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7 Defendants *Pro Se*

8 UNITED STATES BANKRUPTCY COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 LOS ANGELES DIVISION

|                                  |   |                                       |
|----------------------------------|---|---------------------------------------|
| 11 In re                         | ) | Chapter 11                            |
| 12 J.T. THORPE, INC.,            | ) | Case No. 02-14216-BB                  |
| 13 THORPE INSULATION COMPANY,    | ) | Adversary Case No. 2:12-ap-02182-BB   |
| 14 Debtors                       | ) | Case No. 07-19271-BB                  |
| <hr/>                            |   |                                       |
| 15 J.T. THORPE SETTLEMENT TRUST, | ) | Adversary Case No. 2:12-ap-02183-BB   |
| 16 THORPE INSULATION COMPANY     | ) |                                       |
| 17 ASBESTOS SETTLEMENT TRUST,    | ) | <b>DEFENDANT MICHAEL J.</b>           |
| 18 Plaintiffs,                   | ) | <b>MANDELBROT, d.b.a., MANDELBROT</b> |
| 19 vs.                           | ) | <b>LAW FIRM'S OPPOSITION TO THE</b>   |
| 20 MICHAEL J. MANDELBROT and THE | ) | <b>PLAINTIFFS' MOTION TO ENFORCE</b>  |
| 21 MANDELBROT LAW FIRM,          | ) | <b>JANUARY 23, 2014, SETTLEMENT</b>   |
| 22 Defendants.                   | ) | <b>AGREEMENT, AND CROSS-REQUEST</b>   |
|                                  | ) | <b>FOR AWARD OF ATTORNEYS' FEES</b>   |
|                                  | ) | <b>AND COSTS</b>                      |
|                                  | ) | Date: March 27, 2014                  |
|                                  | ) | Time: 10:30 a.m.                      |
|                                  | ) | Place: Courtroom 1475                 |
|                                  | ) | 255 E. Temple St., 14th Floor         |
|                                  | ) | Los Angeles, CA 90012                 |
|                                  | ) | Judge: Honorable Sheri Bluebond       |

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27 **DECLARATION OF MICHAEL J. MANDELBROT, IN SUPPORT**



1 favor some of the law firms who filed compensation claims with the trusts, and disfavor other  
2 law firms (such as mine), by failure to properly publish site and ship lists for the benefit of Trust  
3 Beneficiaries. During this period of time, the Thorpe Trusts had never accused me of  
4 wrongdoing in any way. Attached hereto as **Exhibit 4** is a true and correct copy of a sampling of  
5 letters and e-mails written by Mandelbrot to the Trust prior to September 2011.  
6

7 4. Through pretrial discovery in the instant lawsuit with the Thorpe Trusts, I  
8 discovered the Thorpe Trusts hired lawyers (former co-workers of Snyder's) in September 2011  
9 as an effort to "wipe out" my office. It is my belief that this lawsuit was prompted not by my  
10 offices claim filing practices (which I believe are professional and first rate), but by completely  
11 unrelated events including:  
12

13 a. The numerous material notifications by the Mandelbrot Firm just prior to  
14 September 2011 regarding breaches at the Thorpe Trusts including bad faith,  
15 misappropriation of funds, failure to publish hundreds of known Thorpe sites for the  
16 benefit of beneficiaries in addition to retroactive Thorpe Trust modifications. See **Exhibit**  
17 **4.**  
18

19 b. Thorpe Trusts' Executive Trustee Stephen Snyder's bad faith,  
20 capriciousness, and clear desire to harass the Mandelbrot Firm and put it out of business  
21 as detailed herein.  
22

23 c. To "deflect attention" from Snyder's criminal cover up of a known  
24 Bankruptcy Trust fraud totaling 1.7 million dollars (the "Kananian matter") by Thorpe  
25 Trust's Advisory Committee Chairman Alan Brayton. Snyder, a former partner at  
26 asbestos defense firm Brobeck, Phegler and Harrison (before their bankruptcy) gave  
27  
28

1 Brayton the “license to commit fraud” in Trust claim filings and defaults. (See  
2 **Mandelbrot Decl.** ¶ 26-41 herein, inclusive and associated **Exhibits** detailed below).

