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10 Attorneys for MSP RECOVERY CLAIMS,  
SERIES LLC, a Delaware Series Limited  
11 Liability Company; MSPA CLAIMS 1, LLC, a  
Florida Limited Liability Company; MAO-MSO  
12 Recovery II LLC, a Delaware Series Limited  
Liability Company; and MSP RECOVERY  
13 CLAIMS SERIES 44, LLC, a Delaware Series  
Limited Liability Company

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**UNITED STATES BANKRUPTCY COURT**

16

**CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

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In re

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**THORPE INSULATION COMPANY,**

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Debtor.

20

In re

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**PACIFIC INSULATION COMPANY,**

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Debtor.

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MSP RECOVERY CLAIMS, SERIES LLC, a  
24 Delaware Series Limited Liability Company;  
MSPA CLAIMS 1, LLC, a Florida Limited  
25 Liability Company; MAO-MSO RECOVERY  
II LLC, SERIES PMPI, a Segregated Series of  
26 MAO-MSO Recovery II LLC, a Delaware  
Series Limited Liability Company; and MSP  
27 RECOVERY CLAIMS SERIES 44, LLC, a  
Delaware Series Limited Liability Company,

28

Case No. 2:07-bk-20016-BB  
(Jointly Administered with Case No. 2:07-bk-  
19271-BB (Case Closed))

Chapter 11

Adv. No.

**PLAINTIFFS' COMPLAINT FOR  
DECLARATORY RELIEF AND  
DAMAGES**

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Plaintiffs,  
  
vs.  
  
THORPE INSULATION COMPANY  
ASBESTOS SETTLEMENT TRUST, a  
Nevada Trust; JOHN F. LUIKART, Co-Trustee  
of the Western Asbestos Settlement Trust;  
SANDRA R. HERNANDEZ, M.D., Co-  
Trustee of the Western Asbestos Settlement  
Trust.  
  
Defendants.

1 Plaintiffs MSP Recovery Claims, Series LLC ("MSPRC"), MSPA Claims 1, LLC  
2 ("MSPA"), MAO-MSO Recovery II LLC, Series PMPI ("MAO-MSO"), and MSP Recovery Claims  
3 Series 44, LLC ("Series 44") (collectively the "Plaintiffs") bring this action for declaratory relief  
4 and damages against Defendants the Thorpe Insulation Company Asbestos Settlement Trust, a  
5 Nevada Trust (the "Trust"), John F. Luikart, not individually, but solely as Co-Trustee of the Trust,  
6 and Sandra R. Hernandez, M.D., not individually, but solely as Co-Trustee of the Trust (collectively  
7 the "Co-Trustees") and allege the following:

8 **I. JURISDICTION AND VENUE**

9 1. This adversary proceeding arises in and relates to the Chapter 11 bankruptcy case of  
10 Thorpe Insulation Company and Pacific Insulation Company (collectively the "Tortfeasors") which  
11 are presently pending before the United States Bankruptcy Court for the Central District of  
12 California, Los Angeles Division, Administered Under Bankruptcy Case No. 2:07-bk-20016-BB.  
13 This Court has jurisdiction to adjudicate the issues raised in this adversary proceeding pursuant to  
14 28 U.S.C. §§ 157 and 1334 and exclusive jurisdiction over this action under 11 U.S.C. §  
15 524(g)(2)(A) as this proceeding involves the validity, application, construction or modification of  
16 an injunction that was entered by the United States Bankruptcy Court for the Central District of  
17 California pursuant to 11 U.S.C. § 524(g). This Court has subject matter jurisdiction over this action  
18 for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of  
19 Civil Procedure. An actual justiciable controversy exists between Plaintiffs, on the one hand, and  
20 the Trust and the Co-Trustees (collectively the "Defendants"), on the other hand, within the meaning  
21 of 28 U.S.C. § 2201 regarding whether the Trust is a primary plan within the meaning of the  
22 Medicare Secondary Payer provisions of the Medicare Act<sup>1</sup> and whether Defendants have a duty to  
23 report the Trust's primary payer responsibility and provide information related to Medicare claims  
24 and claimants to Plaintiffs pursuant to federal law and regulations. Additionally, this Court has  
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26 \_\_\_\_\_  
27 <sup>1</sup> The Medicare Secondary Payer provisions are set forth at 42 U.S.C. §1395y(b), as amended. The  
28 Centers for Medicare and Medicaid Services ("CMS") has issued regulations implementing the  
statute which are located at Title 42 of the Code of Federal Regulations. The MSP statutes and  
regulation are herein collectively referred to as the "MSP Law."

1 federal question jurisdiction over this action under 28 U.S.C. § 1331. Jurisdiction is also proper  
2 under 42 U.S.C. § 1395y(b)(3)(A). Finally, pursuant to this Court’s Order Confirming Sixth  
3 Amended Joint Plan of Reorganization of Thorpe Insulation Company and Pacific Insulation  
4 Company (Following Remand), entered May 2, 2013 (Doc. 3418) (the "Plan"), this Court “shall  
5 retain jurisdiction over the Chapter 11 Cases after the Effective Date to the extent legally  
6 permissible" including, without limitation, "determin[ing] any . . . matters that may arise in  
7 connection with or related to the Plan, the Disclosure Statement, the Confirmation Order or any  
8 contract, instrument, release, or other agreement or document created in connection with the Plan,  
9 the Disclosure Statement or the Confirmation Order, except as otherwise provided in the Plan."

10 2. Pursuant to 28 U.S.C. § 1409, venue is proper in this district.

11 3. This Complaint involves core proceedings pursuant to subsections (A) and (O) of  
12 28 U.S.C. § 157(b)(2). To the extent that this may be a non-core proceeding, Plaintiffs consent to  
13 the entry of final orders or judgment by the Bankruptcy Court.

## 14 **II. INTRODUCTION**

15 4. Medicare providers suffer staggering financial losses when treating asbestos  
16 exposure related injuries, depleting the dwindling Medicare Trust Fund. Meanwhile, asbestos  
17 personal injury trusts have paid billions in settlement funds to countless asbestos claimants. These  
18 trusts routinely and consistently shirk reporting and reimbursement obligations under the law. The  
19 Trust, administered by the Co-Trustees, is one of over 60 trusts Plaintiffs identified as failing to  
20 comply with federal law and regulations, effectively shifting the burden of treating asbestos-related  
21 illnesses to Medicare and other government funded healthcare programs.

22 5. Plaintiffs bring this action seeking declaratory relief and money damages pursuant to  
23 28 U.S.C. §§ 2201 and 2202. Plaintiffs seek a determination that the Trust is a primary plan pursuant  
24 to the MSP Law and that the Co-Trustees have a duty to report the Trust’s primary payer  
25 responsibility and provide information related to Medicare claims and claimants to Plaintiffs  
26 pursuant to federal law and regulations.

27 6. Additionally, Plaintiffs bring this action to enforce their assignors’ rights as  
28 “secondary payers” under the MSP Law to recover from the Trust, a “primary payer” under the MSP

1 Law, double the amount of the primary payment or appropriate reimbursement that the Trust, as the  
2 primary payer, failed to provide plus interest.

3 7. Asbestos is a naturally occurring mineral used by hundreds of manufacturers in a  
4 wide variety of products including insulation, gaskets, building materials, and automotive parts.  
5 Asbestos exposure is dangerous because inhaled or ingested asbestos dust becomes permanently  
6 trapped in the body. Mesothelioma, a rare and aggressive cancer, is almost exclusively caused by  
7 asbestos exposure; however, asbestos exposure causes other forms of cancer and progressive lung  
8 disease as well.<sup>2</sup> On average, symptoms of disease resulting from asbestos exposure typically begin  
9 manifesting between 40 and 51 years after asbestos exposure, and 68 to 74 years of age.

10 8. After the link between asbestos exposure and cancer was discovered in the 1960s,  
11 companies that mined asbestos and manufactured asbestos-containing products faced a series of  
12 lawsuits for personal injury and wrongful death claims.

13 9. Asbestos companies could not afford the jury awards and settlements resulting from  
14 these lawsuits, opting instead to file bankruptcy to reduce or limit liability. In many cases, asbestos  
15 trust funds were established and amply funded to settle current and future claims. Most asbestos  
16 companies, including the Tortfeasors, sought bankruptcy protection employing the use of personal  
17 injury trust funds to settle asbestos-related illness claims.

18 10. When asbestos trusts settle with claimants who are Medicare beneficiaries, federal  
19 law requires their trustees to provide notice of the settlement and to reimburse conditional payments  
20 made by Medicare providers on behalf of the claimant for the medical treatment of asbestos-related  
21 illnesses. When asbestos trusts pay settlements directly to asbestos claimants (or claimants' counsel)  
22 without first accounting for Medicare providers' rights, Medicare's ability to enforce its rights is  
23 impaired or extinguished. Additionally, the MSP Law imposes penalties when primary plans pay  
24 settlements directly to claimants without reimbursing Medicare providers for medical costs covered  
25

26 \_\_\_\_\_  
27 <sup>2</sup> Mesothelioma, pneumoconiosis, progressive lung disease, and other cancers and illnesses are  
28 collectively referred to herein as "asbestos-related illnesses."

1 under the same program. Penalties for non-compliance include double damages and interest charges.

2 11. Plaintiffs hold assigned rights to reimbursement, including those recoverable  
3 pursuant to the MSP Law, through assignments from Medicare Advantage organizations (“MAOs”),  
4 full-risk organizations such as Management Service Organizations and Independent Physician  
5 Associations, and other Medicare first-tier, downstream, and related entities (collectively, “MA  
6 Plans” or the “Assignors”), all of which act as third-party payers, providing Medicare benefits to  
7 their enrolled beneficiaries (“Enrollees”). The Assignors irrevocably assigned to Plaintiffs all of the  
8 Assignors’ rights to pursue and recover monies related to payments made by the Assignors for  
9 including, among other things, part or all of their Enrollees’ treatment for asbestos-related illnesses  
10 (the “Assignments”).

11 12. The Assignors provided medical benefits by treating or paying for the treatment of  
12 their Enrollees’ asbestos-related illnesses. Pursuant to the Assignments and federal law, when those  
13 Enrollees receive settlement funds from an asbestos trust, Plaintiffs have a right to reimbursement  
14 of the billed amounts for the services or costs incurred by the Assignors on behalf of Enrollees. The  
15 trusts historically have and continue to fail to report settlements or reimburse health plans, including  
16 the Assignors, as required by law.

17 13. Although some asbestos-related claims are pursued in the tort system, the majority  
18 are submitted to asbestos bankruptcy trusts, completely outside the reach of Plaintiffs, their  
19 Assignors, the public, and even the Department of Justice (“DOJ”).

20 14. Defendants paid, and continue to pay, settlements to claimants that were injured as a  
21 result of asbestos exposure. Defendants fail to properly report the Trust’s primary payer  
22 responsibility or provide information relating to settlements to Plaintiffs or their Assignors as  
23 required by federal law and regulations.

24 15. In this action, Plaintiffs seek all available relief including, but not limited to:  
25 1) declaratory relief in the form of an order stating that the Trust is a primary plan as defined by  
26 federal law and regulations, and that Plaintiffs are entitled to the disclosure of the identity of each  
27 Enrollee who received settlement funds from the Trust, either through the court system or other  
28 administrative processes; and 2) double the amount of the primary payment or appropriate

1 reimbursement that the Trust, as the primary payer, failed to provide plus interest.

2 **III. PARTIES**

3 **Plaintiffs**

4 16. Plaintiffs have been assigned all legal rights of recovery and reimbursement for  
5 medical items and services provided by the Assignors that administer Medicare benefits for  
6 Medicare beneficiaries under Medicare Part C and/or Medicare Part D, whether said rights arise  
7 from: (a) contractual agreements, such as participation and network agreements with capitation and  
8 risk sharing arrangements; and/or (b) state and federal laws that provide for the reimbursement of  
9 payments made by the assignor health plans, including the right to recover claims for health care  
10 services on a fee-for-service basis.

11 17. The Assignors irrevocably assigned, transferred, conveyed, set over, and delivered  
12 to Plaintiffs, any and all of Assignors' right, title, ownership, and interest in and to any and all legal  
13 or equitable rights to pursue and recover monies related to the claims that Assignors paid for  
14 including, among other things, part or all of their Enrollees' treatment for asbestos-related illnesses,  
15 conferring standing on Plaintiffs to bring this lawsuit. Plaintiffs' assignments, samples of which are  
16 alleged in detail in the Appendix to this Complaint, are valid and binding contracts.

17 18. The Assignors provided payment for the medical items and services related to the  
18 treatment of injuries caused as a result of their Enrollees' exposure to asbestos products  
19 manufactured by the Tortfeasors throughout the United States.

20 **MSPRC**

21 19. MSPRC is a Delaware series limited liability company with its principal place of  
22 business located in Coral Gables, Florida. MSPRC's limited liability company agreement provides  
23 for the establishment of one or more designated Series.

24 20. MSPRC has established various designated series pursuant to Delaware law in order  
25 to maintain various claims recovery assignments separate from other Company assets, and in order  
26 to account for and associate certain assets with a certain particular series. Pursuant to MSPRC's  
27 limited liability agreement, all designated series form a part of MSPRC. MSPRC may receive  
28 assignments in the name of MSPRC and further associate such assignments with a particular series

1 or may have claims assigned directly to a particular series. In either event, MSPRC will maintain  
2 the right to sue on behalf of each series and pursue any and all rights, benefits, and causes of action  
3 arising from assignments to a series. Any claim or suit may be brought by MSPRC in its own name  
4 or it may elect to bring suit in the name of its designated series.

5 21. MSPRC's limited liability agreement provides that any rights and benefits arising  
6 from assignments to its series shall belong to MSPRC.

7 22. Certain series of MSPRC has executed irrevocable assignments of any and all rights  
8 to recover payments made on behalf of their Assignors' health plan members and enrollees. These  
9 assignments authorize the series and MSPRC, through its operating agreement, to pursue and  
10 enforce all legal rights of recovery and reimbursement for health care services and Medicare  
11 benefits, including payments or services rendered under Medicare to treat asbestos-related illnesses.

12 **MSPA**

13 23. MSPA is a limited liability company that is duly organized, validly existing, and in  
14 good standing under the laws of Florida, with its principal place of business in Coral Gables, Florida.

15 24. MSPA has executed irrevocable assignments of any and all rights to recover  
16 payments made on behalf of its Assignors' health plan members and enrollees. These assignments  
17 authorize MSPA to pursue and enforce all legal rights of recovery and reimbursement for health  
18 care services and Medicare benefits, including payments or services rendered under Medicare to  
19 treat asbestos-related illnesses.

20 **MAO-MSO**

21 25. MAO-MSO is a series limited liability company that is duly organized, validly  
22 existing, and in good standing under the laws of Delaware, with its principal place of business  
23 located in Cresskill, New Jersey.

24 26. MAO-MSO has executed irrevocable assignments of any and all rights to recover  
25 payments made on behalf of its Assignors' health plan members and enrollees. These assignments  
26 authorize MAO-MSO to pursue and enforce all legal rights of recovery and reimbursement for  
27 health care services and Medicare benefits, including payments or services rendered under Medicare  
28 to treat asbestos-related illnesses.

