record.
 - i. The Claimant bears the burden of proof to establish each claim pled consistent with applicable state law requirements. The Responsible Insurers bear the burden of proof to establish each defense pled consistent with applicable state law requirements
 - ii. The Claimant must satisfy the requirements set forth in Article XIII, G of the TDP.
 - iii. The Claimant shall introduce competent evidence, which shall be admitted by the Neutral under the Federal Rules of Evidence subject to the provisions below:

1. The Neutral shall assess the admissibility of all evidence even if no other Party participates in the IRO Hearing.
2. The Neutral shall admit evidence that would otherwise be inadmissible under the Federal Rules of Evidence if the Neutral finds that the evidence is probative and material to any element of any claim or defense pled. In determining the probative and material value of the evidence, the Neutral shall accord the evidence such weight as is appropriate.
3. With respect to a document that was obtained by any Party from the Document Repository, a rebuttable presumption shall exist that the document is admissible in evidence without further foundation testimony being introduced.
 - a. If the presumption is rebutted, the burden will be on the Party seeking the document's admission to lay a proper foundation for its admission.
 - b. Documents obtained from the Document Repository shall be identified in the Party's exhibit list with its unique document identifier from the Document Repository.

XX.XVIII. Administration of IRO Hearings

- a. Virtual IRO Hearings will be conducted over Zoom and will be recorded.
- b. If a Party chooses to have a stenographer transcribe the proceedings, they are entitled to do so at their own expense. If the Parties agree, the stenographic transcript will be the official record, and the proceedings do not need to be recorded via Zoom. If the Parties do not agree, the Zoom record will be the official record. At least 14 days before the commencement of the IRO Hearing counsel shall file a statement in the Claimant's portal indicating whether a stenographer will be reporting the proceedings and whether that will be the official record of the IRO Hearing.
- c. Participation in the IRO Hearing
 - i. Claimant and Claimant's counsel, in addition to any witnesses called by Claimant, shall be deemed participants on behalf of Claimant.
 - ii. The participating Responsible Insurer and its counsel, in addition to any witnesses called by the participating Responsible Insurer, shall be deemed participants on behalf of the participating Responsible Insurer. However, the Neutral shall have the discretion to determine how many participants per Responsible Insurer shall be allowed to participate in the event there are multiple participating Responsible Insurers.
 - iii. The Neutral shall have the discretion to limit or stop the examination of any witness, including the Claimant, if the Neutral determines that the examination is being conducted in a harassing or unprofessional manner.
 - iv. The Neutral shall have the discretion to limit the presentation time for all participating Parties.
- d. Close of the Evidentiary Record
 - i. Each Party participating in the IRO Hearing shall state on the record when it has concluded its presentation of evidence to the Neutral.
- e. Closing Arguments

- i. Each Party participating in the IRO Hearing shall have no more than 60 minutes to make its closing argument to the Neutral in support of its legal position, unless for good cause, the Neutral extends the time limits for closing arguments.
 1. If the Claimant wishes to reserve time for a rebuttal argument, it shall announce the amount of time being reserved at the commencement of its opening argument. The aggregate of both opening and rebuttal arguments cannot exceed 60 minutes, unless extended by the Neutral.
- f. Duration
 - i. The IRO Hearing shall not exceed 8 hours in length, including breaks, absent a showing of good cause.
 - ii. If an IRO Hearing is continued and such continuance results in a cancellation fee charged by the Neutral, the party causing the continuance (and not the Settlement Trust) will be responsible for paying the cancellation fee. Neutrals have varying cancellation fees that will be disclosed on request.