3 d. Trust Counsel Morgan, Lewis & Bockius’ LLP (hereinafter  
4 “Morgan Lewis”) Partners and Stephen Snyder’s conflicts of interest and corrupt desire  
5 to continue to generate fees in the ongoing business of Western MacArthur and  
6 MacArthur Company and ongoing MacArthur (“Western”) insurance coverage litigation  
7 transferred to the firm upon the bankruptcy of Brobeck. Snyder, in a clear apparent  
8 conflict of interest and act of corruption simultaneously served as the head of Brobeck’s  
9 liquidating committee and as Executive Trustee of the Western Asbestos Trust. Snyder  
10 (in his role as Executive Trustee of Western) awarded Snyder (in his role as head of the  
11 Brobeck liquidating committee) 15 million dollars in fees. Attached hereto as **Exhibit 5**  
12 is a true and correct copy of an article detailing this payment. At the same time, Snyder  
13 awarded his old buddies at Morgan Lewis millions in fees too and the ongoing Western  
14 MacArthur work. This payment “just South of 50 million dollars” was never approved by  
15 the Bankruptcy Court and never identified in any Western Annual Reports despite its  
16 material impact on the assets of Trust Beneficiaries. Attached hereto as **Exhibit 6** is a  
17 true and correct copy of the 2006 Western Asbestos Trust Annual Report. Not  
18 surprisingly, the Trust, in this Annual Report adopted an “indemnification fund” in a  
19 similar amount.  
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24 5. To bolster their potential case against the Mandelbrot Law Firm, the  
25 Trust’s also opted to take a deposition of a former employee of both the Trusts and my office ,  
26 John Lynch. Without question, the Thorpe Trusts KNEW that Lynch was a complete and  
27 pathological liar and clearly one of the most unreliable witness and individual in history.  
28

1 Attached hereto as **Exhibit 7** are true and correct copy of true and correct copies of affidavits  
2 and filings extensively detailing Lynch fraud known Trust counsel.

3  
4 6. I informed Trust Attorney Michael Molland of his ethical violation for taking the  
5 deposition of a known perjurer (subornation of perjury). Extensive documentation has been  
6 provided to the Thorpe Trusts proving Lynch committed perjury, but the Thorpe Trusts have  
7 never acknowledged the same. See **Exhibit 7.**

8  
9 7. Also in an effort to unethically harass my office, the Trust utilized an  
10 attorney with a disturbing and unethical conflict of interest, Chuck LaGrave. In this case,  
11 LaGrave committed perjury (in addition to other fraud and misconduct). LeGrave signed a  
12 declaration under oath in this case wherein he stated he acts as "in-house counsel" (to protect his  
13 bad faith communications with the Trust, Trustees, and its staff). Attached hereto as **Exhibit 8** is  
14 a true and correct copy of LaGrave's declaration filed in this case. This was a lie and perjury. As  
15 indicated in the Fourth Annual Western Annual Report (submitted April 25, 2008 to the U.S.  
16 Trustee) LaGrave was the Trust's "outside claims consultant." Attached hereto as **Exhibit 9** is a  
17 true and correct copy of Western Asbestos 2006 Annual Report. I believe this perjury and fraud  
18 was committed not only to further the case against my office, but also so that Snyder, in  
19 conjunction with Morgan Lewis, could continue to perpetrate fraud.  
20  
21

22 8. In early 2012, the Thorpe Trusts, along with the Western Asbestos  
23 Settlement Trust filed virtually identical lawsuits against me seeking Declaratory and Equitable  
24 Relief. At this time, I was unaware that the Thorpe Trusts had in its possession an Affidavit  
25 from Certified Industrial Hygenist Ken Cohen which would have provided a complete defense to  
26 some of the most serious allegations ("unusual trades" and "shipyard exposures") against my  
27 office. This affidavit clearly applicable to Mandelbrot Firm claims was filed with hundreds of  
28

1 claims with the Thorpe and Western Trust and clearly was well known by the Thorpe Trusts and  
2 its processing staff. Attached hereto as **Exhibit 10** is a true and correct copy of the Kenneth  
3 Cohen Declaration. I know the Trust had this document in its possession because I observed  
4 individuals at the Brayton office utilizing this document for Trust filings and I personally  
5 discussed this document with the head of Thorpe Trust Processing Laura Paul.  
6

7 . The Trust maliciously concealed this evidence in an attempt to deceive opposing  
8 counsel.