1                                    *Series 44*

2            27.        Series 44 is a duly organized and existing Delaware series limited liability company  
3 with its principal place of business located in Coral Gables, Florida. Series 44’s limited liability  
4 company operating agreement provides for the establishment of one or more designated series as  
5 permitted by Delaware law. Del. Code Ann. Tit. 6, § 18-215(a). Accordingly, Series 44 established  
6 various designated series to serve as units of the company for the purpose of maintaining various  
7 claims recovery assignments separate from other company assets, and in order to account for and  
8 associate certain assets with a certain particular series.

9            28.        Series 44 has enumerated rights relating to its designated series pursuant to its limited  
10 liability agreement and consistent with Delaware law. Del. Code Ann. Tit. 6, §§ 18-215(a)-(c).  
11 Specifically, all rights and benefits arising from assignments to its series shall belong to Series 44.  
12 Series 44 may receive assignments in the name of Series 44 and further associate such assignments  
13 with a particular series or may have claims assigned directly to a particular series. In either event,  
14 Series 44 and the designated series are authorized to pursue or assert any claim or suit capable of  
15 being asserted by any designated series arising from, or by virtue of, an assignment to a designated  
16 series. Series 44 retains the legal right to sue on behalf of each designated series and pursue all  
17 rights, benefits, and causes of action arising from assignments to a series in its own name or in the  
18 name of the designated series.

19            29.        Certain series of Series 44 have executed irrevocable assignments of any and all  
20 rights to recover payments made on behalf of their Assignors’ health plan members and enrollees.  
21 These assignments authorize the series and Series 44, through its operating agreement, to pursue  
22 and enforce all legal rights of recovery and reimbursement for health care services and Medicare  
23 benefits, including payments or services rendered under Medicare to treat asbestos-related illnesses.

24            30.        As assignees of recovery rights from MA Plans that are entitled to payment from  
25 primary plans such as Defendant, Plaintiffs “stand in the shoes” of CMS to enforce federal Medicare  
26 laws and regulations. 42 C.F.R. § 422.108(f) (“The MA organization will exercise the same rights  
27 to recover from a primary plan, entity, or individual that the Secretary exercises under the MSP  
28 regulations . . .”); *see also MSPA Claims I, LLC v. Tenet Fla., Inc.*, 918 F.3d 1312, 1317 (11th Cir.

1 2019) (“[Medicare Advantage organizations] stand in the shoes of Medicare . . .”).

2 **Defendants**

3 31. The Trust was established pursuant to the laws of Nevada and was formed pursuant  
4 to the Order Confirming Fifth Amended Joint Plan of Reorganization of Thorpe Insulation Company  
5 and Pacific Insulation Company (Doc. 2611) in Bankruptcy Case Nos. 07-19271 and 07-20016,  
6 Jointly Administered Under Bankruptcy Case No. 07-20016, then pending in the United States  
7 Bankruptcy Court for the Central District of California, Los Angeles Division. The Trust came into  
8 existence on or around October 22, 2010. The Trust’s purpose, as reaffirmed in the Plan, is to  
9 assume the liabilities of the Tortfeasors and their predecessors and successors in interest arising  
10 from or relating to asbestos related claims, to use the Trust assets and income to pay the holders of  
11 all claims in accordance with the trust agreement, and to otherwise comply with the requirements  
12 of a trust set forth in Section 524(g) of the Bankruptcy Code.

13 **IV. LEGAL FRAMEWORK**

14 **A. Medicare Generally**

15 32. Title XVIII of the Social Security Act (the “Medicare Act”) creates the Medicare  
16 program, a system of federally funded health insurance for people aged 65 and older, and people  
17 under 65 suffering from certain specified diseases.

18 33. CMS administers Medicare, acting under authority delegated by the Medicare Act to  
19 the U.S. Department of Health and Human Services.

20 34. Part A of the Medicare Act, 42 U.S.C. § 1395c, *et seq.*, provides insurance coverage  
21 for costs of inpatient hospital and other services. Part A is available without payment of premiums  
22 to most persons who paid Medicare payroll taxes prior to becoming Medicare-eligible. Part A  
23 generally pays 100% of the cost of covered services after deductibles and co-insurance, up to  
24 Medicare coverage limits.

25 35. Part B of the Medicare Act, 42 U.S.C. § 1395j, *et seq.*, is a voluntary program in  
26 which beneficiaries pay premiums to Medicare, and in return Medicare pays the costs of medically  
27 necessary outpatient services, such as doctor’s office visits and home health care. Generally, Part B  
28 covers 80% of the cost of such services after exhaustion of deductibles.

1 36. With limited exceptions, each individual eligible for Medicare is entitled to elect to  
2 receive benefits (other than pharmacy benefits) through the original Medicare program under Parts  
3 A and B, or through enrollment in a Medicare Advantage ("MA") plan under Medicare Part C. *See*  
4 42 U.S.C. § 1395w-21(a)(1). No matter which option beneficiaries choose, Medicare Part A and/or  
5 B or Part C, the benefits are Medicare benefits that are governed by Title XVIII and the Medicare  
6 regulations promulgated thereunder by CMS.

7 37. MA Plans must meet strict qualifying standards to provide Medicare benefits to those  
8 Medicare beneficiaries who enroll in their plans. MA Plans must provide all Medicare benefits  
9 offered under Parts A and B and may provide additional or "supplemental" benefits such as vision  
10 or dental plans. *See* 42 U.S.C. §§ 1395w-21 to 1395v-29.

11 38. Pursuant to Title XVIII and CMS Medicare regulations, CMS pays MA Plans,  
12 directly or indirectly, and delegates to them the obligation to administer, pay, and assume  
13 Medicare's economic risk for the Medicare benefits provided to Part C enrollees. The funds CMS  
14 pays MA Plans originate from the Medicare Trust Funds. *See* 42 U.S.C. § 1395w-23(f).

15 **B. The Medicare Secondary Payer Act**

16 39. From its inception through 1980, Medicare generally paid for medical services  
17 whether or not the recipient was also covered by another health insurance plan.

18 40. In 1980, Congress enacted the MSP Law in response to Medicare's skyrocketing  
19 costs. *See generally* 42 U.S.C. § 1395y(b).

20 41. The MSP Law provides that when Medicare pays for treatment of an enrollee, and  
21 there is also a "primary plan," Medicare's payment is conditional; the primary plan, and any entity  
22 that receives payment from a primary plan, must reimburse Medicare for the conditional payment it  
23 made.

24 42. A primary plan's responsibility for such payment "may be demonstrated by . . . a  
25 payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a  
26 determination or admission of liability) of payment for items or services included in a claim against  
27 the primary plan or the primary plan's insured, or by other means." 42 U.S.C. § 1395y(b)(2)(B)(ii).

28 43. In the event a primary plan fails to timely reimburse a Medicare payer for conditional

1 payments made while in the secondary position, the MSP Law authorizes secondary payers to  
2 recover double the amount which the primary plan failed to provide for primary payment or  
3 appropriate reimbursement, plus interest. *See* 42 U.S.C. §§ 1395y(b)(3)(A); 42 C.F.R. § 411.24.

4 44. A primary plan includes a “liability insurance policy or plan (including a self-insured  
5 plan).” 42 U.S.C. § 1395y(b)(2)(A). A “self-insured plan” includes “a business trade or profession  
6 . . . if it carries its own risk (whether by a failure to carry insurance, or otherwise), in whole or in  
7 part” for payment of medical expenses. *Id.*

8 45. The MSP Law and federal regulations require all participants in the tort recovery  
9 system to honor the reimbursement rights of Medicare and MA Plans.

## 10 **V. FACTUAL ALLEGATIONS**

11 46. Thousands of asbestos-related personal injury claims are resolved each year. While  
12 some claims are resolved through litigation, most are resolved by submitting claims to asbestos  
13 trusts.

14 47. More than 100 companies have sought bankruptcy protection as a means of dealing  
15 with asbestos-related liabilities. In 1994, the Bankruptcy Code was amended to include specific  
16 provisions applicable to asbestos-related bankruptcies. Among the amendments was the addition of  
17 § 524(g), which allows the bankruptcy court to issue an injunction channeling most asbestos claims  
18 (and future demands) against the debtor and related entities into an asbestos trust. Once an asbestos  
19 trust is established, asbestos claimants must seek recovery from the asbestos trust rather than the  
20 reorganized debtor or its related entities.

21 48. There are presently more than 60 active asbestos trusts in operation. Additional  
22 asbestos trusts are scheduled to be established or begin accepting claims within the next 12-18  
23 months. Collectively, these trusts will hold more than \$40 billion in assets.

24 49. Litigation over personal injuries due to asbestos exposure has been ongoing for more  
25 than 40 years. Hundreds of thousands of claims have been filed, and billions of dollars in  
26 compensation have been paid.

27 50. From 2004 through 2016, asbestos trusts paid out more than \$24 billion, resolving  
28 hundreds of thousands of asbestos-related claims.

1 51. Specifically, according to the Trust’s annual reports, from the Trust’s inception  
2 through December 31, 2020, over \$287 million was paid on over 3,300 claims.

3 52. As Plaintiffs have determined that their Assignors paid nearly one million claims for  
4 the treatment of asbestos-related illnesses, the Assignors should have received thousands of notices  
5 from the asbestos trusts, including Defendants, as required by federal law; however, they received  
6 no notices or reimbursements in violation of the MSP Law.

7 **Asbestos Trusts Circumvent the MSP Law by Cloaking Themselves in Opacity**

8 53. Third parties, including the DOJ, who examine the operations of asbestos trusts  
9 consistently find a lack transparency regarding claimant identities, claim amounts paid, and  
10 compliance with the MSP Law.

11 54. For example, the RAND Institute for Civil Justice prepared a 2010 report titled  
12 Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports  
13 on the Largest Trusts (the “RAND Report”). The RAND Report notes that data on important  
14 variables, such as the number of claims filed against any asbestos trust, the identity of the individuals  
15 filing those claims, and the diseases being claimed and paid, are either incomplete or unavailable.

16 55. A 2011 Government Accountability Office (“GAO”) report found that, of all the trust  
17 documents they reviewed from 2009 and 2010 filings, only one trust published claimant names.  
18 U.S. Government Accountability Office, GAO-11-819, Asbestos Injury Compensation: The Role  
19 and Administration of Asbestos Trusts 25 (2011) (hereinafter “GAO Report”).

20 56. The U.S. Chamber Institute for Legal Reform prepared a 2018 report entitled  
21 Dubious Distribution: Asbestos Bankruptcy Trust Assets and Compensation (“Dubious  
22 Distribution”) addressing the lack of trust claimant transparency and dwindling trust funds for bona  
23 fide claimants. Specifically, the report acknowledges that “detailed information about individual  
24 claims made to and payments made from trusts is limited.” The report also highlights legislative  
25 efforts to mandate that trust forms and related evidence be disclosed in a timely manner during tort  
26 proceedings and to discourage the suppression of evidence as has historically been the case in  
27 asbestos trust related litigation.

28 ///

1 57. Despite these limitations, the RAND Report concluded that asbestos trusts paid some  
2 \$3.3 billion to approximately 575,000 claimants during the year 2008 alone, and Dubious  
3 Distribution reported that asbestos trusts paid out nearly \$24 billion between 2004 and 2016.

4 58. In 2018, the DOJ filed statements in several asbestos trust bankruptcy proceedings,  
5 wherein it objected to provisions of proposed bankruptcy plans. The DOJ argued that “the terms of  
6 the Trust should permit the United States to monitor when particular individuals have filed claims  
7 with or received payment from the Trust.” *In re Kaiser Gypsum Co., Inc.*, Case No. 16-31602, ECF  
8 No. 1150, at 12 (Bankr. W.D.N.C. Sept. 13, 2018). The DOJ further argued:

9 Although personally identifiable information and medical information are protected  
10 under federal law, the assertion of a tort claim in court is a public act, and claims  
11 filed with a judicially established trust pursuant to 11 U.S.C. § 524(g) should be a  
12 matter of public record—as would be the case if those claims were pursued in a state  
13 court or litigated through the bankruptcy claims process. To the extent that the  
14 Debtors propose to prohibit any disclosure of claims information, as certain other  
15 asbestos trusts have done, this would be a blunt tool that frustrates the government’s  
16 visibility into compliance with the MSP Statute and Congress’s oversight of the  
17 effects of section 524(g). Certain information about claims filed with trusts can be  
18 appropriately disclosed while still complying with data privacy obligations. The  
19 ability to file claims in secret would also stand in contrast to the obligations of  
20 creditors in other chapter 11 cases, where claims become part of the public claims  
21 register and evidentiary submissions may be sealed only if such relief is specifically  
22 granted by the court pursuant to a legally supported motion under 11 U.S.C. § 107.

23 *Id.* at 13.

24 59. In a 2017 report, Congress identified problems caused by asbestos trusts claim  
25 opacity, specifically as it relates to an increase in the potential for fraud:

26 Because the trusts’ current confidentiality provisions and practices make data sharing  
27 difficult, individual trusts and the trust system as a whole are susceptible to fraud and  
28 abuse. The GAO and the non-partisan RAND Corporation . . . both concluded that

1 asbestos bankruptcy trusts are unlikely to identify and decline payment of improper  
2 claims, including claims that are supported by ‘altered work histories’ or allege  
3 inconsistent exposure patterns.

4 *See* H.R. Rep. No. 115-18, at 11 (2017).

5 60. The substantial latency period between asbestos exposure and onset of disease means  
6 that claimants may have had many exposures over a long period of time, many of which were in the  
7 distant past. The result is that claimants were likely not aware of the injury as it occurred, and  
8 accordingly, may not be able to specifically identify the responsible Tortfeasors.

9 61. As such, a claimant may file claims with numerous trusts, claiming to have been  
10 exposed to or harmed by multiple products or debtors, especially for claims submitted under  
11 expedited review. Given the substantial period of time between the filing of an asbestos bankruptcy  
12 case and the creation of an asbestos trust, a single claimant may obtain multiple sources for asbestos-  
13 related recoveries.

14 62. Asbestos trusts receive, review, process, and settle asbestos claims pursuant to trust  
15 distribution procedures (“TDP”) established during the bankruptcy case. Claimants are entitled to  
16 recover from an asbestos trust only if they establish the existence of an asbestos-related illness  
17 caused by or resulting from exposure to asbestos or an asbestos-containing product of the debtor(s)  
18 whose bankruptcy case resulted in the creation of that asbestos trust.

19 63. This lack of transparency results in three general problems for the Assignors:

- 20 a. there is not a complete list of asbestos claimants;
- 21 b. the limited information that is available is often erroneous, misleading, and missing  
22 vital identifying information;
- 23 c. and the trust claim resolution process has no public disclosure requirement.

24 **The Trust’s Claim Processing**

25 64. The Trust’s operating procedures and general activities do not comply with reporting  
26 requirements and do not ensure that Medicare conditional payments are reimbursed, as required by  
27 the MSP Law.

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1           65.     The Trust settles claims pursuant to its TDP, which has been amended seven times  
2 since its creation at the Trust’s inception. To recover from the Trust, asbestos claimants must  
3 establish the existence of an asbestos-related illness caused by or resulting from exposure to a  
4 Tortfeasors’ asbestos-containing product. A true and correct copy of the Trust’s TDP is attached  
5 hereto as Exhibit A.

6           66.     The Trust provides three avenues for claimants to receive compensation: Case  
7 Valuation Matrix (“Matrix”), Individual Review, and Extraordinary Claims.