XIX. Administration of Cases Proceeding on the Written Record

XXI. ~~If a Claimant elects to proceed solely on the written record, the participating Responsible Insurer(s) shall proceed solely on the written record as well.~~ **Settlement Recommendation**

- a.
- b. Within 14 days after the close of discovery, the Claimant shall upload in his portal his intention to proceed solely on the written record. If discovery has closed at the time these rules become effective, Claimant shall have 14 days from the effective date to upload in his portal his intention to proceed solely on the written record. If an IRO Hearing date was set in the initial scheduling order, unless changed by the Neutral, that date will be the Initial Submission Date for the simultaneous filings by the Claimant and Responsible Insurers of their initial written evidentiary submissions. If no IRO Hearing date was included in the initial scheduling conference, the Neutral will set an Initial Submission Date for the initial filings.
- c. 14 days after the Initial Submission Date, the Claimant and Responsible Insurers may file their opposition evidentiary responses to their opponent's initial evidentiary submissions.
- d. Seven days after the filing of the opposition evidentiary responses to the initial evidentiary submissions the parties may, but are not required, file written evidentiary reply submissions. No sur-replies will be permitted unless solicited by the Neutral.
- e. The written submissions should address, at a minimum, the topics outlined in Article XIII G (iii) of the TDP and Article XIV.a of these rules.
- f. Closing arguments, not to exceed 14 pages in length, may be simultaneously filed by the Claimant and Responsible Insurers within 14 days of the last evidentiary submissions.
- g. The time for the Neutral to review the written submissions is limited to 8 hours so counsel is wise to use indexes for written documents and upload organized snippets of videography rather than large, unindexed video files.
- h. Duration
 - i. The time for the Neutral to review all evidentiary submissions shall

- not exceed 8 hours in length, absent a showing of good cause.
 - ii. If a case submitted on the written record is continued and such continuance results in a cancellation fee charged by the Neutral, the party causing the continuance (and not the Settlement Trust) will be responsible for paying the cancellation fee. Neutrals have varying cancellation fees that will be disclosed on request.
- i. The Neutral shall make a Settlement Recommendation based upon the written submissions of the participating parties within 30 days of the closing argument deadline unless counsel agrees to extend the deadline an additional 30 days.
- j. The Claimant's counsel shall upload a "Notice" in the Claimant's portal as follows: "The deadline for the Neutral to make a Settlement Recommendation to the Settlement Trustee is: [•]"

XX. Settlement Recommendation to the Settlement Trustee

- a. Cases proceeding to IRO Hearing
 - i. In cases involving **IRO Hearings** where a stenographer is transcribing the proceedings:
 - 1. In order to have access to the stenographic record prior to writing the Settlement Recommendation, the Neutral will set a date certain, after conferring with the stenographer, no later than 60 days after the closing of the **IRO Hearing** for uploading the Settlement Recommendation to the Claimant's portal. If the transcript will not be completed in time for the Neutral to meet the 60-day deadline, an additional 14 days is permitted, but no additional extensions are appropriate. Counsel for the Claimant shall upload a notice in the Claimant's portal as follows: "The deadline for the Neutral to make a Settlement Recommendation to the Settlement Trustee is: [•]"
 - ii. In cases involving **IRO Hearings** where the official record is the Zoom recording and there is no stenographic transcript:
 - 1. Absent agreement of the Parties who participated in the IRO Hearing, the Neutral shall have 30 days following the conclusion of the IRO Hearing ~~within which to make her Settlement Recommendation to the Settlement Trustee~~ to make a Settlement Recommendation to the Settlement Trustee. With the agreement of all parties who participated in the IRO Hearing, the Neutral may have an additional 30 days within which to make a Settlement Recommendation. Counsel for the Claimant shall upload a notice in the Claimant's portal as follows: "The deadline for the Neutral to make a Settlement Recommendation to the Settlement Trustee is: [•]"
- b. In Cases Proceeding to IRO Hearing and Cases Submitted on the Written Record
 - ~~ii.i.~~ The Settlement Recommendation shall replicate, to the extent possible, the amount a reasonable jury might award for the ~~claim(s)~~ **Direct Abuse Claim**, taking into account the relative shares of fault that may be attributed to any parties potentially responsible for the ~~claim~~ **Direct**

Abuse Claim under applicable law and applying the same standard of proof that would apply under applicable law.