9  
10 9. Once the instant litigation began, I learned that most opposing Counsel were  
11 former co-worker of Snyder's at the Law Firm of Brobeck, Phegler and Harrison, LLP – a firm  
12 that is now bankrupt. I knew many of the opposing counsel in this case from my 20 years  
13 experience in asbestos litigation including Snyder, Chuck LaGrave and Gary Fergus while at  
14 Brobeck. . Additional opposing counsel Benjamin Smith and Michael Molland, who also worked  
15 with Snyder at Brobeck prior to its bankruptcy were also put on the 'payroll' in my litigation.  
16 These former co-workers of Snyder at Brobeck have now billed the Thorpe Trusts millions of  
17 dollars litigating this case. I have always been willing to provide full and complete  
18 documentation supporting every claim filed with the Trusts to resolve this litigation as I know I  
19 have never filed an unreliable or fraudulent claim with the Thorpe Trusts.  
20  
21

22 10. Litigation with the Thorpe Trusts was incredibly time consuming and expensive  
23 with my small office spending well over a million dollars in fees and costs defending my office  
24 and reputation. On this Motion alone, I have spent well over \$10,000 dollars investigating,  
25 researching and writing.

26  
27 11. The Western Asbestos case filed concurrently with the Thorpe Trusts case  
28 was dismissed without prejudice on October 29, 2013. There was clearly no finding of any

1 wrongdoing whatsoever by my office. Attached hereto as Exhibit 11 is a true and correct copy  
2 of Judge Carlson's Order dismissing the Western Case against my office. The Thorpe Trust  
3 implies in its brief that some misconduct occurred by my office with Western filings, but this is  
4 clearly a fiction created by the Thorpe Trusts.  
5

6 12. Trial against the Thorpe Trusts began on January 21, 2014. On that morning, just  
7 prior leaving for Court, my former counsel Dennis Davis informed me for the first time that there  
8 was a tentative ruling against the Mandelbrot firm. Although concerned, I remained confident in  
9 this case. I told Mr. Davis, "I sure hope you prepared a good Opening Statement." Mr. Davis  
10 replied "I don't prepare anything for Opening Statements." As we arrived to Court that morning,  
11 I suggested to Mr. Davis that we determine if the Thorpe Trusts wanted to discuss settlement.  
12

13 13. At the Courthouse on the morning of January 21, 2014, I met with Defendant  
14 attorneys Benjamin Smith, Gary Fergus and Michael Molland to determine if there was a  
15 settlement offer. Attorney for the Futures Representative Gary Fergus did most of the speaking  
16 and indicated the offer was that Mandelbrot would file "no more claims with Western, Plant, J.T.  
17 Thorpe and Thorpe Insulation...". I immediately stated that the "Western and Plant Trusts aren't  
18 even part of this litigation" and that my office has had already been "dismissed by Judge Carlson  
19 in the Western case." I immediately rejected, and even scoffed at this settlement offer and  
20 elected to start trial. Contrary to Plaintiffs assertion, no other negotiations or settlement  
21 discussions took place on this day.  
22

23 14. From Opening Statement by Plaintiff attorney Benjamin Smith on January 21,  
24 2014 through trial on January 22, 2014, nearly every Plaintiff witness committed perjury.  
25 Specifically instances of perjury at trial on major issues included but are not limited to:  
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1 a. Perjury #1: Benjamin Smith and Plaintiff witness Laura Paul (amongst  
2 other perjured testimony) committed perjury on core issues in this case by indicating that “Long  
3 Beach Naval Shipyard is a site on the J.T. Thorpe, Inc. Site List.” Attached hereto as **Exhibits 12**  
4 is a true and correct copy of Smith’s testimony and pages from the Thorpe site lists. This perjury  
5 was critical on a core issue which prompted this litigation – the so called “disembarkment  
6 claims.” Long Beach Naval Shipyard has never been a site on the J.T. Thorpe, Inc. Attached  
7 hereto as **Exhibit 13** is a true and correct copy of pages from the Thorpe site lists.

8  
9 b. Perjury #2: Laura Paul committed perjury on a core claim in this case.  
10 Paul indicated in Trial that only J.T. Thorpe, Inc. site for C.F. Braun is “C.F. Braun, Alhambra”.  
11 Paul stated, “You couldn’t have been at C.F. Braun somewhere else in the country. You had to  
12 be in proximity where J.T. Thorpe performed work, and that was where they were with C.F.  
13 Braun Alhambra.” This was clearly perjury. The J.Thorpe, Inc. records (posted on the website  
14 and in the Trust’s possession since at least 2006) prove J.T. Thorpe worked at close to 100 C.F.  
15 Braun sites, including at least 10 out-of-state job sites. This was perjury by Paul in an effort to  
16 show I filed an unreliable claim for an out-of-state claimant. It should be noted that these facts  
17 (C.F. Braun working at many sites) was detailed in my initial letter to the Trust on. See **Exhibit**  
18 **2**. Also attached hereto as **Exhibit 14** is a true and correct copy of Paul’s perjured testimony.  
19 Also attached hereto as **Exhibit 15** is a true and correct copy of the J.T. Thorpe published job  
20 book relating to the many, many jobs performed by J.T. Thorpe at C. F. Braun sites both in and  
21 out of state.