8           a.     Under the Matrix, claimants provide some basic qualifying information relating to  
9 their medical diagnosis and exposure to asbestos. Claimants who meet the  
10 established threshold receive settlements according to a pre-determined  
11 compensation formula, which has two main components: (i) a dollar value for each  
12 disease type; and (ii) a payment percentage applied to that value. These claims are  
13 paid out with the intention of paying all claimants over time as equivalent a share as  
14 possible of the value of their claims based on historical values for substantially  
15 similar claims in the tort system.

16           b.     Individual Review allows some independent review of asbestos claims by the Trust  
17 for claimants with claims that do not meet the presumptive medical/exposure criteria  
18 for the relevant compensable disease. In such a case, notwithstanding that the claim  
19 does not meet the presumptive medical/exposure criteria for the relevant  
20 compensable disease, the Trust can offer the claimant a liquidated value amount up  
21 to the average value for the compensable disease, unless the claim qualifies as an  
22 Extraordinary Claim.

23           c.     Extraordinary Claims are available for claimants whose asbestos injury is alleged to  
24 be primarily caused by the Tortfeasor whose bankruptcy case led to the creation of  
25 the Trust. Extraordinary Claims allow claimants to potentially receive more than they  
26 would under the Matrix or Independent Review.

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1 67. Trust claims are processed based on a first-in-first out “FIFO” basis called the FIFO  
2 Processing Queue. The Trust liquidates all Trust claims that meet the presumptive medical/exposure  
3 criteria in accordance with the Matrix.

4 68. The TDP requires claimants to submit a claim form, including, *inter alia*, personal  
5 identifying information (name, address, Social Security number, etc.), proof of a medical diagnosis  
6 of an asbestos-related illness, and proof of exposure to an asbestos-containing product  
7 manufactured, marketed, sold or distributed by the debtor(s).

8 69. The Claim Form requires claimants to identify whether the claimant was Medicare  
9 eligible, whether any of the medical expenses of the injured party related to the claims have been  
10 paid by Medicare, whether any such Medicare payments are continuing, and whether Medicare’s  
11 lien for such payments has been satisfied by claimant (such as participation in an approved Global  
12 Settlement with Medicare). The Claim Form also requires that, if a Medicare lien has been satisfied,  
13 that the proof of Medicare lien satisfaction be submitted along with the Claim Form.

14 70. Although the Trust’s TDP requires the Trust to obtain Medicare related information,  
15 Plaintiffs found no evidence that the Trust reported settlements (or reimbursed conditional  
16 payments) as required.

17 71. Once the Trust processes and approves an asbestos claim, and all necessary  
18 paperwork is completed, the Trust sends the settlement funds to the claimant or his or her  
19 representative. Notably, the Trust does not notify CMS or the Assignors of the settlement,  
20 substantially impairing recovery efforts.

21 72. The Trust’s current process does nothing to further Congress’ intent of sustaining  
22 Medicare. As alleged herein, Congress implemented the MSP Law and its reporting requirements  
23 to extend Medicare’s viability; yet asbestos trusts and their trustees, including Defendants, fail to  
24 comply with these provisions, causing Medicare to expend resources for items and services for  
25 which it is not responsible to pay and for which it is entitled to reimbursement.

26 73. In an attempt to obtain claimant information, Plaintiffs sent a demand letter to the  
27 Trust’s General Counsel on May 15, 2020 ("Demand Letter"). A true and correct copy of the  
28 Demand Letter is attached hereto as Exhibit B. However, the Trust refused to produce claimant

1 records or otherwise cooperate in any meaningful way arguing, among other things, that the Trust  
2 is not a Responsible Reporting Entity under MSP law. A true and correct copy of the response of  
3 the Trust's counsel is attached hereto as Exhibit C. However, contrary to the Trust's position, 42  
4 C.F.R. § 411.25 is a legislative rule promulgated pursuant to a statutory directive derived from a  
5 Medicare Act directive to CMS, and thus has general applicability and legal effect. *See Health*  
6 *Ass'n of Am., Inc. v. Shalala*, 23 F.3d 412, 422-23 (D.C. Cir. 1994).

7 74. On or about December 9, 2020, in anticipation of filing a motion for examination  
8 under Fed. R. Bankr. P. 2004, Plaintiffs' counsel contacted the Trust's counsel to request the  
9 claimant information sought and set forth Plaintiffs' legal and factual basis for requesting same. A  
10 true and correct copy of Plaintiffs' Counsel's Meet and Confer Letter is attached hereto as Exhibit  
11 D. On December 21, 2020, Trust counsel responded with, among other things, conclusory arguments  
12 that Plaintiffs' document request seeks documents that are not subject to the MSP Law, that the  
13 Trust is a Qualified Settlement Fund and not a Responsible Reporting Entity, and that Plaintiffs'  
14 document request seeks confidential private information from the Trust without any showing that  
15 its clients paid anything for any Trust beneficiary whose asbestos exposure occurred on or after  
16 December 5, 1980. A true and correct copy of Trust counsel's response is attached hereto as Exhibit  
17 E. On January 13, 2021, Plaintiffs' counsel participated in a "meet and confer" conference call with  
18 the Trust counsel. Despite clarifying factual and legal questions posed by the Trust counsel  
19 regarding Plaintiffs' entitlement to the requested information, the Trust again refused to comply  
20 with Plaintiffs' request.

21 75. Plaintiffs made no further attempts to settle this matter outside of litigation, as efforts  
22 to resolve identical issues with another trust, which has the same Co-Trustees and the same counsel  
23 proved unsuccessful. *See* Exhibit F.

24 76. To independently identify Trust claimants, Plaintiffs searched dockets, bankruptcy  
25 filings, annual reports, and the Trust's website attempting to identify trust claimants. Only names  
26 were found (in some limited instances, settlement amounts were provided) and Plaintiffs have no  
27 means to determine the accuracy or completeness of the complied list of potential claimant names.

28

1 With the potential claimant names, Plaintiffs conducted a fuzzy name match<sup>3</sup> against their database  
2 of Enrollees to identify Enrollees whose asbestos-related medical expenses appear to have been paid  
3 by one or more of the Assignors that were also claimants of the Trust (Enrollees identified as the  
4 Trust’s claimants will be referred to herein as “Matched Asbestos Claimants”).

5 77. Notwithstanding the foregoing, Plaintiffs’ fuzzy name match identified 22 Matched  
6 Asbestos Claimants to a certainty of no less than 85%, with 513 related claims, whose asbestos-  
7 related medical expenses appear to have been paid by one or more of the Assignors.

8 **The Trust is a Self-Insured Plan and a Primary Plan as Defined by Federal Law**

9 78. The Tortfeasors are corporations that were involved in the design, manufacture,  
10 distribution, sale, installation, and/or service of products containing asbestos.

11 79. Specifically, the Tortfeasors performed asbestos related work at refineries, power  
12 plants, and other major industrial sites, as well as in commercial buildings, schools, hospitals and  
13 some shipyards.

14 80. Overwhelmed by over 12,000 asbestos-related claims, the Tortfeasors eventually  
15 filed for Chapter 11 bankruptcy protection in 2007.

16 81. The bankruptcy plan confirmed by this Court in 2010 and the Plan confirmed by this  
17 Court in 2013 included the creation of an asbestos personal injury trust, which is one of the  
18 Defendants in this action.

19 82. The sole purpose of the Trust is to assume the liabilities of the Tortfeasors, their  
20 predecessors and successors in interest, for all asbestos personal injury claims, and to use the Trust  
21 assets and income to pay claimants in accordance with the trust agreement and the TDP, and to  
22 otherwise comply in all respects with the requirements of a trust set forth in Section 524(g)(2)(B)  
23 of the Bankruptcy Code. Accordingly, it is self-insured and thus a primary plan as defined by the  
24 MSP Law.

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27 <sup>3</sup> Fuzzy name matching involves the comparing of data sets (here, first and last names) to identify  
28 matches to a given degree of certainty where a positive identification value (such as Social Security  
number) is unavailable for 100% certain matches.

1 **Statutory Primary Payer Status**

2 83. In December 2003, Congress amended the MSP Law to include the Tortfeasors and  
3 their insurance carriers in the definition of a primary plan, after a number of court decisions found  
4 that tortfeasors were not primary plans under the law.

5 84. Congress made two important changes. First, Congress expressly defined a “self-  
6 insured plan” as “[a]n entity that engages in a business, trade, or profession . . . if it carries its own  
7 risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.” Congress intended  
8 the term “self-insured plan” to be defined broadly. This amendment reflected clear Congressional  
9 intent to make tortfeasors liable under the MSP Law.

10 85. The second important amendment to the MSP Law in 2003 was the “demonstrated  
11 responsibility” provision, which states that a primary plan must reimburse Medicare only if its  
12 responsibility to pay has been demonstrated, which can occur through a judgment, *settlement*, or  
13 “other means.”

14 **Regulatory Primary Payer Status**

15 86. Pursuant to 42 C.F.R. § 411.21, the definition of primary plan, when used in the  
16 context in which Medicare is the secondary payer, includes “liability insurance policy or plan  
17 (including a self-insured plan).

18 87. Section 411.21 also defines a primary payer as any entity that is or was required or  
19 responsible to make payment with respect to an item or service under a primary plan, including, but  
20 not limited to, insurers or self-insurers.

21 88. Asbestos trusts are established by “primary payers.” Specifically, asbestos trusts are  
22 funded by the Tortfeasors which qualify as primary plans pursuant to the 2003 MSP Law  
23 amendment.

24 89. As asbestos trusts are established for the *sole purpose* of paying the past and future  
25 claims of the Tortfeasors, they are themselves primary plans pursuant to federal law and

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1 regulations.<sup>4</sup> See *Humana Inc. v. Shrader & Assoc., LLP*, 584 B.R. 658, 678-81 (S.D. Tex. 2018)  
2 (“the court concludes that pursuant to the 2003 amendments to the MSP provisions, asbestos trusts  
3 can constitute primary plans under the MSP.”).

4 90. The Trust is one such entity that has been created and funded for the sole purpose of  
5 settling the past and future personal injury claims for the Tortfeasors and is therefore a primary plan  
6 under federal law and regulations.

7 **The Trust is Obligated to Provide Claimant Information to Plaintiffs**

8 91. A vital aspect of the MSP Law is the effective identification of primary payers. These  
9 notice requirements are necessary to achieve the MSP Law’s cost cutting goal and to limit the hide  
10 and seek game that primary payers, such as the Trust, rely on. See *Blue Shield Ass’n v. Sullivan*, 794  
11 F. Supp. 1166, 1175 (D.C. Cir. 1992) (“[T]he MSP statutory scheme is not a game of hide and seek,  
12 in which private parties may sit back and wait until the government independently determines that  
13 private coverage exists.”).

14 92. Pursuant to 42 C.F.R. § 411.25(a), a primary payer is obligated to “provide notice  
15 about primary payment responsibility and information about the underlying MSP situation.” When  
16 primary payers, including Defendants, enter into settlement agreements, they are required to  
17 “provide notice about primary payment responsibility and information about the underlying MSP  
18 situation to the entity or entities designated by CMS to receive and process that information.” *Id.*

19 93. Self-insured product liability tortfeasors or their liability insurers that pay settlement  
20 funds to Medicare beneficiaries are primary plans subject to MSP reporting and reimbursement  
21 obligations. Settlement funds paid by such a tortfeasor constitute a source from which MA Plans  
22 may obtain recovery.

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25 \_\_\_\_\_  
26 <sup>4</sup> In fact, recently established asbestos trusts for Maremont Corporation and Kaiser Gypsum  
27 Company acknowledged this by including reporting requirement language in their trust agreements:  
28 “The Asbestos Trust shall register as a Responsible Reporting Entity (“RRE”) under the reporting  
provisions of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L.  
110-173) (“MMSEA”) in order to fulfill the reporting requirements applicable to the funders of the  
Asbestos Trust.”

1 94. Where a Medicare claim was filed by, or on behalf of, a claimant of an asbestos trust,  
2 federal regulations expressly authorize that trust to release information pertinent to the Medicare  
3 claim to Plaintiffs. 42 C.F.R. § 411.24(a); *see also* 42 C.F.R. § 422.108(f) (“[t]he MA organization  
4 will exercise the same rights to recover from a primary plan, entity, or individual that the Secretary  
5 exercises under the MSP regulations in subparts B through D of part 411 of this chapter.”).

6 **As Primary Payers, Federal Statutes Require Asbestos Trusts to Provide Information About**  
7 **Settlements.**

8 95. Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007  
9 (“MMSEA”) requires primary plans to secure from plan participants such information to identify  
10 situations where a primary payer is available. *See* 42 U.S.C. § 1395y(b)(8).

11 96. Primary plans must determine whether a claimant (including an individual whose  
12 claim is unresolved) is entitled to Medicare and, if so entitled, submit the identity of the claimant  
13 and other identifying information to enable the Secretary to make an appropriate determination  
14 concerning coordination of benefits, including any applicable recovery claim. *See* 42 U.S.C. §  
15 1395y(b)(8).

16 97. The Trust’s Claim Form requires filers to identify whether the claimant was eligible  
17 for Medicare even though the Claimant is under age 65, whether any of the medical expenses of the  
18 injured party related to their claims have been paid by Medicare, whether any such Medicare  
19 payments are continuing, and whether Medicare’s lien for such payments has been satisfied by  
20 claimant (such as participation in an approved Global Settlement with Medicare). The Claim Form  
21 also requires that if a Medicare lien has been satisfied, that the proof of Medicare lien satisfaction  
22 be submitted along with the Claim Form.

23 98. While the Trust requests Medicare information from Trust claimants, it fails to report  
24 the settlements it pays Medicare Part C beneficiary claimants to CMS or the Assignors and fails to  
25 reimburse the Assignors for the conditional payments they have made under Medicare Part C, in  
26 violation of federal law.

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28 ///

1 **Plaintiffs are Entitled to Reimbursement of their Assignors' Conditional Payments**

2 99. As MA Plans, Assignors provided benefits under agreements and coverage  
3 documents that give them: (a) broad rights of reimbursement from the Tortfeasors related to  
4 conditional payments; (b) rights to prompt notice of settlement or judgment from the Tortfeasors;  
5 and (c) other similar rights that are necessary to protect Plaintiffs' and their Assignors' ability to  
6 enforce their rights.

7 100. When Defendants disburse settlement funds to an asbestos claimant without  
8 accounting for Plaintiffs' and their Assignors' rights, Plaintiffs' and their Assignors' ability to  
9 enforce their rights is impaired or extinguished, thus directly harming Plaintiffs, their Assignors,  
10 and the Medicare Trust.

11 **FIRST CLAIM FOR RELIEF**

12 **DECLARATORY RELIEF**

13 101. Plaintiffs incorporate by reference paragraphs 1 through 100 as if set forth fully  
14 herein.

15 102. There is a genuine and bona fide dispute and an actual controversy and disagreement  
16 between Plaintiffs and Defendants regarding the Trust's legal status as a primary plan under the  
17 MSP Law and whether Defendants have reporting obligations under both the MSP Law and federal  
18 regulations.

19 103. Pursuant to 28 U.S.C. § 2201, *et seq.*, Plaintiffs are entitled to declaratory relief that:

- 20 a. The Trust is a primary plan under the MSP Law;
- 21 b. Defendants are obligated to provide notice of primary payment responsibility and  
22 information about the underlying MSP situation (including, but not limited to, for  
23 each claimant, name, address, gender, date of birth, health insurance claim (HIC)  
24 number, and Social Security number) to Plaintiffs pursuant to 42 C.F.R. § 411.25  
25 (guidelines for compliance with 42 C.F.R. § 411.25 can be found in Medicare  
26 Program; Medicare Secondary Payment, 59 Fed. Reg. 4285, 4287 (Jan. 31, 1994));  
27 and
- 28 c. Defendants must determine whether a claimant (including an individual whose claim

1 is unresolved) is entitled to Medicare benefits, and if so, submit the claimant's  
2 information to the HHS Secretary to enable CMS to make an appropriate  
3 determination concerning coordination of benefits, pursuant to  
4 42 U.S.C. § 1395y(b)(8).