~~iii. With agreement of all parties who participated in the IRO Hearing, the Neutral shall have no more than an additional 30 days within which to make her Settlement Recommendation.~~

ii. The Settlement Recommendation of a Neutral in one case is not precedential, nor relevant to, any other Neutral's exercise of discretion in making a Settlement Recommendation to the Settlement Trustee. Settlement Recommendations made by Neutrals may not be cited in other cases and since the proceedings are confidential, may not be disseminated, even with redaction.

~~iv-iii.~~ Within 7 days of the Settlement Trustee's receipt of the Settlement Recommendation, the Settlement Trustee shall provide written notice to the Responsible Insurers and request, within 21 days, their consent or refusal to consent. Failure to respond timely will be deemed a refusal to consent to the Settlement Recommendation.

~~v-iv.~~ The Settlement Trustee shall review all Settlement Recommendations and either accept or reject such recommendations. The Settlement Trustee maintains an inventory of settlement recommendations that are ripe for consideration and addresses them as promptly as time permits.

Notice of the Settlement Trustee's decision shall be given in writing to all Parties who participated in the IRO Hearing.

~~vi-v.~~ If the Settlement Trustee accepts the Settlement Recommendation:

1. The Accepted Settlement Recommendation shall become the allowed amount of the Claimant's claim against the Debtors, other Protected Parties and Chartered Organization;
2. The Claimant shall assign its claim against any Chartered Organization and all other rights and claims arising out of its claim to the Settlement Trust as a condition to receiving the Accepted Settlement Recommendation.
3. The Settlement Trust shall have the right and power to assert and/or resolve any such claims assigned to it consistent with the Plan.

~~vii-vi.~~ If the Settlement Trustee rejects the Settlement Recommendation:

1. The Claimant may commence a lawsuit in any court of competent jurisdiction against the Settlement Trust to recover on its claims within 45 days.
 - a. If the lawsuit is dismissed or the claim is denied, the Claimant's Allowed Claim Amount will be zero.
 - b. If the matter is litigated, the Allowed Claim Amount shall be equal to the settlement or final judgment amount obtained in the tort system less any payments actually received and retained by the Direct Abuse Claimant.

~~viii-vii.~~ Notwithstanding the above, any amount of an Accepted Settlement Recommendation or Allowed Claim Amount for an Abuse Claim that proceeds under this IRO in excess of a multiple of five times the Maximum

Matrix Value in the applicable tier set forth in the Claims Matrix shall be subordinate and junior in right for distribution from the Settlement Trust to the prior payment by the Settlement Trust in full of all Direct Abuse Claims that are Allowed Abuse Claims as liquidated under the TDP (excluding Claims liquidated under the Article XIII of the TDP (regarding the IRO) or under Article XII of the TDP (regarding Tort Election Claims)).

~~XXII.~~XXI. Ramifications for Failure to Comply

- a. If, after notice and a reasonable opportunity to be heard, the Settlement Trustee determines that an attorney or a Claimant has repeatedly failed to comply with the terms governing the IRO Process as set forth herein, the Settlement Trustee may file a motion with the Bankruptcy Court seeking the imposition of appropriate sanctions, including, without limitation, disallowance of the claim, for such failures. In addition, with respect to an attorney's repeated failures, the Settlement Trustee may report such failures to the applicable licensing authorities.

~~XXIII.~~XXII. Amendment of the Attorney's Guide to IRO

- a. The Settlement Trustee may amend the requirements set forth in the Attorney's Guide to IRO without notice. When an amendment is made, a subsequent version of the Attorney's Guide to IRO will be posted on the Settlement Trust website. Parties participating in the IRO Process shall comply with the latest version of the Attorney's Guide to IRO from its Effective Date through the remainder of the IRO Process.