22  
23 c. Perjury #3: Steven Sacks, Attorney for the Trust Advisory Committee  
24 lied to this Court in trial when he denied the Court (in Ohio related to the fraudulent Brayton  
25 activities) “essentially disbarred the Brayton firm from practicing law before that court because  
26  
27  
28



1 of what it felt were indiscretions and improprieties in Brayton's handling of the (Kananian)  
2 claim." Sacks lied. Judge Hanna in a signed order noted Brayton Purcell "institutionally" had  
3 "failed to abide" by the Court rules, "not conducted themselves with dignity" in Court, "not  
4 honestly discharged the duties of an attorney" and therefore, "forfeited their privileges to practice  
5 before this Court." This lie by Sacks was clearly to 'protect' Alan Brayton and his firm and to  
6 assist in the cover up of Brayton's fraudulent activities. Attached hereto as **Exhibits 16 and**  
7 **16(a)** are true and correct copy of Judge Hanna's signed Order, Sack's perjury, and Judge  
8 Hanna's transcript dated January 3, 2007 detailing Brayton's fraud.  
9

10  
11 15. On the morning of January 23, 2014 before trial, I was working in the Business  
12 Center of a local hotel when my former attorney Dennis Davis entered. I was looking forward to  
13 and excited to testify that day. Immediately upon entering, Davis stated, "As your attorney, I  
14 have to tell you that this is the worst judge that I've had in 30 years of practice and if you testify  
15 today, I think she will try and throw you in jail!" He then stated, "Judges will refer cases to the  
16 U.S. Attorney for criminal prosecution and if you testify, you could go to federal prison." I didn't  
17 say another word to my attorney exiting the hotel or on the drive to Court that morning.  
18

19 16. Given the extensive undue influence, duress and fraud (perjury) by Plaintiffs on  
20 the first 2 days of trial and the incredible undue influence/duress placed upon me by my own  
21 attorney that I could go to prison (which was clearly mistaken), I called my wife upon arriving at  
22 Court. I told my wife what my attorney said and my wife said, "we (the family) know you did  
23 nothing wrong, we love you, just get out of there and come home."  
24

25 17. At this point on January 23, 2014, I communicated with my former attorney that I  
26 would consider settling the case so long as I could still "refer" Thorpe and Western Trust claims  
27  
28

1 to other attorneys. The ongoing ability to refer cases was critical for the survival of my office and  
2 clearly a condition precedent to resolving any dispute.

3 18. At this point on the morning of January 23, 2014 and before trial began that day,  
4 the duress, fraud and undue influence placed upon me by both my former attorney and the  
5 plaintiffs mistakenly caused me to ask the plaintiffs “if the deal communicated Tuesday was still  
6 open?” I again met with Mr. Molland, Mr. Smith and Mr. Fergus. My former attorney was  
7 present. In a conversation which lasted approximately 4 minutes, Mr. Fergus reiterated the offer  
8 of January 21, 2014 and clearly seeing that I was under duress/undue influence added numerous  
9 material and unconscionable terms to the offer to settle. These additional terms included but  
10 were not limited to:  
11

- 13 a. That I could not “co-counsel” (refer) Western Asbestos, Thorpe Trust or Plant  
14 Trust claims;
- 16 b. That any outstanding offers from all the Thorpe Trusts and the Western Trusts  
17 would be cancelled if the Release was not mailed by January 23, 2014; and
- 18 c. Language that was incorrect, false and never presented to me in the very brief  
19 negotiations related to admissions, transferring of claims and other details.