5 **SECOND CLAIM FOR RELIEF**

6 **PRIVATE CAUSE OF ACTION UNDER 42 U.S.C. § 1395y(b)(3)(A)**

7 104. Plaintiffs incorporate by reference paragraphs 1 through 100 as if set forth fully  
8 herein.

9 105. Plaintiffs assert a private cause of action pursuant to 42 U.S.C. § 1395y(b)(3)(A).

10 106. The elements of a cause of action under 42 U.S.C. § 1395y(b)(3)(A) are: (a) the  
11 existence of a primary plan; (b) the primary plan's failure to provide for primary payment or  
12 appropriate reimbursement; and (c) damages.

13 107. The Trust was established for the sole purpose of settling claims against the  
14 Tortfeasors for asbestos-related injuries. As such, the Trust is a primary plan, rendering the Trust a  
15 primary payer for settled asbestos-related illness claims.

16 108. Pursuant to federal law and regulations, Defendants have a continuing responsibility  
17 to provide notice of settlements with claimants who are Medicare beneficiaries, but failed, and  
18 continue to fail, to do so.

19 109. Pursuant to federal law and regulations, the Trust is responsible for the timely  
20 reimbursement of conditional payments of the Enrollees' asbestos-related illness expenses made by  
21 Plaintiffs' Assignors; however, the Trust failed, and continues to fail, to do so.

22 110. The Trust was and is required to reimburse said conditional payments even if it has  
23 already released settlement funds to other parties, including claimants and/or their counsel. *See* 42  
24 C.F.R. § 411.24(i).

25 111. Because the Trust is a primary payer, the Medicare payments for which Plaintiffs  
26 seek reimbursement were conditional payments under the MSP Law.

27 112. The Trust's obligation to reimburse conditional payments pursuant to the MSP Law  
28 is independent of, and in addition to, its reporting obligations under the MMSEA or federal

1 regulations.

2 113. Assignors suffered money damages as a direct result of the Trust's failure to  
3 reimburse the asbestos-related illness expenses.

4 114. Plaintiffs bring this claim pursuant to 42 U.S.C. § 1395y(b)(3)(A) to recover double  
5 the amount of the primary payment or appropriate reimbursement that the Trust, as the primary  
6 payer, failed to provide plus interest for its failure to timely reimburse conditional payments made  
7 by the Assignors for their Enrollees' asbestos-related illness expenses.

8 115. Each Assignor made payments and/or provided benefits on behalf of their Enrollees,  
9 for items and services required as a result of injuries suffered due to asbestos exposure.

10 116. At the time the Assignors made these payments, they did not know that primary  
11 coverage provided by the primary payers existed or that any primary plan could be expected to pay  
12 promptly for their Enrollees' asbestos-related medical expenses. Accordingly, the Assignors'  
13 payments were conditional. *See* 42 C.F.R. § 411.21.

14 117. The Tortfeasors have not reimbursed the Assignors out of the settlement payments  
15 they have made to their claimants. Further, neither the Trust, nor their claimants, have resolved or  
16 satisfied the Assignors' reimbursement claims.

17 118. The MSP Law and federal regulations require all participants in the tort recovery  
18 system, including asbestos trusts, to honor the reimbursement rights of Medicare and the Assignors.

19 119. Approximately 7,300 claims have been submitted to the Trust, with over 3,300  
20 claims having been paid out totaling over \$287 million according to the Trust's annual reports. In  
21 many, if not most, of these instances, the Trust settled with claimants that received asbestos  
22 recoveries; however, Defendants failed to disclose the settlement to, or reimburse, Assignors that  
23 paid for, or otherwise provided the treatment of claimants' asbestos-related medical care. By failing  
24 to do so, Defendants are cheating the Medicare system in violation of federal law.

25 120. The Assignors advanced conditional payments for medical treatment of asbestos-  
26 related illnesses for their Enrollees.

27 121. The Tortfeasors are self-insured plans that are "primary plans" under the MSP Law  
28 and funded the Trust for the sole purpose of making settlement payments (including trust payouts)

1 to the claimants, that include Enrollees of the Assignors.

2 122. These asbestos recoveries constitute payments under a primary plan, entitling  
3 Plaintiffs to recover conditional payments made on behalf of each claimant whose asbestos-related  
4 illnesses were treated, or whose treatment was paid for, by an Assignor.

5 123. CMS regulations provide, *inter alia*, that the Assignors are entitled to exercise the  
6 same rights to recover from a primary plan, entity, or individual as those granted to Medicare under  
7 42 C.F.R. Part 411, subparts B–D. CMS has interpreted this to mean that the Assignors have the  
8 right (and responsibility) to collect from primary payers using the same procedures that are available  
9 to traditional Medicare.

10 124. Federal regulations implementing the MSP Law broadly define the entities from  
11 which Medicare, Assignors, and therefore, Plaintiffs can recover primary payments. *See* 42 C.F.R.  
12 § 411.24(g). Such recovery may be had from any entity, including a beneficiary provider, supplier,  
13 physician, attorney, state agency or private insurer that has received a primary payment.

14 125. The Trust made, and continues to make, such payments to asbestos claimants covered  
15 by the Assignors.

16 126. Neither the Trust, nor its claimants, have reimbursed Plaintiffs or their Assignors for  
17 the conditional payments made on behalf of the Enrollees for the medical care provided as a result  
18 of exposure to the Tortfeasor’ asbestos products.

19 127. The Trust was required to reimburse Plaintiffs for unreimbursed conditional  
20 Medicare payments (plus interest).

21 128. Congress established a private cause of action under 42 U.S.C. § 1395y(b)(3)(A),  
22 permitting the recovery of damages which shall be double the amount that a primary plan failed to  
23 timely provide for primary payment (or appropriate reimbursement) of conditional payments.

24 129. Since neither Plaintiffs, nor their Assignors, received payment for the billed amount  
25 of their Enrollees’ medical treatment for asbestos-related illnesses provided by Assignors, Plaintiffs  
26 are entitled to recover from the Trust double the amount that the Trust, as the primary payer, failed  
27 to provide plus interest.

28

1 **VI. PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs respectfully request that the Court enter judgment against  
3 Defendants as follows:

4 1. A declaratory judgment that:

5 a. The Trust is a “primary plan” as contemplated by 42 U.S.C. § 1395y(b)  
6 [section 1862(b) of the Social Security Act], and 42 C.F.R. Part 411.

7 b. Pursuant to 42 C.F.R. § 411.25, on the Trust’s behalf, the Co-Trustees are  
8 obligated to provide notice of primary payment responsibility and  
9 information about the underlying MSP situation (including, but not limited  
10 to, for each claimant, name, address, gender, date of birth, health insurance  
11 claim (HIC) number, and Social Security number) to Plaintiffs to receive and  
12 process that information;

13 c. Any and all additional relief necessary and proper to effectuate a declaratory  
14 judgment entered in Plaintiffs’ favor pursuant to 28 U.S. Code § 2202,  
15 including, but not limited to, monetary damages; and

16 d. Pursuant to 42 U.S.C. § 1395y(b)(8), on the Trust’s behalf, the Co-Trustees  
17 are obligated to determine whether a claimant is entitled to Medicare benefits;  
18 and if the claimant is determined to be so entitled, submit the identity of the  
19 claimant and such other information as the Secretary shall specify in order to  
20 enable the Secretary to make an appropriate determination concerning  
21 coordination of benefits, including any applicable recovery claim against the  
22 Trust.

23 2. Judgment awarding Plaintiffs

24 a. Recovery of double the amount that a primary plan failed to timely provide  
25 for primary payment (or appropriate reimbursement) of conditional  
26 payments. under 42 U.S.C. § 1395y(b)(3)(A);

27 b. Pre-judgment and post-judgment interest consistent with the MSP Law; and

28 c. Costs and attorneys’ fees in favor of Plaintiffs and against Defendants.

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3. Such other and further relief to which Plaintiffs are entitled under 28 U.S.C. §§ 2201, 2202, the MSP Law or otherwise, or this Court deems just and proper.

**SHULMAN BASTIAN FRIEDMAN & BUI LLP**

DATED: August 13, 2021

By:                   /s/ Gary A. Pemberton                    
Alan J. Friedman  
Gary A. Pemberton  
Attorneys for MSP RECOVERY CLAIMS,  
SERIES LLC, a Delaware Series Limited Liability  
Company; MSPA CLAIMS 1, LLC, a Florida  
Limited Liability Company; MAO-MSO Recovery  
II LLC, a Delaware Series Limited Liability  
Company; and MSP RECOVERY CLAIMS  
SERIES 44, LLC, a Delaware Series Limited  
Liability Company

**Appendix**

1  
2 A1. On 5/3/2016, Preferred Medical Plan, Inc. entered into an assignment with MSP  
3 Recovery LLC. Said assignment included the following language “[c]lient hereby irrevocably  
4 assigns, transfers, conveys, sets over and delivers to MSP Recovery, and any of its successors and  
5 assigns, any and all of Client’s right, title, ownership and interest in and all rights and claims against  
6 primary payers and/or third parties that may be liable to Client arising from or relating to the Claims,  
7 including claims under consumer protection statutes and laws, and all information relating thereto,  
8 all of which shall constitute the ‘Assigned Claims’,[] as also specified in Section 1.1.” The  
9 assignment contract was executed by individuals of majority, of sound mind, and with legal  
10 authority to bind the respective parties. The assignment was entered under Florida law. On 8/8/2016,  
11 MSP Recovery, LLC entered into an assignment with MAO-MSO Recovery II LLC, Series PMPI,  
12 irrevocably assigning its right to recover payments as assigned from Preferred Medical Plan, Inc.  
13 Said assignment included the following language “[a]ssignor, hereby irrevocably assigns, sells,  
14 transfers, conveys, sets over and delivers to Assignee and is successors and assigns, all of Assignor’s  
15 right, title, ownership and interest in and to all Assigned Claims . . . whether based in contract, tort,  
16 statutory right, and any and all rights to pursue and/or recover monies that Assignor had, may have  
17 had, or has asserted against any party in connection with the Assigned Claims, and all rights and  
18 claims against primary payers and/or third parties that may be liable to Assignor arising from or  
19 relating to the Assigned Claims, including claims under consumer protection statutes and laws, and  
20 all information relating thereto, all of which shall constitute the ‘Assigned Claims.’” This second  
21 assignment contract was executed by individuals of majority, of sound mind, and with legal  
22 authority to bind the respective parties. This second assignment was entered under New York law.  
23 Consideration was given between each party in executing these assignments.

24 A2. On 5/12/2017, SummaCare, Inc. entered into an assignment with MSP Recovery,  
25 LLC. Said assignment included the following language “[c]lient hereby irrevocably assigns,  
26 transfers, conveys, sets over and delivers to MSP Recovery, and any of its successors and assigns,  
27 any and all of Client’s right, title, ownership and interest in and to all Claims existing on the date  
28 hereof, whether based in contract, tort, statutory right, and any and all rights to pursue and/or recover

1 monies for Client that Client had, may have had, or has asserted against any party in connection  
2 with the Claims and all rights and claims against primary payers and/or third parties that may be  
3 liable to client arising from or relating to the Claims, including claims under consumer protection  
4 statutes and laws, and all information relating thereto, all of which shall constitute the ‘Assigned  
5 Claims’” The assignment contract was executed by individuals of majority, of sound mind, and with  
6 legal authority to bind the respective parties. The assignment was entered under Ohio law. On  
7 6/12/2017, MSP Recovery, LLC entered into an assignment with MSP Recovery Claims, Series  
8 LLC, irrevocably assigning its right to recover payments as assigned from SummaCare, Inc. Said  
9 assignment included the following language “Assignor . . . irrevocably assigns, sells, transfers,  
10 conveys, sets over and Delivers to Assignee and its successors and assigns, any and all of Assignors  
11 right, title ownership and interest in and to the ‘Assigned Claims’, ‘Claims’, [‘][sic]Assigned Assets’  
12 and ‘Assigned Documents’ . . . whether based in contract, tort, statutory right, and any and all rights  
13 to pursue and/or recover monies that Assignor had, may have had, or has asserted against any party  
14 pursuant to the Agreement, including claims under consumer protection statutes and laws, any and  
15 all rights and claims against primary payers and/or third parties that may be liable to Client arising  
16 from or relating to the Claims and all information relating thereto.” This second assignment contract  
17 was executed by individuals of majority, of sound mind, and with legal authority to bind the  
18 respective parties. This second assignment was entered under Delaware law. Consideration was  
19 given between each party in executing these assignments.

20 A3. On 12/16/2014, Interamerican Medical Center Group, LLC (IMC) entered into an  
21 assignment with MSP Recovery, LLC. Said assignment included the following language “[c]lient  
22 appoints, directs, and, otherwise, irrevocably assigns all of Client’s rights as it pertains to the rights  
23 pursuant to any plan, State or Federal statute(s) whatsoever directly and/or indirectly for any of its  
24 members and/or plan participants, and/or its rights pursuant to any agreement....” The assignment  
25 contract was executed by individuals of majority, of sound mind, and with legal authority to bind  
26 the respective parties. The assignment was entered under Florida law. On 2/20/2015, MSP  
27 Recovery, LLC entered into an assignment with MSPA Claims 1, LLC, irrevocably assigning its  
28 right to recover payments as assigned from Interamerican Medical Center Group, LLC (IMC).” Said

1 assignment included the following language “[a]ssignor hereby irrevocably assigns, transfers,  
2 conveys, sets over, and delivers to Assignee or its assigns any and all of Assignor’s right, title,  
3 ownership and interest in and to all rights and entitlements, that Assignor has, may have had, or has  
4 asserted against third parties arising from or relating to the Claims.” This second assignment contract  
5 was executed by individuals of majority, of sound mind, and with legal authority to bind the  
6 respective parties. This second assignment was entered under Florida law.

7 A4. Effective April 28, 2016, Health First Health Plans, Inc. (“HFHP”), a Medicare  
8 Advantage organization, irrevocably assigned all rights to recover payments made on behalf of its  
9 Enrollees to MSP Recovery (the “HFHP Assignment”). The HFHP Assignment expressly provides,  
10 in pertinent part:

11 Client hereby irrevocably assigns, transfers, conveys, sets over and delivers to MSP  
12 Recovery, and any of its successors and assigns, any and all of Client’s right, title,  
13 ownership and interest in and to all Claims existing on the date hereof, whether based  
14 in contract, tort, statutory right, and any and all rights (including, but not limited to,  
15 subrogation) to pursue and/or recover monies for Client that Client had, may have  
16 had, or has asserted against any party in connection with the Claims and all rights  
17 and claims against primary payers and/or third parties that may be liable to Client  
18 arising from or relating to the Claims, including claims under consumer protection  
19 statutes and laws, and all information relating thereto . . . all of which shall constitute  
20 the “Assigned Claims.”

21 ...

22 The transfer, grant, right, or assignment of any and all of Client’s right, title,  
23 ownership, interest and entitlements in and to the Assigned Claims shall remain the  
24 confidential and exclusive property of MSP Recovery or its assigns. This assignment  
25 is irrevocable and absolute.

