

# DII Industries, LLC Asbestos PI Trust

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## TRUST UPDATE – September 19, 2019

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**Texas Civil Investigative Demand:** The Trust recently received the attached civil investigative demand from the Office of the Attorney General of Texas (OAG). The OAG has agreed to extend until September 30, 2019 the Trust's deadlines to object and respond to the demand. The Trust will provide further updates when appropriate and in accordance with the Trust Distribution Procedures. If claimant information will be produced to the OAG, the Trust will notify affected claimants before producing such information.

Any questions should be directed to the Trust rather than to the Delaware Claims Processing Facility.



**STATE OF TEXAS  
OFFICE OF THE ATTORNEY GENERAL**

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**CONFIDENTIAL  
CIVIL INVESTIGATIVE DEMAND**

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**To: Greg McHugh, Executive Director  
DII Industries, LLC Asbestos PI Trust  
P.O. Box 821628  
Dallas, TX 75382**

**Via CM/RRR No. 7010 1060 0000 3702 0250**

**Issued: July 26, 2019**

A.

**NATURE OF INVESTIGATION**

1. The Office of the Attorney General of Texas (“OAG”) is investigating possible misrepresentations and/or unlawful acts related to the disbursement of asbestos trust funds for health care claims paid by the State of Texas’s Medicaid program. Such acts and/or misrepresentations may violate one or more provisions of the Texas Medicaid Fraud Prevention Act (“TMFPA”), TEX. HUM. RES. CODE §§ 36.001, *et seq.* This investigation is confidential pursuant to TEX. HUM. RES. CODE §§ 36.054(e).
2. The OAG has reason to believe that DII Industries, LLC Asbestos PI Trust (“*You*” or “*TRUST FUND*,” as defined in Section G, below) has custody or control of information relevant to the subject matter of our investigation. Therefore, the OAG submits the following and requests for production of documents and other information pursuant to TMFPA §§ 36.053-36.054 and requests and requires that *TRUST FUND* produce all of the requested documents by the deadline set out below.

B.

**DEADLINE FOR PRODUCTION**

3. The materials and/or responses required by this Confidential Civil Investigative Demand (“CID”) shall be delivered to the Office of the Texas Attorney General on or before **August 30, 2019**. Responsive materials shall be submitted to Susan Miller, Deputy Chief, Civil Medicaid Fraud Division, Office of the Attorney General of Texas, P.O. Box 12548, MC 056-1, Austin, Texas 78711-2548 (physical address 300 W. 15<sup>th</sup> St., 9<sup>th</sup> Floor, Austin, Texas 78701) on or before the date indicated above, or as otherwise agreed **in writing** by the OAG.

C.

**AUTHORITY**

4. Texas Human Resources Code sections 36.053(b)(1)-(3) and 36.054 require *TRUST FUND*’s compliance with this CID. Be advised that this CID is issued pursuant to the TMFPA in the course of an official investigation to determine whether a person is committing, has committed, or is about to commit an unlawful act or acts as defined by the TMFPA. TEX. HUM. RES. CODE § 36.002 (Unlawful Acts).

D.

**NOTICE**

5. **ANY PERSON WHO REFUSES TO COMPLY, IN WHOLE OR IN PART, WITH A CIVIL INVESTIGATIVE DEMAND ISSUED PURSUANT TO THE TMFPA IS SUBJECT TO PENALTY, POTENTIALLY INCLUDING CONTEMPT OF**

**COURT. See TEX. HUM. RES. CODE § 36.054(j)-(l). ADDITIONALLY, IT IS A VIOLATION OF THE TMFPA TO KNOWINGLY OBSTRUCT AN INVESTIGATION BY THE OAG OF AN ALLEGED UNLAWFUL ACT UNDER TMFPA § 36.002. See TEX. HUM. RES. CODE § 36.002 (11). EXCEPT AS PROVIDED BY COURT ORDER, A PERSON ON WHOM A DEMAND HAS BEEN SERVED UNDER § 36.054 SHALL COMPLY WITH THE TERMS OF THE CIVIL INVESTIGATIVE DEMAND. See TEX. HUM. RES. CODE § 36.054(g).**