21 19. I was admittedly in a ‘fog’ during this “settlement” meeting due to the lack of  
22 sleep (over the past 2 years and none the prior evening) and the duress, undue influence clearly  
23 mistaken beliefs. No negotiations took place. Mr. Fergus just unethically “told us” what the deal  
24 “would be” and I just nodded. Had I not been under the duress and undue influence placed upon  
25 me by Plaintiffs and my former attorney, and the clearly mistaken belief that I could go to jail  
26 (and there would be no attorney discipline), I would have never even discussed settling the  
27 litigation on the unconscionable unethical terms proposed. Numerous additional material terms  
28

1 were added to the agreement which were never negotiated. I was shown no documents, never  
2 engaged in negotiations (except on very minor terms), and never discussed many the material  
3 terms of the settlement in detail with Plaintiffs.  
4

5 20. The Plaintiffs immediately communicated with Your Honor that a settlement had  
6 been negotiated. I said nothing. Mr. Fergus began furiously working on his laptop to prepare the  
7 Thorpe Trusts settlement demand to read into the record. At one point, this Court indicated that  
8 “if we can’t get this done in 10 minutes, everyone needs to come back at 2 O’Clock.” Mr. Fergus  
9 indicated he would complete the terms of the proposed settlement on his laptop.  
10

11 21. Approximately 5 minutes later, Mr. Fergus came over with his laptop and  
12 showed my former attorney the language on the proposed terms on his laptop. There were no  
13 written documents for me to refer to and I never personally read any of the material terms from  
14 Mr. Fergus’ laptop. To my surprise, the terms of the proposed settlement were much more  
15 extensive than previously discussed and included a reference to an extensive document (the  
16 “May letter”) which I hadn’t seen in over 8 months, if ever. I said nothing.  
17

18 22. The proposed settlement agreement was clearly void and unconscionable for the  
19 following reasons:

20 a. It involved two Trusts, Western and the Plant Asbestos Trust which were not part  
21 of the litigation and which this Court had no jurisdiction over;

22 b. It contained numerous “material terms” which were false and the product of  
23 fraud, undue influence, duress and bad faith  
24

25 c. It was incredible complex and detailed and a copy was never provided to  
26 Mandelbrot prior to going on the Record;  
27  
28

1 d. It may have required Mandelbrot self report to the State Bar although Mandelbrot  
2 has never filed an unreliable or fraudulent claim;

3 e. It entirely restrained me from engaging in my occupation as plaintiff's asbestos  
4 attorney and should have been void. If this Court were to enforce the proposed settlement  
5 agreement, I would no longer be able to engage in my lawful profession as an asbestos attorney.  
6 I could no longer (without committing malpractice) retain new clients, no longer fulfill my duties  
7 to my current clients and would be put "out of business." Applicable Business and Professions  
8 Code Section 16600 states "every contract (settlement) by which anyone is restrained from  
9 engaging in a lawful profession, trade, or business of any kind is void. Attached hereto as  
10 **Exhibit 17** is a true and correct copy of Business and Professions Code Section 16600.

11 f. The settlement agreement of January 23, 2014 would have required me to violate  
12 my ethical duties as an Attorney to report fraud (of Brayton, Snyder and the Trusts).

13 g. It violated my due process

14 h. Various additional reasons not stated herein

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17  
18 23. On the Record on January 23, 2014, Your Honor then asked Mr. Fergus to read  
19 the terms of the proposed settlement into the Record. At the time, I didn't agree to any of the  
20 material terms read into the record by Mr. Fergus nor did I understand the complete terms of the  
21 settlement or implications thereof. In addition, I knew that any potential (unconscionable)  
22 settlement was a product of fraud, duress, undue influence and the mistaken belief that if I didn't  
23 settle, I would lose my personal freedom. Consequently, despite shaking my head "no"  
24 throughout Mr. Fergus' reading of his terms, I paused and answered "hesitantly, yes" when Your  
25 Honor asked if I agreed to the settlement. I should have said "no". There were no parts of the  
26 material terms of the proposed settlement agreement to which I agreed, and I knew the  
27  
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1 unconscionable settlement agreement was a product of perjury, the subornation of perjury, bad  
2 faith and malicious conduct by the Trusts, Snyder, Paul and Trust staff as I have never filed an  
3 unreliable claim with the Thorpe Trusts.

4  
5 24. On January 25, 2014, I advised my former counsel that “I wanted out of the  
6 deal.” I do not know if he ever communicated this with Plaintiffs. I substituted my former  
7 attorney Mr. Davis out of this case for, among other things, incompetence on January 31, 2014.

8  
9 25. On January 31, 2014 I immediately communicated to Plaintiffs by e-mail that the  
10 “deal was off” and that it was “null and void”. I suggested a conference call on the morning of  
11 February 3, 2014 to discuss. See **Exhibit 9** to the Declaration of Benjamin Smith. In addition, I  
12 wanted to alert the Plaintiffs to a portion of the newly discovered documents. The Plaintiffs  
13 responded on February 3, 2014 and suggested a conference call the following day and I obliged.