26 ///

27 ///

28 ///

1 HFHP Assignment.<sup>5</sup>

2 On June 12, 2017, MSP Recovery assigned all rights acquired under the HFHP Assignment  
3 to Series 16-05-456, a designated series of MSPRC (the “Series Assignment”). The Series  
4 Assignment states:

5 [T]he undersigned Assignor . . . irrevocably assigns, sells, transfers, conveys, sets  
6 over and delivers to Assignee and its successors and assigns, any and all of  
7 Assignor’s right, title, ownership and interest in and to the Claims and Assigned  
8 Claims, (and all proceeds and products thereof, including any related assigned assets  
9 and assigned documents) as such terms are defined or contained in that certain (1)  
10 Assignment and (2) Addendum to the Recovery Agreement and Assignment  
11 Addendum, both given and effective April 28, 2016 and executed on June 1, 2018,  
12 by and between Health First Health Plans, Inc., a Florida corporation and Medicare  
13 Advantage Organization and party to contract number H1099 with The Centers for  
14 Medicare & Medicaid Services, as the “Client” and health plan assignor, and [MSP  
15 Recovery], a Florida limited liability company (the “Assignment”); irrespective of  
16 when the claims were vested in Client, inclusive of any and all claim(s), causes of  
17 actions, proceeds, products and distributions of any kind, and proceeds of proceeds,  
18 in respect thereof, whether based in contract, tort, statutory right, and any and all  
19 rights (including, but not limited to, subrogation) to pursue and/or recover monies  
20 that Assignor had, may have had, or has asserted against any party pursuant to the  
21 Assignment from the Client, including claims under consumer protection statutes and  
22 laws, any and all rights and claims against primary payers and/or third parties that

23 ///

24  
25 <sup>5</sup> The agreements entered between MSP Recovery, Health First Administrative Plans, and Health  
26 First Health Plans have been the subject of much litigation over the last three years; however, the  
27 Eleventh Circuit Court of Appeals in *MSP Recovery Claims, Series LLC v. QBE Holdings, Inc.*, 965  
28 F. 3d 1210 (11th Cir. 2020) held that the assignment agreements properly assigned the claims and  
are the relevant documents providing standing to assert HFHP recovery rights.

1 may be liable to Client arising from or relating to the Claims and all information  
2 relating thereto.

3 Further, on October 22, 2020, Series 16-05-456 entered into an assignment agreement with  
4 to Series 44-20-456, a designated series of Series 44, whereby it irrevocably assigned all rights it  
5 acquired through its assignment agreement with MSP Recovery. This third assignment agreement  
6 was executed by individuals of majority, of sound mind, and with legal authority to bind the  
7 respective parties, and was entered into under Florida law:

8 [Series 16-05-456] . . . hereby irrevocably assigns, transfers, conveys, sets over, and  
9 delivers to [Series 44-20-456] and its successors and assigns, (i) any and all of  
10 Assignor’s right, title, ownership, and interest in and to the [claims], as well as (ii)  
11 the “Claims” and “Assigned Claims”, and all proceeds and products thereof  
12 (collectively the “Assigned Claims” ) as such terms are defined in the Agreements.

13 This Assignment includes all the Assigned Claims irrespective of when the claims  
14 were vested in HFHP, inclusive of any and all claim(s), causes of actions, proceeds,  
15 products, and distributions of any kind, and proceeds of proceeds, in respect thereof,  
16 whether based in contract, tort, statutory right, and any and all rights (including, but  
17 not limited to, subrogation) to pursue and/or recover monies that Assignor had, may  
18 have had, or has asserted against any party, including claims under consumer  
19 protection statutes and laws, any and all rights and claims against primary payers  
20 and/or third parties that may be liable to HFHP arising from or relating to the Claims  
21 and all information relating thereto.

22 Consideration was given between each party in executing these assignments.  
23  
24  
25  
26  
27  
28

# Exhibit A

**EXECUTION COPY**

**SEVENTH AMENDMENT TO AND COMPLETE RESTATEMENT OF  
THORPE INSULATION COMPANY  
ASBESTOS PERSONAL INJURY SETTLEMENT  
TRUST DISTRIBUTION PROCEDURES**

**SEVENTH AMENDMENT TO AND COMPLETE RESTATEMENT OF  
THORPE INSULATION COMPANY  
ASBESTOS PERSONAL INJURY SETTLEMENT  
TRUST DISTRIBUTION PROCEDURES**

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**SEVENTH AMENDMENT TO AND COMPLETE RESTATEMENT OF  
THORPE INSULATION COMPANY  
ASBESTOS PERSONAL INJURY SETTLEMENT  
TRUST DISTRIBUTION PROCEDURES**

The Thorpe Insulation Company Asbestos Personal Injury Settlement Trust Distribution Procedures (“TDP”) contained herein provide for satisfying all asbestos-related personal injury and death claims (“Asbestos Claims”) caused by conduct of, and/or exposure to asbestos-containing products for which, Thorpe Insulation Company and/or Pacific Insulation Company (collectively, “Thorpe”), its predecessors, successors, and assigns have legal responsibility (hereinafter for all purposes of this TDP defined as “Trust Claims”), as provided in and required by the Thorpe Insulation Company Plan of Reorganization (“Plan”) and the Thorpe Insulation Company Asbestos Personal Injury Settlement Trust Agreement (“Trust Agreement”). The Plan and Trust Agreement establish The Thorpe Insulation Company Asbestos Personal Injury Settlement Trust (“Trust”). The Trustees of the Trust (“Trustees”) shall implement and administer this TDP in accordance with the Trust Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan.

**SECTION I**

**Introduction**

**1.1 Purpose.** This TDP has been adopted pursuant to the Trust Agreement. It is designed to provide fair and equitable treatment for all Trust Claims that may presently exist or may arise in the future in substantially the same manner.

**1.2 Interpretation.** Except as expressly provided below, nothing in this TDP shall be deemed to create a substantive right for any claimant. The rights and benefits expressly provided herein to holders of Trust Claims shall vest in such holders as of the Effective Date.

## SECTION II

### Overview

**2.1 Trust Goals.** The goal of the Trust is to treat all similarly situated claimants, present and future, equitably. This TDP furthers that goal by setting forth procedures for processing and paying Trust Claims generally on an impartial, first-in-first-out (“FIFO”) basis, with the intention of paying all claimants over time as equivalent a share as possible of the Thorpe several share of the value of their claims based on the level of settlements, verdicts or judgments historically received for substantially similar claims litigated under state tort law (the “Tort System”). To this end, the TDP establishes for unliquidated claims in the Case Valuation Matrix (“Matrix”), attached hereto as Appendix I, a schedule of five asbestos-related diseases (“Compensable Diseases”), which have presumptive medical and exposure requirements (“Medical/Exposure Criteria”), criteria for establishing liquidated values (“Matrix Values”), anticipated average values (“Average Values”), and caps on liquidated values (“Maximum Values”). The Compensable Diseases, Medical/Exposure Criteria, Matrix Values, Average Values and Maximum Values, which are set forth in the attached Matrix, have all been selected and derived with the intention of achieving a fair allocation of the Trust funds as among claimants suffering from different disease processes in light of the best available information, considering the settlement, verdict and/or judgments that claimants would receive in the Tort System for the Thorpe several share absent the bankruptcy. The TDP also provides mechanisms for the treatment and payment of Liquidated Claims.

**2.2 Trust Claim Liquidation Procedures.** Trust Claims shall be processed based on their place in the FIFO Processing Queue to be established pursuant to Section 5.3 below. The Trust shall liquidate all Trust Claims that meet the presumptive Medical/Exposure Criteria in accordance with the Matrix. Claims that do not meet the presumptive Medical/Exposure Criteria

for the relevant Compensable Disease may undergo the Trust's Individual Review Process described in the Matrix. In such a case, notwithstanding that the claim does not meet the presumptive Medical/Exposure Criteria for the relevant Compensable Disease, the Trust can offer the claimant an amount up to the Average Value as defined in the Matrix of that Compensable Disease if the Trust is satisfied that the claimant has presented a claim that would be cognizable, valid and compensable in the Tort System.

All unresolved disputes over a claimant's medical condition, exposure history and/or the liquidated value of the claim shall be subject to binding or non-binding arbitration, at the election of the claimant, under the Arbitration Rules. Disputes with the Trust that cannot be resolved by non-binding arbitration may enter the Tort System as provided in Sections 5.9 and 7.3 below. However, if and when a claimant obtains a judgment in the Tort System, the judgment will be payable (subject to the Funds Received Ratio, Maximum Annual Payment, Company Category Claims Payment Ratio and Disease Category Claims Payment Ratio provisions set forth below) as provided in Section 7.4 below.

**2.3 Trust Application of the Funds Received Ratio.** The Debtor, through the Trust and this TDP, is liable to pay to full amount of the liquidated value of all Trust Claims. The Trust will pay as much of the liquidated value of each Trust Claim as is possible, as described in more detail in section 4.2 below, taking into consideration the net funds received by the Trust to date from all sources ("Funds Received"), including payments by those insurers of Debtors that have settled the Coverage Litigation and paid their share of Debtors' liability, the anticipated present value of future Trust Claims, income taxes, inflation, the anticipated cost of Trust administration and the anticipated return on Trust investments. The Initial Funds Received Ratio will be set by the Trust, with the consent of the TAC and Futures Representative, once the Trust has collected sufficient assets to make the expense and burden on claimants of a distribution worthwhile. The

Funds Received Ratio will be calculated on the assumption that the Matrix's Average Values will be achieved with respect to existing present claims liquidated under the Matrix and projected future claims.

Upon receipt of additional funds from Debtors' other insurers, the Trust shall review the Funds Received Ratio to determine if there are sufficient funds to adjust that ratio. The Funds Received Ratio shall be adjusted upwards or downwards from time to time by the Trust with the consent of the TAC (as defined in Section 3.1 below) and the Futures Representative (as defined in Section 3.1 below) to reflect then-current estimates of the fair market value of the Trust's assets and the net present value of its liabilities, as well as the estimated value of then-pending and future claims. However, any adjustment to the initial Funds Received Ratio shall be made only pursuant to Section 4.2 below. When the Funds Received Ratio is increased as Debtors' other insurers pay their share of Debtors' liability, claimants who have previously been paid by the Trust will receive a proportional additional payment unless the Trust with consent of the TAC and the Futures Representative concludes that the amount is so modest and the administrative costs and burdens are so great in comparison to the benefits to claimants that such additional payments shall be omitted or deferred.

To the extent that the designated legal representative of a claimant or heir (or the Trust in the case of in pro per claimants), following reasonable efforts, cannot locate a claimant or heir within one year from the approval of any additional payment pursuant to Section 4.2, the legal representatives shall return all funds, which must be held in client trust accounts, to the Trust which the Trust shall return to net claimant equity. To the extent the Trust cannot locate a claimant or heir in pro per within one year from the approval of any additional payment pursuant to Section 4.2 following reasonable efforts, the entire additional payment shall also be returned to net claimant equity.

**2.4 Trust's Determination of the Maximum Annual Payment.** At any given time and based upon the Funds Received, the Trust shall estimate or model the amount of cash flow anticipated to be necessary over its entire life to ensure that funds will be available to treat all present and future claimants as similarly as possible. In each year, the Trust will be empowered to pay out all of the interest earned during the year, together with a portion of its principal, calculated so that the application of Trust funds over its life shall correspond with the needs created by the anticipated flow of claims (the "Maximum Annual Payment"). The Trust's distributions to claimants for that year shall not exceed the Maximum Annual Payment determined for that year; provided, however, that the Maximum Annual Payment limitation shall not apply to any Pre-Petition Liquidated Claims as defined in Section 5.2(a) below because those amounts are known and have already been taken into account in the projected cash flow.

**2.5 Trust Claims Disease Category Claims Payment Ratio.** Based upon Thorpe's claim settlement history and analysis of present and future claims, a Disease Category Claims Payment Ratio is hereby established. The Trust's determination of the anticipated number and value of future asbestos claims incorporates the historical disease payment ratio. If there is a material deviation from the historical Disease Category Claims Payment Ratio in the actual Trust Claims received by the Trust, there could be an adverse impact on future asbestos claimants as a whole. The Trust, with the consent of the TAC and the Futures Representative, will set the Disease Category Claims Payment Ratio for "Category A" claims, which consist of Trust Claims involving malignant claims that were unliquidated as of the Petition Date, and for "Category B" claims, which are Trust Claims involving non-malignant claims that were similarly unliquidated as of the Petition Date.

In each year, after the determination of the Maximum Annual Payment, the Disease Category Claims Payment Ratio for each category multiplied by the Maximum Annual Payment

amount shall be available to pay the respective Disease Category Claims that have been liquidated since the Petition Date.

In the event there are insufficient funds in any year to pay the liquidated claims in a Disease Category, the available funds within the particular Disease Category shall be paid to the maximum extent to claimants in the particular Disease Category based on their place in the FIFO Payment Queue described in Section 5.3(c) below based upon the date of claim liquidation. Claims for which there are insufficient funds will be carried to the next year where they will be placed at the head of the FIFO Payment Queue. If there are excess funds in either or both Disease Category, because there was an insufficient amount of liquidated claims to exhaust the respective Maximum Annual Payment amount for that Disease Category, then the excess funds for either or both Disease Categories will be rolled over and remain dedicated to the respective Disease Category to which they were originally allocated.

The number and value of the Pre-Petition Liquidated Claims are known and have already been taken into account in determining the Trusts liabilities and cash flow. Thus, the Disease Category Claims Payment Ratios shall not apply to any Pre-Petition Liquidated Claims.

**Suspension of Claims Payment Ratio.** Notwithstanding any other provision herein, commencing on September 1, 2020, the Trust shall cease enforcing the Disease Category Claims Payment Ratio (“Ratio”) contained in the TDP subject to the ability of the Trustees, the Futures Representative and the TAC to reinstate the enforcement of the Ratio in the manner provided below. During the time that the Trust is not enforcing the Ratio, it shall continue to track and maintain records regarding the funds allocated to the Ratio and the claims paid that would have otherwise been subject to the Ratio.

Beginning on February 1, 2021, the Trust shall on July 31st (for the period January 1st to June 30th of the current year) and February 1st (for period July 1st to December 31st of the prior

year) of each such period where the Ratio has been suspended provide the Trustees, the Futures Representative and the TAC a report showing: (a) the amount of the Maximum Annual Payment that would have been allocated by the Ratio for that six month period using the existing Ratio; (b) the amounts paid with respect to claims during such six month period that would have been subject to the Ratio in each category; and (c) the amounts approved for payment (but not yet paid) as of the end of such six month period with respect to claims that would have been subject to the Ratio. The Futures Representative and the TAC shall have fifteen days (15) from the receipt of each such report to notify the Trust in writing that they are exercising their right to have the Trust begin enforcing the Ratio effective as of the end of the most recent reporting period. In addition, the Trustees may, at any time with notice to the Futures Representative and the TAC, exercise their right to reinstate the enforcement of the Ratio. If the Trustees exercise their right or if the Trustees receive a written reinstatement notice from the Futures Representative or the TAC, the Trust shall immediately begin enforcing the Ratio, effective as of the end of the most recent reporting period. If the enforcement of the Ratio is reinstated, all provisions of the TDP relating to the Ratio shall be in effect, but any deficits from prior reporting periods or years shall be ignored and any rollover amounts shall be allocated in accordance with the percentages set forth in the Ratio.