6. The sole statutory means to set aside or modify a civil investigative demand, including an extension of the return date, is to file a petition in a district court of Travis County, Texas, on or before the 20<sup>th</sup> day after this civil investigative demand has been served. See TEX. HUM. RES. CODE § 36.054(f).
7. Preservation of records: The OAG is investigating records and data related to, but not limited to, documents in the possession, custody, or control of *TRUST FUND* regarding payments to Medicaid beneficiaries who may have received benefits from Texas Medicaid and any documents relating to Medicaid liens or repayment. *TRUST FUND* is expressly instructed that all such records shall be preserved.

**E.**

**CONFIDENTIALITY**

8. This investigation, this Confidential Civil Investigative Demand, and the documentary materials obtained hereunder are confidential pursuant to TEX. HUM. RES. CODE § 36.054(e).

**F.**

**INSTRUCTIONS**

9. REVIEW EACH OF THE DEFINITIONS AND INSTRUCTIONS CONTAINED IN THIS CIVIL INVESTIGATIVE DEMAND BEFORE PRODUCING THE DOCUMENTS AND INFORMATION REQUESTED.
10. Tense, Number and Gender:
  - a) Words in the present tense include the past and future tenses.
  - b) The singular includes the plural, and the plural includes the singular.
  - c) Words of one gender include the other gender.
11. Specified Time Period: All documents requested herein refer to January 1, 2004 through the present, unless otherwise indicated, and shall include all documents that relate to such period even though prepared or published before that period.

12. All capitalized words that appear in italics within the requests for production and written questions under oath are defined terms. Please refer to the definitions in **SECTION G** below for these terms.
13. No terms of this CID can be amended or modified except upon express signed written agreement by an authorized representative of the OAG or through court order.
14. The documents and other information that *TRUST FUND* produces in response to this CID must be accompanied by a completed Sworn Certificate and Business Records Affidavit, in a form substantially similar to the provided Sworn Certificate and Business Records Affidavit attached to this Civil Investigative Demand. The Business Records Affidavit must be signed by an authorized individual with personal knowledge of the facts and circumstances concerning the production of the requested documents and other information. Except where the production of original documents is specifically required, in lieu of submitting original documents to the OAG for inspection and copying, *TRUST FUND* may provide true and correct copies of the requested documents.
15. Scope of search required: This CID calls for information and documents in *TRUST FUND*'s possession, custody, or control. Furthermore, *TRUST FUND* is required to search all sources reasonably likely to contain responsive information and documents, even if the documents are not in *TRUST FUND*'s direct possession.
16. All documents produced pursuant to this CID shall be organized as they are kept in the ordinary course of business and Bates numbered. **Documents requested herein are requested to be produced electronically where possible. PLEASE SEE THE ATTACHED SPECIFICATIONS FOR ELECTRONIC DOCUMENTS.**
17. If there are no documents that are responsive to a particular request, please specify that *TRUST FUND* has no responsive documents.
18. In producing the *Documents* and things, *TRUST FUND* shall furnish *Documents* in the possession, custody or control of its agents and/or representatives, including its attorneys and corporate affiliates, and shall supplement its responses as necessary.
19. If any requested *Document* or thing cannot be produced in full, it shall be produced to the extent possible, indicating what *Documents* or portion of *Documents* are being withheld and the reasons why such *Documents* are being withheld.
20. If any privilege is claimed to be applicable to any *Document* the production of which is sought by this Request, with respect to that *Document*: State the date(s) the *Document* was created, sent, and received;
  - a. Identify each and every author of the *Document*;