14  
15 26. From January 26, 2014 until the present time, I have discovered and continue to  
16 discover extensive information and documentation which not only provides a complete defense  
17 for my office on critical issues before this Court, but also details concealment fraud and  
18 corruption by Trust Advisory Committee Member Alan Brayton, Stephen Snyder and extensive  
19 perjury by Plaintiffs to cover up and conceal said fraud.

20  
21 27. Alan Brayton is the Thorpe and Western Trust’s highest level fiduciary as  
22 defined by the Trust’s By-Laws relating to Trust Advisory Committee Members. A fiduciary  
23 duty is “highest standard of care” at either equity or law. A fiduciary is expected to be extremely  
24 loyal to the person to whom he owes the duty and must not put his personal interests before the  
25 duty and must not profit from his position as a fiduciary. In addition, a fiduciary should not have  
26 a conflict of interest Attached hereto as **Exhibit 18** is a true and correct copy of the definition of  
27 “Fiduciary.”  
28

1           28.     As detailed below, Brayton clearly breached these fiduciaries duties to the Thorpe  
2 and Western Trusts by committing extensive fraud on bankruptcy claims, covering up and  
3 concealing the same, and not disclosing his clear fraud to the Thorpe Trusts. In addition, Brayton  
4 clearly has a conflict of interest in his role at Trust Advisory Committee member who takes part  
5 in establishing rules and policy decisions for the Trusts and as plaintiffs trust counsel who  
6 regularly submits claims the Trusts.  
7

8           29.     Since January 26, 2014, depositions, documents and e-mails which I have now  
9 discovered display extensive fraud by the Trusts, Trust lawyers, Trust staff and specifically  
10 Stephen Snyder and Alan Brayton.  
11

12           30.     One example of these critical documents the Trusts attempted to conceal is the  
13 Exhibits to the Sara Beth Brown Deposition dated March 22, 2010. These documents detail  
14 extensive fraud by Brayton. Thorpe specifically attempted to prevent me from obtaining the  
15 Exhibits from this deposition. During discovery in this case, I personally phoned Bonanza Court  
16 Reporting in an effort to get these Exhibits. I was told by Bonanza Reporting that “all parties had  
17 to approve the release of these Exhibits” and the Plaintiffs would not approve it. I obtained a  
18 copy of these Exhibits on January 26, 2014.  
19

20           31.     This deposition of Sara Beth Brown taken March 22, 2010 and especially the  
21 Exhibits (since they detailed extensive Brayton Fraud), were clearly part of a legal matter  
22 (*Kananian v. Brayton* malpractice case) and Sara Beth Brown received a subpoena to testify on  
23 that date. The criminal cover up of these documents by the Trust included but was not limited to:  
24

25           a.           Failure to Identify the Legal Matter, Subpoena and the Deposition (and its  
26 contents) received by Sara Beth Brown in the Trust Annual Reports filed with the United States  
27 Trustee. In all Annual Reports both before and after Brown received the subpoena, the Trusts  
28

1 have identified “Legal Matters” and “Subpoenas Received.” Attached hereto as **Exhibit 19** is a  
2 true and correct copy of Annual Reports which fail to detail the fraud. Amazingly, the same Sara  
3 Beth Brown certifies that all Trust Annual Reports are “true and correct.”  
4

5 b. Failure to identify the Kananian matter or the resulting lawsuits in any  
6 Annual Reports and to Trust Beneficiaries. The Trusts, Snyder, Morgan Lewis and Brayton have  
7 gone at great lengths to cover up the Kananian matters and have never publicly disclosed the  
8 Brayton fraud to the various supervising bankruptcy courts and, of course, never disclosed the  
9 fraud to Trust Beneficiaries. See **Exhibit 19**.  
10

11 32. Additionally, the Exhibits to the Sara Beth Brown deposition discovered on  
12 January 27, 2014 also provided documentary evidence critical to the defense of this action  
13 relating to the reliability of my firm’s claims. The key document included in these Exhibits was:

14 a. Declaration of Certified Industrial Hygienist Kenneth Cohen (provided to  
15 the Trusts in hundreds of claims by other firms). This Declaration would have provided a  
16 complete defense to the substantial allegation that Defendant had filed claims for trades with  
17 “unusual occupations” who were not exposed to asbestos “on ships or in shipyard”. In this  
18 general Declaration about asbestos exposures both on and off of ships, Cohen concludes the  
19 “exponential decay of asbestos contamination, asbestos fibers and dust from all sources...once  
20 released, are re-entrained and circulated through the site (building, ship or otherwise) via the re-  
21 circulation ventilation system and by a number of activities including cleaning, walking, minor  
22 repairs and vibration-generating movements resulting in exposure to asbestos.” Cohen adds, “any  
23 one in the vicinity at the time or subsequent to the release of fibers would more likely than not  
24 have been exposed to hazardous levels of asbestos.” See **Exhibit 10**.  
25  
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1           33.     Additional and extensive fraud by Trust Advisory Committee Chairman Alan  
2 Brayton is also displayed in the Exhibits to the Sara Beth Brown deposition of March 22, 2010.