**2.6 Adjustments to Forecast.** The Trustees, with the consent of the TAC and the Futures Representative, may in a particular year conform the Disease Category Claims Payment Ratio to the revised estimates of future claims by a qualified expert subject to the Fundamental Adjustments described below.

**2.7 Fundamental Adjustments.** The Disease Category Claims Payment Ratio and its rollover provisions shall be continued absent circumstances, such as a significant change in law or medicine, necessitating amendment to avoid manifest injustice (“Fundamental Adjustment”). The accumulation, rollover and subsequent delay of claims resulting from application of the Disease

Category Claims Payment Ratio, shall not, in and of itself, constitute such circumstances, nor may an increase in the numbers of Disease Category B claims beyond those predicted or expected be considered as a factor in deciding whether to reduce the percentage allocated to Disease Category A. In considering whether to make any Fundamental Adjustment to the Disease Category Claims Payment Ratio and/or its rollover provisions, the Trustees should also consider the reasons for which the Disease Category Claims Payment Ratio and its rollover provisions were adopted, the settlement history that gave rise to its calculation, and the foreseeability or lack of foreseeability of the reasons why there would be any need to make a Fundamental Adjustment. In that regard, the Trustees should keep in mind the interplay between the Funds Received Ratio and the Disease Category Claims Payment Ratio as it affects the net cash available at any given time to pay to claimants. In any event, no Fundamental Adjustment to the Disease Category Claims Payment Ratio may be made without the consent of the TAC and the Futures Representative pursuant to the consent process set forth in Section 2.2(f) of the Trust Agreement. However the Trustees may offer the option of a reduced payment to either Disease Category for any or all Company Categories in return for prompter payment (the “Reduced Payment Option”), after first obtaining the consent of the TAC and the Futures Representative as described above.

**2.8 Trust Indemnity and Contribution Claims.** As set forth in Section 5.6 below, Trust Claims for indemnity and contribution (if any) will be subject to the same categorization, evaluation, and payment provisions of this TDP as all other Trust Claims.

### **SECTION III**

#### **TDP Administration**

**3.1 Trust Advisory Committee and Futures Representative.** Pursuant to the Plan and the Trust Agreement, this TDP will be administered by the Trustees in consultation with a five-member Trust Advisory Committee (“TAC”), that represents the interests of holders of

present Trust Claims, and a Legal Representative for Future Asbestos-Related Claimants (“Futures Representative”), who represents the interests of holders of Trust Claims that will be asserted in the future. The Trustees shall obtain the consent of the TAC and the Futures Representative to any amendments to these Procedures pursuant to Section 8.1 below, and to such other matters as are otherwise required below and in Section 2.2(f) of the Trust Agreement. The Trustees shall also consult with the TAC and the Futures Representative on such matters as are provided below and in Section 2.2(e) of the Trust Agreement. The initial members of the TAC and the initial Futures Representative are identified in the Trust Agreement.

**3.2 Consent and Consultation Procedures.** In those circumstances in which consultation or consent is required, the Trustees will provide written notice to the TAC and the Futures Representative of the specific amendment or other action that is proposed. The Trustees will not implement such amendment nor take such action unless and until the parties have engaged in the consultation process described in Section 2.2(e), or the Consent Process described in Sections 5.6 and 6.6 and if necessary, 5.7 and 6.7 of the Trust Agreement.

## SECTION IV

### Funds Received Ratio; Periodic Evaluations

**4.1 Uncertainty of Thorpe’s Asbestos Claim Liabilities.** As discussed above, there is inherent uncertainty regarding Thorpe’s total Asbestos Claim liabilities, as well as the total value of the Funds Received available to pay such claims. Consequently, there is inherent uncertainty when or if the Trust will be able to pay the full amount of the liquidated amount of Trust Claims. To seek to ensure substantially equivalent treatment of all present and future claims, the Trustees must determine from time to time the Funds Received Ratio of the full liquidated value that holders of Trust Claims will be likely to receive absent receipt of additional payments on behalf of the

Debtors for Debtors' liability to pay the full liquidated value, as described in Section 2.3 above and Section 4.2 below.

**4.2 Computation of Funds Received Ratio.** The Initial Funds Received Ratio will be set by the Trust, with the consent of the TAC and Futures Representative, once the Trust has collected sufficient assets to make the expense and burden on claimants of a distribution worthwhile. The Funds Received Ratio will be calculated on the assumption that the Matrix's Average Values will be achieved with respect to existing present claims liquidated under the Matrix and projected future claims. The Funds Received Ratio shall be revised if and when material additional funds are received, subject to the terms of this TDP and the Trust Agreement. In addition, the Funds Received Ratio shall be revised if the Trustees determine, with consent of the TAC and the Futures Representative, that an adjustment is required. Commencing on the first day of January, after the Plan has been Confirmed, the Trustees shall reconsider the then applicable Funds Received Ratio to assure that it is based on accurate current information and may, after such reconsideration, change the Funds Received Ratio if necessary with the consent of the TAC and the Futures Representative. Thereafter, no less frequently than once every three years, commencing with the first day of January occurring after the Plan is consummated, the Trustees shall reconsider the then applicable Funds Received Ratio to assure that it is based on accurate, current information and may, after such reconsideration, change the Funds Received Ratio if necessary with the consent of the TAC and the Futures Representative. The Trustees shall also reconsider the then applicable Funds Received Ratio at shorter intervals if they deem such reconsideration to be appropriate or if requested to do so by the TAC or the Futures Representative. The Trustees must base their determination of the Funds Received Ratio on Funds Received, the current estimates of the number, types, and values of present and future Trust Claims, the value and liquidity of the assets then available to the Trust for their payment, all anticipated

administrative and legal expenses, and any other material matters that are reasonably likely to affect the sufficiency of funds to pay a comparable percentage of the full value of liquidated claims to all holders of Trust Claims. When making these determinations, the Trustees shall exercise common sense and flexibly evaluate all relevant factors. The Funds Received Ratio applicable to one category of claims may not be reduced to alleviate delays in another category claims' payments caused by a backlog in that category. All claims will receive the same Funds Received Ratio then in effect at the time of payment subject to provisions of Section 4.3.

**4.3 Applicability of the Funds Received Ratio.** No holder of a Trust Claim shall receive a payment that exceeds the Trust's determination of the then existing Funds Received Ratio unless a Reduced Payment Option applies. If a redetermination of the Funds Received Ratio has been proposed in writing by the Trustees to the TAC and the Futures Representative but has not yet been adopted, the claimant shall receive the lower of the current Funds Received Ratio or the proposed Funds Received Ratio. However, if the proposed Funds Received Ratio was the lower amount but is not subsequently adopted, the claimant shall thereafter receive the difference between the lower proposed amount and the higher current amount. Conversely, if the proposed Funds Received Ratio was the higher amount and is subsequently adopted, the claimant shall thereafter receive the difference between the lower current amount and the higher adopted amount.

## SECTION V

### Resolution of Trust Claims

**5.0 General Requirements.** Subject to the requirements of Section 5.11 below, all Trust Claims shall be resolved as set forth in this TDP and the Claims Matrix.

**5.1 Threshold Requirement for Submitting a Claim to the Trust.** If a Claimant or Injured Person has commenced litigation seeking compensation for asbestos-related injuries or death that are the subject of a claim in a court where one or more of the Debtors liable for such

claim was subject to *in personam* jurisdiction as of October 15, 2007, then that jurisdiction shall determine which limitations period shall be used subject to the exceptions stated herein. If multiple pre-petition lawsuits in different jurisdictions naming one or more of the Debtors liable for such claim have been filed for an Injured Person or Claimant, then such Injured Person or Claimant may choose the pre-petition jurisdiction (from among the different jurisdictions in which the pre-petition lawsuits naming one or more of the Debtors liable for such claim were filed for that Injured Party or Claimant, so long as in personam jurisdiction existed) in which the limitations period shall be used. If a Claimant does not have a pending lawsuit against one or more of the Debtors at the time of the submission to the Trust, then in lieu of having a tort action filed for purposes of this TDP, the Claimant or Injured Person must submit a verified certification under penalty of perjury, either of counsel based upon counsel's records, or of Claimant or Injured Person stating facts which establish in personam jurisdiction in a court where one or more of the Debtors liable for such claim was subject to in personam jurisdiction as of October 15, 2007 or incorporate a lawsuit which asserts those facts, and therefore such person can meet the jurisdictional requirements of the particular state in which the tort claim would have been timely and properly filed. The Trust shall have the right to contest any such certification. The jurisdiction so certified shall determine which limitations period shall be used subject to the exceptions stated herein.

**5.2 Statute of Limitations or Repose for Trust Claims.** The statute of limitations and the choice of law determination applicable to claims against the Trust shall be determined by reference to the tort system where a claim against a Debtor was pending on the filing date of these cases, or where such a claim could have been timely and properly filed as asserted by the Claimant or Injured Person.

**5.3 Ordering, Processing and Payment of Claims.**

**5.3(a) Ordering of Claims.**

**5.3(a)(1) Establishment of the FIFO Processing Queue.** The Trust will order unliquidated claims for processing purposes on a FIFO basis except as otherwise provided herein (the “FIFO Processing Queue”). For all claims filed on or before the date six months after the Effective Date (the “Initial Claims Filing Date”), a claimant’s position in the FIFO Processing Queue shall be determined as of the earlier of (i) the date prior to October 15, 2007 “Petition Date” (if any) that the specific claim was either served or filed against Thorpe in a court in which Thorpe could properly have been sued or was actually submitted to Thorpe pursuant to an administrative processing agreement; (ii) the date before the Petition Date that a claim was filed or served against another defendant in the Tort System if at the time the claim was subject to a tolling agreement with Thorpe; (iii) the date after the Petition Date (if any) but before the Effective Date that the claim was filed or served against another defendant in a court in which Thorpe could properly have been sued; or (iv) the date after the Effective Date but on or before the Initial Claims Filing Date that the claim was served or filed with the Trust. Following the Initial Claims Filing Date, the claimant’s position in the FIFO Processing Queue shall be determined by the date the claim was filed with the Trust. For all claims filed on the same date, the claimant’s position in the FIFO Processing Queue shall be determined by the date of the diagnosis of the asbestos-related disease.

**5.3(a)(2) Effect of Statutes of Limitations and Repose.** All claims barred by the applicable statute of limitations or repose, as determined in Section 5.2 above, at the Petition Date shall remain barred on and after the Petition Date. All claims not so barred shall be tolled as of the Petition Date to and including April 20, 2012, without the need of the claimant to take any action whatsoever, including without limitation, filing a Proof of Claim in the Reorganization Cases.

**5.3(b) Processing of Unliquidated Trust Claims.** Within six months after the establishment of the Trust, the Trustees with the consent of the TAC and the Futures Representative shall adopt procedures for reviewing and liquidating all unliquidated Trust Claims, which shall include deadlines for processing such claims. Such procedures shall also require claimants seeking resolution of unliquidated Trust Claims to first file a Trust Claim form, together with the required supporting documentation, in accordance with the provisions of Sections 6.1 and 6.2 below. It is anticipated that the Trust shall provide an initial response to the claimant within six months of receiving the Trust Claim form. All claims filed with the Trust shall be deemed to be a claim for the highest Compensable Disease for which the claim qualifies at the time of filing, with all lower Compensable Diseases for which the claim then qualifies or may qualify in the future subsumed into the higher Compensable Disease for both processing and payment purposes. Upon filing of a valid Trust Claim form with the required supporting documentation, the claim shall be placed in the FIFO Processing Queue in accordance with the ordering criteria described in Section 5.3(a) above.

The five Compensable Diseases covered by this TDP are set forth in detail in the Matrix attached as Appendix I. The Compensable Diseases, Matrix Values, and Medical/ Exposure Criteria shall apply to all unliquidated claims filed with the Trust.

As a general practice, the Trust will review its claims files on a regular basis and notify all claimants whose claims are likely to come up in the FIFO Processing Queue in the near future.

**5.3(c) Payment of Claims.** Trust Claims shall be paid in FIFO order based on the date their liquidation became final (the “FIFO Payment Queue”), all such payments being subject to the applicable Funds Received Ratio, Maximum Annual Payment, and Disease Category Claims Payment Ratio, except as otherwise provided herein. For all claims liquidated on the same

date, each claimant's position in the FIFO Payment Queue shall be determined by the date of the diagnosis of the claimant's asbestos-related disease.

**5.3(d) Adjustment for Inflation.** All payments made to holders of Trust Claims shall be adjusted for inflation annually beginning with the first calendar year after the Effective Date.

**5.3(e) Post-Petition Interest.** No interest shall be paid on any post-petition Trust Claims.

**5.4 Resolution of Pre-Petition Trust Claims.** As soon as practicable after the Effective Date, the Trust shall pay all Trust Claims that were liquidated by (i) a settlement agreement entered into prior to the Petition Date for the particular claim, or (ii) a judgment of any kind entered on or before October 15, 2007 (collectively, "Pre-Petition Liquidated Claims"). Notwithstanding the foregoing, these payments shall be subject to the limitations set forth below in this section. The liquidated value of a Pre-Petition Liquidated Claim shall be the amount agreed to in the binding settlement agreement, or the amount of the judgment, as the case may be, plus interest, if any, that has accrued on that amount in accordance with the terms of the agreement, if any, or under applicable state law as of the Petition Date; however, pursuant to Section 7.2 below, the liquidated value of a Pre-Petition Liquidated Claim shall not include any punitive or exemplary damages.

Pre-Petition Liquidated Claims shall be processed and paid within 90 days of the Effective Date, if feasible, or as soon thereafter as is possible. The amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Maximum Annual Payment or the Disease Category Claims Payment Ratio, but shall be subject to the Funds Received Ratio provisions set forth in Section 4.2 above.

**5.5 Hardship Claims.** At any time the Trust may liquidate and pay certain Trust Claims that qualify as Hardship Claims. Such claims may be considered separately no matter what the order of processing otherwise would have been under this TDP. A Hardship Claim, following its liquidation, shall be placed at the head of the FIFO Liquidation Queue for purposes of payment, subject to the Maximum Annual Payment and Disease Category Claims Payment Ratio described above. A Trust Claim qualifies for payment as an Hardship Claim if the Trust, in its sole discretion, determines (a) that the claimant needs financial assistance on an immediate basis based on the claimant's expenses and all sources of available income, and (b) that there is a causal connection between the claimant's dire financial condition and the claimant's asbestos-related disease.

**5.6 Contribution Claims.** Contribution Claims that are asserted against the Trust based upon theories of contribution or indemnification under applicable law may not be processed or paid by the Trust (a) unless such claim would not be disallowed by Section 502(e) of the Code if the Trust were a debtor in a case under the Code, and (b) the holder of such claim (the "Indirect Claimant") establishes to the satisfaction of the Trustees that (i) the Indirect Claimant has paid in full the liability and obligations of the Trust to the direct claimant to whom the Trust would otherwise have had a liability or obligation under these Procedures, (ii) the direct claimant and the Indirect Claimant have forever released the Trust from all liability to the direct claimant, and (iii) the claim is not otherwise barred by a statute of limitations or repose or by other applicable law. In no event shall any Indirect Claimant have any rights against the Trust superior to the rights of the related direct claimant against the Trust, including any rights with respect to the timing, amount or manner of payment.

The Trust shall not pay any Indirect Claimant unless and until the Indirect Claimant's aggregate liability for the direct claimant's claim has been fixed, liquidated and paid by the Indirect Claimant pursuant to final judgment and not by settlement.