- b. Identify each and every other person who prepared and participated in the production of the *Document*;
  - c. Identify each and every person who received the *Document*;
  - d. Identify each and every person from whom the *Document* was received;
  - e. State a description of the *Document* sufficient to identify it without revealing the information for which the privilege is claimed;
  - f. State the present location of the *Document* and all copies thereof;
  - g. Identify each and every person having custody or control of the *Document* and all copies thereof;
  - h. Provide sufficient further information concerning the *Document* to explain the claim of privilege and to permit the adjudication of the propriety of that claim.
21. Notwithstanding the assertion of any privilege or objection, any *Document* that contains both privileged or objectionable and non-privileged or non-objectionable information that is responsive to this Request must be produced with the privileged or objectionable information redacted from this *Document*.
  22. Copies of the file tab or label of the file in which a *Document* is called for in the Request is found shall be produced along with the documents found in the file.
  23. *Documents* attached to each other should not be separated. *Documents* not otherwise called for by this Request shall be produced if such *Documents* refer, relate to, or explain the *Documents* which are called for by this Request or if such *Documents* are attached to *Documents* called for by this Request and constitute routing slips, transmittal memoranda, letters, comments, evaluations, or similar *Documents*.
  24. If *You* are aware that a *Document* or thing, or group of *Documents* or things, once existed, but has been destroyed, *TRUST FUND* is requested to state when the *Document*, group of *Documents*, thing or group of things, was destroyed, why it was destroyed, and the circumstances under which it was destroyed.
  25. All *Documents* shall be produced in *Appropriate Electronic Format* as defined below.

### **E-Discovery Formatting**

26. **Format for Electronic Documents** – Electronic documents, including but not limited to e.g. emails, spreadsheets, and word processing documents should be produced as directed

in Attachment A – Standard Procedures and Specifications for Production, which is attached hereto.

27. **Format for Paper Documents** – Documents that only exist in paper form should be produced in Concordance format as specified in Attachment A – Standard Procedures and Specifications for Production, which is attached hereto.
28. **Proprietary Software** – For files contained in proprietary software, all data contained therein should be exported into a format agreed upon by the OAG.

## G.

### DEFINITIONS

29. For purposes of this Second Confidential Civil Investigative Demand, the following definitions apply:
  - a. *And* and *Or* both mean and/or.
  - b. *Appropriate Electronic Format* means a format that complies with the Standard Procedures and Specifications for Production contained in Attachment A hereto.
  - c. *Communication* or *Communications* means the transmittal of information by any means (in the form of facts, ideas, inquiries, or otherwise), whether or not such communication was ever recorded or commemorated in writing or electronically stored information (“*ESI*”).
  - d. *Document*, *Documents*, *Documentation*, and *Records* shall be synonymous and shall specifically include, without limitation, the entire document, all versions of the document including drafts, the original, and all non-identical copies (whether different from the original because of notes, underlining, attachments, or otherwise) or any written, typed, printed, electronically stored, magnetic, computerized, digital, analog, or optical information or records, and all information recorded by any other means, including, without limitation, accounts, agendas, agreements, analyses, announcements, archives, audits, audit workpapers, authorizations, backups, booklets, books, brochures, calendars, charts, claims, compilations, contracts, correspondence, databases, directives, e-mails, faxes, film, graphs, invoices, journals, ledgers, letters, manuals, maps, memoranda, minutes (including but not limited to minutes of a meeting of a board of directors or a committee of the board of directors), notes, notices, photographs, policies, reports, schedules, spreadsheets, sound recordings, summaries, tables, telegrams, and video recordings, regardless of whether stored electronically or on paper, tapes, disks, solid state memory, or any other medium. *Document* also specifically includes any electronic or magnetic data or other *ESI* including any material falling within the scope of Rule 34, Fed. R. Civ. P. Responsive *ESI* should be produced in native format, unless otherwise provided by express signed written agreement by an

authorized representative of the OAG. Documents and data existing as electronic or magnetic data shall be produced on disc, either DVD (“digital versatile disc”) or CD (“compact disc”) or on an external hard drive.