3 These documents include but are not limited to:

4  
5           a.           An internal Brayton Purcell Memorandum wherein the firm evaluated the  
6 (fraudulent) Western Asbestos claim filed for Harry Kananian and determined there was “not  
7 enough exposure” to qualify for the Western Asbestos Trust. (Exhibit). Despite this memo  
8 ‘rejecting’ the claim, the Brayton firm took a default in the claim. The Western Asbestos Trust  
9 has paid Trust Advisory Committee Member Alan Brayton over \$700,000 on this fraudulent  
10 Kananian claim. The monies were never repaid to the Trust. Attached hereto as **Exhibit 20** is a  
11 true and correct copy of the Brayton internal memo rejecting this fraudulently paid claim.

12  
13           b.           The actual fraudulent default claim for the Kananian family “proven up”  
14 by the Brayton firm. In the claim, the Brayton firm committed perjury and fraud by claiming  
15 exposure to Western Asbestos while “stationed on board the GENERAL JOHN POPE at Hunters  
16 Point Naval Shipyard.” The GENERAL JOHN POPE is not a Western Asbestos ship and  
17 Kananian was not at Hunters Point Naval Shipyard. Additionally included in this claim file are  
18 various addition ‘boilerplate’ affidavits used to prove damages and exposure. Attached hereto as  
19 **Exhibit 21** is a true and correct copy of Kananian claim with Western Asbestos.

20  
21  
22           c.           Internal Brayton Purcell e-mails which we discovered had previously been  
23 produced in malpractice/State Bar litigation in Ohio but not disclosed by the Trusts. These e-  
24 mails by Alan Brayton and his staff detail and acknowledge that his firm was “making up  
25 information” on bankruptcy claims, extensively utilizing “boilerplate” documents and filing  
26 Trust claims with “outright fabrications.” Attached hereto as **Exhibit 22** is a true and correct  
27  
28



1 copy of copies of internal Brayton e-mails detailing “fabricated claims” and efforts to conceal the  
2 same.

3 34. I am also now in possession of Judge Harry A Hanna’s Order  
4 disqualifying Brayton in the Kananian matter and detailing Brayton’s extensive fraud in  
5 bankruptcy claims. **See Exhibit 16.**

6  
7 35. In the instant Motion, the Thorpe Trusts represent that the Law firm of Kecker and  
8 Van Nest has investigated the Kananian claim and cleared the Trusts of any wrongdoing. This is  
9 clearly *another* attempt by the Trust to mislead this Court, the Western Court and the Trust  
10 Beneficiaries. Kecker & Van Nest has never filed an asbestos bankruptcy claim, never been  
11 involved in asbestos litigation, and could not have fully investigated the claim. The documents  
12 actually filed with the Kananian claim and all evidence and investigation clearly reveal that the  
13 claim and the Brayton firm committed fraud and attempted to conceal the same.  
14

15  
16 36. In addition to the above newly discovered documents, I am also in possession on  
17 extensive additional documentation detailing fraudulent activities in the filing of Bankruptcy  
18 Claims at Brayton Purcell. Combined with my experience as employee of Brayton Purcell from  
19 1994 to 1999 where I witnessed bankruptcy fraud and raised it with the Managing Partner  
20 Francine Curtis, I have no doubt that Brayton Purcell has filed hundreds, if not thousands, of  
21 fraudulent bankruptcy claims with the Thorpe and Western Trusts totaling tens of millions of  
22 dollars.  
23

24 37. The Western MacArthur fraud by Brayton is also detailed in a recent  
25 Complaint filed by attorney Chris Andreas. Attached hereto as **Exhibit 23** is a true and correct  
26 copy of the Andreas Complaint against Brayton – see specifically ¶ 52-119, inclusive.  
27  
28