The credit or offset which a co-defendant is entitled in the Tort System for settlement with the trust is the amount of the Trust's Payment to the Claimant shall be (a) the actual amount received to date by the Claimant; or (b) if no funds have yet been received, the amount of the liquidated value agreed to by the Claimant and the Trust, multiplied by the pro rata share in effect at the time the set-off is being applied.

Contribution Claims shall be processed in accordance with procedures to be developed and implemented by the Trustees, which procedures (a) shall determine the validity, allowability and enforceability of such claims; and (b) only then shall otherwise provide the same liquidation and payment procedures and rights to the holders of such claims as the Trust would have afforded the holders of the underlying valid Trust Claims.

#### **5.7 Claim Auditing and Review Procedures.**

**5.7(a) Claims Audit Program.** The Trust with consent of the TAC and Futures Representative shall develop methods for auditing the reliability of evidence reasonably related to the value of the claim, including additional reading of x-rays and verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including exposure to asbestos-containing products manufactured or distributed by Thorpe, and requesting from claimants or other Trusts, claims materials submitted to other Trusts. In the event that the Trust reasonably determines that any unreliable individual or entity has engaged in a pattern or practice of providing unreliable medical or other evidence to the Trust, it may decline to accept additional evidence from such provider in the future. Further, in the event that an audit reveals that fraudulent information has been provided to the Trust, the Trust may penalize any responsible claimant or claimant's attorney by disallowing the related Trust Claim or by other means including, but not limited to, requiring the claimant or attorney submitting the fraudulent information to pay the costs associated with the audit and any future related audit or audits, reordering the priority of payment

of all affected claimants' Trust Claims, raising the level of scrutiny of additional information submitted from the medical facility or other source, refusing to accept additional evidence from the same, seeking the prosecution of the claimant or claimant's attorney for presenting a fraudulent claim in violation of 18 U.S.C. 152, and seeking Rule 11 sanctions.

**5.7(b) Review by the Trust for the benefit of the TAC and Futures Representative.** The Trust shall cause a review of the filed claims, paid claims, average payments and disallowed claims by Compensable Disease to be performed bi-annually or upon the request of the TAC or the Futures Representative, sufficient to allow an estimation of the adequacy of the Trust fund to compensate Claimants as compared to the current claims forecast.

**5.8 Second Disease Claims.**

**5.8(a) Second Disease (Malignancy) Claims.** The holder of a claim involving a non-malignant asbestos-related disease may file a new claim for a malignant disease that is subsequently diagnosed ("Second Disease Claim"). Any payments to which such claimant may be entitled for such asbestos-related malignancy shall be reduced by the amount paid by the Trust for the non-malignant asbestos-related disease.

**5.8(b) Second Disease Judgment Claims.** Claimants who received personal injury judgments are allowed to file i) a wrongful death claim, if the claimant subsequently died of an asbestos-related disease; and/or ii) a Second Disease Claim. These claims will be valued, pursuant to the Matrix, at either i) one-half of the otherwise appropriate liquidated value of the wrongful death or Second Disease Claim award from the Trust; or ii) at full value of the new claim, wrongful death claim or Second Disease Claim less a dollar for dollar credit on money actually received from the Trust pursuant to Section 5.4 above, as the claimant may elect.

**5.9 Arbitration.**

**5.9(a) Establishment of Arbitration Procedures.** The Trust, with the consent of the TAC and the Futures Representative, shall institute Arbitration Rules for resolving disputes concerning the Trust's outright rejection or denial of a claim, or concerning the claimant's medical condition or exposure history for purposes of categorizing a claim. Binding and non-binding arbitration shall also be available for resolving disputes over the liquidated value of a claim. In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in the Matrix. In the case of an arbitration involving the liquidated value of a claim, the arbitrator shall consider the same valuation factors that are set forth in the Matrix. With respect to all claims eligible for arbitration, the claimant, but not the Trust, may elect either non-binding or binding arbitration. If the claimant elects non-binding arbitration, claimant will be responsible for 1 /2 of arbitrator's fees and costs. The Arbitration Rules may be modified by the Trust with the consent of the TAC and the Futures Representative. Such amendments may also include adoption of mediation procedures, as well as establishment of an Extraordinary Claims Panel to review such claims pursuant to the Matrix.

**5.9(b) Claims Eligible for Arbitration.** A claim is eligible for arbitration, if it has been rejected by the Trust, or the Trust has made an offer which was rejected by the claimant. The claimant must notify the Trust of such rejection in writing.

**5.9(c) Limitations on and Payment of Arbitration Awards.** The arbitrator shall not return an award in excess of the appropriate Matrix Value for such claim based upon the facts as found by the arbitrator. For an Extraordinary Claim, the arbitrator shall not return an award greater than the Maximum Extraordinary Value for such a claim as set forth in the Matrix. A claimant who submits to arbitration and who accepts the arbitral award will receive payments in the same manner as one who accepts the Trust's original valuation of the claim.

**5.10 Litigation.** A claimant who elects non-binding arbitration and then rejects the arbitral award retains the right to exit to the Tort System pursuant to Sections 7.3 below. However, a claimant shall be eligible for payment of a judgment for monetary damages obtained in the Tort System from the Trust's available cash only as provided in Section 7.4 below.

**5.11 Trust Claims Determined by the Trust to be Covered by Policies Issued by Non-Settling Insurers.** The Trustees, with the consent of the TAC and the Futures Representative, may adopt alternative claims handling procedures to those set forth herein to be offered for Trust Claims determined by the Trust to be Covered by Policies Issued by Non-Settling Insurers.

## SECTION VI

### Claims Materials

**6.1 Claims Materials.** The Trust shall prepare suitable and efficient claims materials ("Claims Materials"), and shall provide such Claims Materials upon written request. The Trust Claim form to be submitted to the Trust shall include a certification by the claimant or his or her attorney sufficient to meet the requirements of Rule 11(b) of the Federal Rules of Civil Procedure. A copy of the Trust Claim forms to be used by the Trust for Pre-Petition Liquidated Claims and unliquidated Claims will be created with the consent of the TAC and the Futures Representative within three months of the establishment of the Trust. The Trust Claim forms may be changed by the Trust with the consent of the TAC and the Futures Representative. The Trust shall also establish procedures for electronic filing of claims.

**6.2 Content of Claims Materials.** The Claims Materials shall include a copy of this TDP, such instructions as the Trustees shall approve, and Trust Claim forms. The Trust Claim forms shall be submitted with supporting documentation in accordance with the relevant criteria as set forth below and in compliance with Section I of the Matrix. At a

minimum, the unliquidated Trust Claim form shall require submission of sufficient information to prove, and any relevant information tending to disprove exposure, disease and damages including:

(a) All relevant information called for in the San Francisco Superior Court General Order 129 Form Interrogatories, Set 1 and Set 2 including the required complete occupational history and identification of other exposures, with the information relevant to exposure used to qualify this claim for the particular category highlighted and the pages tabbed.

(b) If the claimant was involved in any type of asbestos litigation, a complete copy of any litigation interrogatory responses created in support of that claim must be submitted to the Trust regardless of the jurisdiction in which the lawsuit was filed with any information exposures asserted in this claim highlighted and the pages tabbed (or, if applicable, noting that the interrogatories contain no reference to exposures asserted in this claim). In addition, the claimant who was involved in any type of asbestos litigation must identify all prior depositions of the claimant and produce them upon request.

(c) If the Claimant is utilizing the Trust Approved Interrogatories (set forth on the Trust Web site), portions of litigation interrogatories that were amended after the litigation was concluded or declarations to establish the Trust Claim, the responses and/or declarations must meet the following requirements:

(i) The interrogatories and/or declarations must be verified or made by a person who is competent to testify to the information stated in the interrogatories and/or declarations and the person must have personal direct knowledge of the factual information relevant to the claim and the answers and/or declarations must provide sufficient background information to explain how the person verifying the interrogatories and/or the declarant(s) acquired the personal direct knowledge of factual matters relevant to this claim, to

allow the Trust to determine the credibility of the person verifying the interrogatories and/or the declarants;

(ii) Where the person lacks personal direct knowledge, the answers and/or declarations must provide sufficient information to explain how, when and from what sources the person verifying the interrogatories and/or the declarants acquired any indirect knowledge of factual matters relevant to the claim;

(iii) The interrogatory responses and/or declarant must provide specifics about the claimant's (or claimant's decedent's) exposure and not use boilerplate wording;

(iv) If the person verifying the interrogatories and/or declarants relied upon documents as the basis for the responses given in the interrogatories and/or declarations (i.e. military records, social security records, etc.), those documents must be specifically identified and relevant portions of any such documents included in the supporting documents attached to the claim;

(v) The truth of the facts asserted in the interrogatories must be affirmed or verified under the penalty of perjury and any declarations must be made under penalty of perjury;

(vi) All declarations must be specific to the claim. In appropriate circumstances, the Trust may accept expert opinions pertaining to issues that are of general application and that are relevant to the specific claimant's claim.

(vii) The Trust shall have the right to interview by phone or in person (always with the participation or presence of claimant's counsel), anyone who verifies interrogatories, or has provided information to the person verifying the interrogatories or who submits a declaration in support of a claim submitted to the Trust.

(d) Medical records, medical reports and/or death certificates evidencing the claimed disease, with the diagnosis highlighted and the pages tabbed. For lung cancer and other cancer cases, evidence of markers or other factors which would lead to an upward adjustment under the Matrix will be highlighted and the pages tabbed. For Grade I claims, evidence of x-ray and PFT values that would lead to an increased award will be highlighted and the pages tabbed.

(e) For Serious Asbestosis claims, evidence to support this categorization will be highlighted and the pages tabbed.

(f) For an Injured Person seeking a multiplier for an economic loss in excess of the base case amount, an economic report of evidence supporting claimed wage/pension/home services loss, with total claimed loss highlighted and the page tabbed.

(g) For an Injured Person seeking a multiplier for medical expenses in excess of the base case amount, an affidavit summarizing medical expenses, or submission of medical bills to substantiate the total claimed amount.

(h) An endorsed/filed copy of the face page of the complaint or equivalent proof of commencement of litigation if applicable, or alternatively a certification under Section 5.1.

(i) Social Security records, front or identifying face page and portions relevant to facts asserted in connection with the claim of deposition transcript(s), union records, railroad records, military records (including leave records), or any other employment records all highlighted and tabbed. If such records are unavailable, the claimant or representative attorney must explain why such records are unavailable and attest that every reasonable effort has been made to obtain them.

(j) Information sufficient to establish that the claimant is not eligible nor has received Medicare benefits. Information representing that the date of last exposure to Thorpe Insulation Company's asbestos products or operations happened before or after December 5, 1980. Information of satisfied Medicare lien or global settlement documentation.

**6.3 Withdrawal of Claims.** A claimant can withdraw a Trust Claim at any time upon written notice to the Trust and file another claim subsequently without affecting the status of the claim for statute of limitations purposes, but any such claim filed after withdrawal shall be given a place in the FIFO Processing Queue based on the date of such subsequent filing. A claim will be deemed to have been withdrawn if the claimant neither accepts, rejects, nor initiates arbitration within six months of the Trust's offer of payment or rejection of the claim. Upon written request and good cause, the Trust may extend this period for an additional six months.

**6.4 Filing Fees.** There will be a filing fee of \$250.00 for each unliquidated claim which will be refunded by the Trust if the claim is allowed. The Trust may waive the refundable filing fee if it is determined that such a fee would create undue hardship for the claimant. The size of the fee will be reviewed by the Trust on a yearly basis.

**6.5 Confidentiality of Claimants' Submissions.** All submissions to the Trust by a holder of a Trust Claim or a proof of claim form and materials related thereto shall be treated as made in the course of settlement discussions between the holder and the Trust and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including, but not limited to, those directly applicable to settlement discussions. The Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only, with the permission of the holder, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) of the Bankruptcy Code or other applicable

law, to such other persons as authorized by the holder, or in response to a valid subpoena of such materials issued by the Bankruptcy Court or any state or federal Court having personal jurisdiction over the Trust. Furthermore, the Trust shall provide counsel for the holder a copy of any such subpoena immediately upon being served. The Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privilege before the Bankruptcy Court or any state or federal Court having personal jurisdiction over the Trust and before those courts having appellate jurisdiction related thereto. Nothing in the TDP, the Plan, or the Trust Agreement expands, limits or impairs the obligation under applicable law of a claimant to respond fully to lawful discovery in an underlying civil action regarding his or her submission of factual information to the Trust for the purpose of obtaining compensation for asbestos-related injuries from the Trust.

## SECTION VII

### General Guidelines for Liquidating and Paying Claims

**7.1 Discretion to Vary the Order and Amounts of Payments in Event of Limited Liquidity.** Consistent with the provisions hereof and subject to the FIFO Processing and Liquidation Queues, Maximum Annual Payment, and Disease Category Claims Payment Ratio requirements set forth above, the Trustees shall proceed with due diligence to liquidate valid Trust Claims, and shall make payments to holders of such claims in accordance with this TDP promptly as funds become available and as claims are liquidated, while maintaining sufficient resources to pay future valid claims in substantially the same manner. Because the Trust's income over time remains uncertain, and decisions about payments must be based on estimates that cannot be done precisely, they may have to be revised in light of experiences over time, and there can be no guarantee of any specific level of payment to claimants. However, the Trustees shall use their best efforts to treat similar claims in substantially the same manner, consistent with their duties as

Trustees, the purposes of the Trust, the established allocation to Categories A and B, and the practical limitations imposed by the inability to predict the future with precision. In the event that the Trust faces temporary periods of limited liquidity, the Trustees may, with the consent of the TAC and the Futures Representative, suspend the normal order of payment and may temporarily limit or suspend payments altogether, and if appropriate, at any time may offer a Reduced Payment Option.

**7.2 Punitive Damages.** In determining the value of any liquidated or unliquidated Trust Claim, punitive or exemplary damages, i.e., damages other than compensatory damages, shall not be considered or allowed, notwithstanding their availability in the Tort System.

**7.3 Suits in the Tort System.**

**7.3(a) Suits in the Tort System Not Involving Insurers.** If the holder of a disputed claim disagrees with the Trust's determination regarding the Compensable Disease of the claim, the claimant's exposure history or the liquidated value of the claim, and if the holder has first submitted the claim to nonbinding arbitration as provided in Section 5.9 above and rejected the resulting arbitration award, the holder may file a lawsuit in the jurisdiction where in personam jurisdiction over Trust can be obtained. Any such lawsuit must be filed by the claimant in his or her own right and name and not as a member or representative of a class. No such lawsuit may be consolidated with any other lawsuit, with the exception of a personal injury or survival claim which may be consolidated with a wrongful death claim brought as a result of the death of the Injured Party. If the claimant was alive at the earlier of the date on which the initial complaint was filed or the date the Trust Claim form was filed, the case will be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim. All defenses (including, with respect to the Trust, all defenses which could have been asserted by Thorpe) shall be available to the Trust at trial and the Trust may waive any defense

and/or concede any issue of fact or law; provided, however that any such waiver or concession on the part of the Trust waives, to the extent provided by applicable law, the Trust's right to tender the defense to, or recoup any monies from, Non-Settling Insurers that may have otherwise had coverage liability under their applicable Insurance Policies with respect to such claim.