- e. *Employee* means current *Or* former appointed, salaried, hourly, commissioned *Or* other compensated agents of *TRUST FUND*, *Including* independent contractors, individuals performing work as temporary *Or* part-time employees.
- f. *Government* or *Governmental* means the government of the State of Texas, the United States, *Or* any state, federal, or county municipality through their respective departments, branches, agencies *And* instrumentalities, *And* their employees, agents, directors, officials, representatives, assignees, servants, attorneys, investigators *Or* consultants.
- g. The terms *Identify* and *Describe* mean the following:
  - i) When referring to a natural person, provide information, *Including* but not limited to, to the extent known, the person’s full name; present *Or* last known address, phone number *And* e-mail; *And* the present *Or* last known place of employment *And*, if applicable, *TRUST FUND* job title(s).
  - ii) When referring to an artificial person *Or* entity such as a corporation *Or* partnership, provide the organization’s full name *And* trade name, if any; the address *And* telephone number of its principal place of business; *And* the names *And* titles of the entity’s officers, directors *And* managing agents *Or* *Employees*.
  - iii) When referring to a document *TRUST FUND* is not producing, provide information, to the extent known, regarding the (i) type of document; (ii) general subject matter of the document; (iii) the name by which the document is known; (iv) a description of the information contained in the document; (v) the date of the document; *And* (vi) the name *And* address of the person *Or* persons having custody over the document.
  - iv) When referring to a *Texas Resident*, *Including* but not limited to, to the extent known, the person’s full name; present *Or* last known address, phone number *And* e-mail; *And* the present *Or* last known place of employment *And* Social Security Number, if known.
- h. *Includes* and *Including* are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.
- i. *You* or *Your* or *TRUST FUND* means DII Industries, LLC Asbestos PI Trust, a trust established in relation to the case styled *In re Mid-Valley, Inc., et al.*, Case No. 03-35592 JKF, pending before the Bankruptcy Court for the Western District of



Pennsylvania, and all agents, accountants, consultants, independent contractors, directors, *Employees*, executives, officers, personnel, and representatives of any of the foregoing, and any person or entity acting on behalf of any of the foregoing under an assumed name or otherwise.

- j. *Medicaid* means a Medicaid program of a state, commonwealth, or territory of the United States. *Texas Medicaid* means the Medicaid program of the State of Texas.
- k. *Relating To, Related, Relate(s) To* or *Related To* mean concerning, describing, identifying, discussing, constituting, embodying, mentioning, referring to, evidencing, or pertaining to, in whole or in part, directly or indirectly, the subject matter identified in the request. Any of the terms listed in this definition are also defined terms meaning the equivalent of the terms *Relating To, Related, Relate(s) To* or *Related To*.
- l. *Texas Medicaid Recipient* shall mean any individual who received goods or services paid for in whole or in part by *Texas Medicaid* during the Specified Time Period, *Or* such individual's attorney, representative *And* any person acting on behalf of any of the foregoing.
- m. *Texas Resident* shall mean any individual with a Texas address listed on any *Document Or Communication, Or* such individual's attorney, representative *And* any person acting on behalf of any of the foregoing.

## H.

### REQUESTS FOR PRODUCTION

- 1. *Documents And Communications* previously produced to the *Government* by *TRUST FUND* in response to any Civil Investigative Demand, subpoena *Or* other official *Government* request dated after January 1, 2016.
- 2. *Communications* between *You* and a *Texas Medicaid Recipient*.
- 3. *Communications* between *You* and *Texas Medicaid*.
- 4. *Documents And Communications Related To TRUST FUND's* organizational charts sufficient to *Identify Employee* names *And* job titles of any person acting on behalf of *TRUST FUND*.
- 5. *Documents And Communications Related To Trust Fund's* distribution procedures for Indirect Asbestos PI Trust Claims as described in Section 5.6 of Trust Fund's Eighth Amended Trust Distribution Procedures, dated October 24, 2017, including but not limited to any draft or proposed procedures.