1           38.     On January 31, 2014, I personally informed the Trusts by e-mail that any potential  
2 settlement deal was “void.” Not only was this due to a lack of a contract (fraud, duress,  
3 unconscionable), but also because the purported agreement was clear violation of public policy,  
4 various State laws and would have essentially terminated by right to work as an asbestos  
5 plaintiffs attorney. I also had doubts about this Court’s jurisdiction to enforce the settlement  
6 agreement.  
7

8           39.     On February 4, 2014 on the telephone, I spoke with Trust Counsel Michael  
9 Molland, Benjamin Smith and Gary Fergus. Immediately, I told them there was “no deal” and  
10 that we would be seeking to get “back in trial.” In addition, I informed them of a small portion of  
11 the additional documentation and information I had received in the past week and detailed a  
12 portion of the fraud I uncovered. In addition, I informed the Trusts that I hadn’t yet researched  
13 my ethical duty to report this major fraud.  
14

15           40.     During that call February 4, 2014, Trust counsel Mr. Molland asked me if I had a  
16 “demand” to resolve the litigation. This seemed to me to be an acknowledgement by Trust  
17 Counsel that there was a) no current settlement agreement; b) the prior “settlement agreement”  
18 from January 23, 2014 was null and void; and that c) the Trusts were willing to negotiate to  
19 resolve this litigation. At that time, I made reasonable demand (offer) to settle this litigation.  
20 Plaintiff’s counsel informed me that they would “certainly take the offer to their clients” and that  
21 they would be in touch with me. My offer/demand to settle this litigation remained open. In  
22 addition, in that telephone call I touched very briefly on the extensive perjury by Trust counsel  
23 and staff.  
24

25           41.     On February 7, 2014, I received a letter from Trust Counsel Benjamin Smith  
26 indicating that the Thorpe Trusts had disagreed with my contention, were rejecting my  
27  
28

1 settlement offer and intended to provide my office with definitive agreement despite my protests.

2 See **Exhibit 13** to Smith Declaration.

3 42. On February 12, 2014, I filed Objections to the Trust' Proposed Findings of Fact  
4 and Conclusions of Law. See **Exhibit 14** to the Smith Declaration.

5 43. On February 18, 2014, this Court held a hearing. During that hearing this Court  
6 noted set the Motion to Enforce to Settlement Agreement for March 27, 2014. At this hearing,  
7 Michael Molland, Trust counsel, represented to this Court that the Trusts sought to enforce the  
8 purposed unethical settlement.

9 44. On February 21, 2014, I sent an e-mail to the Western Trust requesting that the  
10 Trust continue to process and pay Mandelbrot Claims for the benefit of the Beneficiaries of the  
11 Trust. See **Exhibit 16** to Smith Declaration.


12 45. Benjamin Smith responded by letter February 24, 2014. See **Exhibit 17** to Smith  
13 Declaration. As is customary from Mr. Smith, his responsive letter of February 24, 2014  
14 misrepresented facts and evidence, attempted to 'bully' my office and thus, required a response  
15 from me.

16 46. On February 25, 2014, I responded to Mr. Smith by e-mail. In that e-mail, I not  
17 only informed Mr. Smith of his misstatement and misrepresentations in his February 24, 2014  
18 letter, but also alerted him to perjury he personally committed on a critical issue in this case. On  
19 Opening Statement in this case, Mr. Smith indicated that "Long Beach Naval Shipyard is a site  
20 on the J.T. Thorpe, Inc. Site List." This was perjury on a critical issue in this case as Long Beach  
21 Naval Shipyard is not and has never been a site on the J.T. Thorpe, Inc. site list. The  
22 distinguishable site on the J.T. Thorpe site list in the "Long Beach Naval Shipyard Boiler Plant."  
23 This is separate and distinct site from the Long Beach Naval Shipyard and was clearly perjury on  
24  
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1 a critical issue in the case. See **Exhibit 12**. I also informed Smith of his personal subornation of  
2 perjury relating to his eliciting of false testimony Laura Paul. Smith clearly told Laura Paul to  
3 testify falsely relating to this site. I have no doubt that Laura Paul knows that Long Beach Naval  
4 Shipyard is not a site on the J.T. Thorpe, Inc. site list as she and I have had numerous  
5 conversations about this specific site.  
6

7  
8 47. I hereby urge this Court to reject the Proposed Settlement Agreement, dismiss the  
9 actions against my office and/or to reset this case for Trial.  
10

11 I declare that the foregoing is true and correct under penalty of perjury under the laws of  
12 the State of California. Executed this 12<sup>th</sup> day of March, 2014.  
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17 Michael J. Mandelbrot  
18 Signed in Novato, California.  
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