6. *Documents sufficient to Identify any Texas Resident who received payment, disbursement, or any other form of remuneration from Trust Fund.*

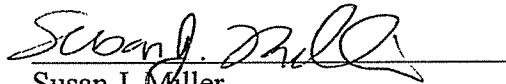
ISSUED this 26<sup>th</sup> day of July, 2019

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

DARREN L. MCCARTY  
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Civil Medicaid Fraud Division  
P.O. Box 12548  
Austin, Texas 78711-2548

**COUNSEL FOR THE STATE OF TEXAS**

**CERTIFICATE OF SERVICE**

I certify that on July 26, 2019 this Civil Investigative Demand was sent by CMRRR No. 7010 1060 0000 3702 0250 to:

**Greg McHugh, Executive Director  
DII Industries, LLC Asbestos PI Trust  
P.O. Box 821628  
Dallas, TX 75382**

  
\_\_\_\_\_  
Susan Miller  
Assistant Attorney General

**SWORN CERTIFICATE**

STATE OF \_\_\_\_\_

§  
§  
§

COUNTY OF \_\_\_\_\_

Before me, the undersigned notary, on this day personally appeared \_\_\_\_\_, a person whose identity is known to me. After I administered an oath to this person, upon this oath the person said:

I am the \_\_\_\_\_ (title) of \_\_\_\_\_, and I am duly authorized to respond and to make this certification on behalf of \_\_\_\_\_. I have knowledge of the facts and circumstances relating to the production of documents in response to the Requests for Production contained in this Civil Investigative Demand. I hereby verify that true and correct copies of all of the requested material within \_\_\_\_\_'s possession, custody, or control have been produced to the Office of the Attorney General.

Signature: \_\_\_\_\_

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

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

Telephone Number: \_\_\_\_\_

SWORN TO and SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public in and for The State of \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**BUSINESS RECORD AFFIDAVIT**

Before me, the undersigned notary, on this day personally appeared \_\_\_\_\_, a person whose identity is known to me. After I administered an oath to this person, upon this oath the person said:

1. "My name is \_\_\_\_\_. I am of sound mind and capable of making this affidavit. I have personal knowledge of the facts stated in this affidavit, and they are true and correct.

2. I am the custodian of records of DII Industries, LLC Asbestos PI Trust [the "TRUST"].

3. In response to a Civil Investigative Demand from the State of Texas, the TRUST produced \_\_\_\_\_ pages of documents from the Company Bates labeled \_\_\_\_\_ through \_\_\_\_\_.

4. These records are kept by the TRUST in the regular course of business, and it was the regular course of business of the TRUST for an employee or representative of the TRUST, with knowledge of the act, event, condition, opinion, or diagnosis that was recorded, to make this record or to transmit the information to be included in this record. The record was made at or near the time or reasonably soon after the act, event, condition, opinion, or diagnosis that was recorded. The records produced to the State of Texas are the original or exact duplicates of the original."

FURTHER AFFIANT SAYETH NAUGHT.

\_\_\_\_\_  
Signature  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SWORN TO and SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public in and for The State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

# ATTACHMENT A

## CIVIL INVESTIGATIVE DEMAND

### Office of the Texas Attorney General Standard Procedures and Specifications for Production

This document describes the procedures and specifications for producing an image-based production to the Office of the Texas Attorney General (OAG) in the form of load files in an industry standard Concordance format. Page 1 lists necessary procedures and areas of potential concern. Page 2 provides the actual **Image & Load File Specifications**. Page 3 Provides Samples of data and image files to be produced.

For any technical questions regarding these specifications, please contact -  
Carrie Killion 512-475-4087

#### Special Areas of Concern

- 1) Database files (such as an Access .MDB) should not be produced in this manner. Database productions should be discussed with the appropriate OAG legal and technical staff to determine the optimal production format.
- 2) Regarding attachments, pay special attention to the PARENTID and ATTCHIDS fields, which are used to keep track of email families, and have often been delivered incorrectly by vendors.
- 3) Note that PowerPoint and Excel files require special handling. Both PowerPoint and Excel files should be produced natively, with links referenced in the DOCLINK field. In addition, you must provide TIFF images of the entire PowerPoint. PowerPoint files should be produced in full slide image format along with speaker notes, with any speaker notes following the appropriate full slide image. For Excel spreadsheets, in addition to native production, provide a placeholder tiff image. Images of spreadsheets often comprise thousands of pages, and are thus not useful for review purposes.
- 4) Extracted text should be provided with all records, except for documents that originated as hard copy. For the hard-copy records, please provide OCR text. For redacted documents, provide full text for the redacted version.
- 5) Before beginning production, produce a sample, including emails, attachments, and non-email files. The OAG will evaluate that sample and confirm the technical details. If the OAG identifies a problem, you will need to resubmit the sample until the OAG confirms there are no problems.

6) When you provide the full production, the OAG must receive a cover letter that provides the total document and page counts, so the OAG can verify the records in the database. The counts should also be reported by custodian. With any submission, documents from an individual custodian should be confined to a single load file.

7) You must label the media provided, whether CD, DVD, or hard drive. At a minimum, the label must include a unique number (Submission #), the name of the company providing the response, and any references necessary to link to the information in the cover letter.

### **Image & Load File Specifications**

- **IMAGES:** Provided Images should be standard, single page TIF images
  - Images should be single-page, Group IV TIFF files.
  - File names cannot contain embedded spaces.
  - Bates numbers should be endorsed on the lower right corner of all images.
  - The number of TIFF files per folder should not exceed 500 files.
  
- **LOAD FILES:** Provide standard Concordance load files, including data file (.DAT) and Image Cross-Reference file (Opticon .OPT or .LOG).
  - The data file (.DAT) contains all of the fielded information that will be loaded into the database.
  - All attachments should sequentially follow the parent document/email.
  - All metadata associated with email and native electronic document collections must be produced.
  - The first line of the .DAT file must be a header row identifying the field names.
  - DAT files should be limited in size to allow editing in a standard text editor such as TextPad or Notepad++ (less than 100 MB per file, preferred).
  - OCR Data should not be embedded in the DAT.
  
- **Text and OCR DATA:** Provide separate TXT files containing extracted or OCR text, one file per imaged document (commonly referred to as document level text). TXT files should have same file name as first image of document (BEGDOC).
- The metadata of Email and attachments, and native file document collections should be extracted and provided in the .DAT file using standard field definitions and formatting.

The specifications listed above are standard in the e-Discovery industry, and Litigation Support providers are familiar with this format and should be able to provide guidance and assistance if needed.

## Sample DAT File

*DAT file should include all metadata fields available from produced documents.*

 FIRSTBATES  LASTBATES  IMAGEID  CUSTODIAN   
 AGTX0000001  AGTX00000005  TXOAG00000001  Citizen, John  

## Sample OPT File

The format is as follows:

*ImageID,VolumeLabel,ImageFilePath,DocumentBreak,FolderBreak,BoxBreak,PageCount*

IMG0000001, ,E:\001\IMG0000001.TIF,Y,,,  
IMG0000002, ,E:\001\IMG0000002.TIF,,,,  
IMG0000003, ,E:\001\IMG0000003.TIF,,,,  
IMG0000004, ,E:\001\IMG0000003.TIF,Y,,,  
IMG0000005, ,E:\001\IMG0000003.TIF,Y,,,  
IMG0000006, ,E:\001\IMG0000003.TIF,,,,