**7.3(b) Suits in the Tort System Involving Insurers.** An insurer as to which the Trust asserts coverage liability in respect to the claim of a claimant filing a lawsuit consistent with the provisions of this Section (a "Litigation Claim"), which insurer continues to be entitled under the terms of its policies and applicable state law to control or participate in the resolution of such claim against the Debtors or the Trust, shall have the right to control or participate in the resolution of the Litigation Claim according to the policy language in the insurer's applicable Insurance Policy and applicable law so long as it continues to be prosecuted in a court of law.

**7.4 Payment of Judgments for Money Damages.** If and when a claimant obtains a judgment in the Tort System, the claim shall be placed in the FIFO payment queue based on the date on which the judgment became final. Thereafter, the claimant shall receive from the Trust an initial payment (subject to the Funds Received Ratio, the Maximum Annual Payment and Disease Category Claims Payment Ratio provisions set forth above) of an amount equal to one-hundred percent (100%) of the lesser of a) the jury award or b) the greater of (i) the Trust's last offer to the claimant or (ii) the award that the claimant declined in non-binding arbitration. The claimant shall receive the balance of the judgment, if any, in ten (10) equal installments in years six (6) through fifteen (15) following the year of the initial payment (also subject to the Funds Received Ratio, the Maximum Annual Payment, and Disease Category Claims Payment Ratio provisions set forth above). Under no circumstances shall interest be paid under otherwise applicable law on any judgments obtained in the Tort System post-petition.

**7.5 Releases.** The Trustees shall have the discretion, with the consent of the TAC and Futures Representative, to determine the form and substance of the releases to be provided to the Trust in order to maximize recovery for claimants against other tortfeasors without increasing the risk or amount of claims for indemnification or contribution from the Trust. The Release utilized by the Trust shall include all Personal Injury, Wrongful Death, and/or Derivative claims related to the Injured Party, with the exception of the Second Disease Claims, as described above in Section 5.8. As a condition to making any payment to a claimant, the Trust shall obtain a general, partial, limited, or other release as appropriate in accordance with the applicable state or other law. If allowed by state law, the endorsing of a check or draft for payment by or on behalf of a claimant shall constitute such a release.

**7.6 Third-Party Services.** Nothing in this TDP shall preclude the Trust from contracting with another asbestos claims resolution organization to provide services to the Trust so long as decisions about the categorization and liquidated value of Trust Claims are based on the relevant provisions of this TDP, including the Compensable Diseases, Matrix Values, Average Values, Maximum Values, and Medical/Exposure Criteria set forth in the Matrix.

**7.7 Trust Disclosure of Information.** Periodically, but not less often than once a year, the Trust shall make available to claimants and other beneficiaries, a statistical summary of the number of claims by Compensable Diseases that have been resolved by settlement, arbitration or trial by jurisdiction.

## SECTION VIII

### Miscellaneous

**8.1 Amendments.** Except as otherwise provided herein, the Trustees may amend, modify, delete, or add to any provisions of this TDP (including, without limitation, amendments to conform this TDP to advances in scientific or medical knowledge or other changes in

circumstances), provided they first obtain the consent of the TAC and the Futures Representative pursuant to the Consent Process set forth in Sections 5.6 and 6.6 and, if necessary, Sections 5.7 and 6.7 of the Trust Agreement, except that the right to amend the Disease Category Claims Payment Ratio provisions set forth above) are governed by the restrictions in Section 2.5 above, and the right to adjust the Funds Received Ratio as governed by Section 4.2 above.

**8.2 Severability.** Should any provision contained in this TDP be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this TDP. Should any provision contained in this TDP be determined to be inconsistent with or contrary to Thorpe's obligations to any insurance company providing insurance coverage to Thorpe in respect of claims for personal injury based on Thorpe Exposure, no payment shall be made by the Trust in respect of any such claim from proceeds from said insurance coverage.

**8.3 Governing Law.** This TDP shall be governed by, and construed in accordance with, the laws of the State of California, without regard to California conflict of laws principles.

**8.4 Attorneys' Fees.** Attorneys' fees payable in connection with Trust claims paid through this TDP, whether based on hourly rates or where calculated as a percentage of recovery, shall be the lower of the fee provided in the contract between claimant and counsel or 25% of recovery, exclusive of costs chargeable to the claimant, which costs shall be deducted from the gross amount paid before computation of fees. This recovery shall be measured by the actual payments from the Trust to the claimant, not the liquidated value of the claim. Legal fees shall be paid as payment to claimants are made by the Trust.

**8.5 Trust as Defendant.** The holder of an asbestos claim who is a citizen of the State of California has the option to name the Trust as a party defendant where the only claims against the Trust are for Thorpe related personal injury, wrongful death or derivative claim case filed or

served in California. However, the Trust shall not participate in the litigation and shall be removed from all service lists. No payment shall be made to such holder of an asbestos claim except as provided by the Matrix and the TDP. In the event a California citizen opts to name the Trust in an action commenced in California state court, the Trust shall not consent to remove the action to any federal court and if requested to do so, shall provide a declaration that it did not consent to any removal. The Trust shall not be required to answer or participate in the litigation and no payment shall be made to such Injured Person except as provided by the TDP and Matrix.

# Exhibit B



May 15, 2020

**SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Thorpe Insulation Company Asbestos Settlement Trust d/b/a Thorpe Insulation Settlement Trust  
Eve H. Karasik, counsel for the Thorpe Insulation Company Asbestos Settlement Trust d/b/a  
Thorpe Insulation Settlement Trust  
Levene, Neale, Bender, Yoo & Brill, LLP  
10250 Constellation Blvd. Suite 1700  
Los Angeles, CA 90067

**Re: Request for Disclosure of Federally Required Information by Primary Payer  
Thorpe Insulation Company Asbestos Settlement Trust d/b/a Thorpe  
Insulation Settlement Trust (“TIC Trust”)**

**To Eve H. Karasik:**

MSP Recovery, LLC, acting on behalf of MSP Recovery Claims, Series LLC, MSPA Claims 1, LLC, and MAO-MSO Recovery II, LLC, Series PMPI, (collectively, “MSP”)—as assignees of Medicare claims from various health insurance companies, Medicare Advantage Organizations (“MAOs”), first-tier and downstream entities—has been designated by said health care organizations as a business associate, as defined by 45 C.F.R. § 160.103, to recover Medicare and Medicaid related medical benefits and payments made by their assignors that should have been paid, in the first instance, or reimbursed by primary payers in accordance with 42 U.S.C. § 1395y, *et seq.*, and 42 C.F.R. § 411.1, *et seq.* Primary payers include, but are not limited to, “workers’ compensation, any liability or no-fault insurance . . . or self-insured plans.”<sup>1</sup> The TIC Trust falls within this definition of primary payer.

Accordingly, to the extent a Medicare beneficiary<sup>2</sup> settles with the TIC Trust, the TIC Trust may have reimbursement obligations pursuant to the Medicare Secondary Payer Act. Our research indicates that the TIC Trust has failed to comply with the notice requirements as set forth in 42 C.F.R. § 411.25. This notice is also directed at any other affiliated entities or subsidiaries that are part of the TIC Trust’s corporate or business structure that qualify as Responsible Reporting Entities (RRE) under the provisions of the Medicare, Medicaid, and SCHIP Extension Act (MMSEA) of 2007.

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<sup>1</sup> 42 C.F.R. § 411.24(b); *Humana Med. Plan, Inc. v. W. Heritage Ins. Co.*, 832 F.3d 1229, 1233 n. 1 (11th Cir. 2016) (stating a primary plan includes self-insured plans).

<sup>2</sup> Attached as Exhibit A, MSP provides the TIC Trust a representative sample of Medicare beneficiaries who have been diagnosed with asbestos-related illnesses. Please provide the requested information attached in Exhibit A to identify whether your fund provided settlement related to the asbestos-related illnesses.

Pursuant to 42 C.F.R. § 422.108(f), MSP's Assignors exercise the same rights as Medicare. As such, MSP hereby asserts its rights to seek reimbursement as a contractually authorized Medicare assignee in all instances where your company, as a primary payer, failed to provide payment or appropriate reimbursement, and as a result of said failure, an MAO provided benefits to a Medicare beneficiary to the MAO's detriment.<sup>3</sup>

In a good faith effort to determine whether the TIC Trust has properly discharged its obligations, and to determine if primary payment was properly made, MSP Recovery conducted extensive due diligence. Among other things, MSP Recovery investigated bankruptcy and civil court dockets, identifying and reviewing publicly available pleadings and documents. MSP Recovery also reviewed public corporate and trust filings. Despite these efforts, MSP Recovery found a lack of transparency as it relates to the identity of the TIC Trust's claimants and settlements. Accordingly, this data appears to be exclusively in the possession of the TIC Trust.

Please provide us with notice (as required by 42 C.F.R. § 411.25) describing the specific situation and the circumstances surrounding any payment made by the TIC Trust to the beneficiaries identified in Exhibit A. The documentation sought herein is mandated by federal law, federal code, and CMS requirements.<sup>4</sup> In order to comply with the Health Insurance Portability and Accountability Act ("HIPAA"), we have established a secure FTP site for data sharing. Please visit [www.msprecovery.com/disclosure](http://www.msprecovery.com/disclosure) and enter the following code [AYnbv5%r#S\$7] within ten calendar days of your receipt of this letter. This website will contain a preliminary list of instances that MSP is determining whether the TIC Trust is required to reimburse medical expenses.<sup>5</sup> Please upload the documents containing the requested information, and information related to any other affiliated entities that are part of the TIC Trust's corporate or business structure that would be defined as a RRE, within 30 calendar days of the date of this letter.

If you have any additional questions or concerns regarding this request, please do not hesitate to contact the undersigned via email at [asbestos@msprecovery.com](mailto:asbestos@msprecovery.com).

Respectfully,

*/s/ Jorge Lopez*

Jorge Lopez

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<sup>3</sup> See *Humana Med. Plan, Inc. v. W. Heritage Ins. Co.*, 832 F.3d 1229, 1239 (11th Cir. 2016) (holding that a "plaintiff is entitled to summary judgment on a § 1395y(b)(3)(A) claim when there is no genuine issue of material fact regarding (1) the defendant's status as a primary plan; (2) the defendant's failure to provide for primary payment or appropriate reimbursement; and (3) the damages amount.").

<sup>4</sup> See 42 U.S.C. § 1395y, *et seq.* and 42 C.F.R. § 411.1, *et seq.*

<sup>5</sup> The information available in the portal neither contains Protected Health Information ("PHI") or confidential information and is readily available to the public. It has only been customized to provide information specifically related to your trust.

Corporate Representative

# Exhibit C



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Schiff Hardin LLP  
4 Embarcadero Center  
Suite 1350  
San Francisco, CA 94111

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T 415.901.8700  
F 415.901.8701

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[schiffhardin.com](http://schiffhardin.com)

June 17, 2020

**Jeanine M. Donohue**  
(415) 901.8644  
[jdonohue@schiffhardin.com](mailto:jdonohue@schiffhardin.com)

**VIA EMAIL: ASBESTOS@MSPRECOVERY.COM**

Jorge Lopez  
Corporate Representative  
MSP Recovery  
2701 South LeJeune Road  
10<sup>th</sup> Floor  
Coral Gables, FL 33134

Re: Thorpe Insulation Settlement Trust

Dear Mr. Lopez,

We are in receipt of your letter dated May 15, 2020 addressed to Eve Karasik at Levene, Neale, Bender, Yoo and Brill, LLP. I am outside General Counsel to the Thorpe Insulation Settlement Trust.

Preliminarily, we did not receive the Exhibit A that you reference in the second full paragraph on page 2 of your letter.

Upon review of your request, the information you are requesting is subject to the Trust's Third Party Disclosure Policy (<http://www.titrust.com/third-party-disclosure>). The Trust's policy states that any claim settlement and payment amount is confidential. Please refer to the Trust's Third Party Disclosure Policy for any further questions.

Additionally, the Thorpe Insulation Settlement Trust was established as a Qualified Settlement Fund ("QSF") under 26 CFR Section 468B-1 on October 22, 2010. The currently published guidance on the subject of identification of a Responsible Reporting Entity (RREs) by the Center for Medicare and Medicaid Services has made it clear that settlement trusts, such as this QSF, are not RREs.

Based on the above, the Thorpe Insulation Settlement Trust will not be responding to your written request.

Very truly yours,

A handwritten signature in blue ink that reads "Jeanine M. Donohue".

Jeanine M. Donohue

JMD:da

# Exhibit D

**shulman bastian**  
**friedman & bui** LLP

Jai H. Kim  
Attorney at Law  
jkim@shulmanbastian.com

Please reply to Irvine

James C. Bastian, Jr.  
Shane M. Bjornstad\*  
Lynda T. Bui  
Bryan W. Cabrera  
Franklin J. Contreras, Jr.  
Melissa Davis Lowe  
Alan J. Friedman\*\*  
Kiara W. Gebhart  
J. Ronald Ignatuk  
Brandon J. Iskander  
Rika M. Kido  
Jai H. Kim  
Ryan D. O'Dea  
Gary A. Pemberton  
Leonard M. Shulman  
Sarah M. St. John

December 9, 2020

Via E-Mail and First Class Mail  
[EHK@lnbyb.com](mailto:EHK@lnbyb.com)

Eve H. Karasik  
LEVENE, NEALE, BENDER, YOO & BRILL LLP  
10250 Constellation Boulevard, Suite 1700  
Los Angeles, CA 90067

Re: Meet and Confer re FRBP 2004 Production of Documents  
Case No. 2:07-bk-20016-BB (Jointly Administered with 2:07-bk-19271-  
BB)

Debtors: Thorpe Insulation Company, a California corporation and Pacific Insulation  
Company, a California corporation

Dear Ms. Karasik:

Pursuant to Federal Rule of Bankruptcy Procedure (“FRBP”) 2004 and Local  
Bankruptcy Rule 2004-1(a), please allow this letter to serve as our formal request for a  
conference to arrange for a mutually agreeable date, method, and scope of production  
of documents under FRBP 2004.

Our office represents MSP Recovery Claims, Series LLC, MSPA Claims 1,  
LLC, MAO-MSO Recovery II, LLC, and MSP Recovery Claims Series 44, LLC  
(together “Clients”), assignees of recovery rights from numerous Medicare Advantage  
plans, first tier entities, and downstream entities<sup>1</sup> that are “secondary payers” with  
recovery rights under, *inter alia*, the Medicare Secondary Payer provisions of the

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<sup>1</sup> A first tier entity is any party that enters into a written arrangement, acceptable to the  
Centers for Medicare and Medicaid Services (“CMS”), with a Part D plan sponsor or  
applicant to provide administrative services or health care services for a Medicare  
eligible individual under Part D. Downstream entity means any party that enters into a  
written arrangement, acceptable to CMS, below the level of the arrangement between  
a Part D plan sponsor (or applicant) and a first tier entity. These written arrangements  
continue down to the level of the ultimate provider of both health and administrative  
services. 42 C.F.R. § 423.501(3).

Eve H. Karasik  
December 9, 2020  
Page 2

Medicare Act, 42 U.S.C. § 1395y(b), et seq., including 42 U.S.C. § 1395y(b)(3)(A) (collectively, the “MSP Law”). Our Clients identified Medicare beneficiaries that received medical benefits from their assignors for the treatment of asbestos related illnesses (the “List”) for which they may be entitled to reimbursement from the Thorpe Insulation Company Asbestos Settlement Trust (the “Trust”).<sup>2</sup>

Our Clients’ understanding is that the Trust has paid, and continues to pay, “Trust Claims” to asbestos claimants under the applicable Thorpe Insulation Company Asbestos Personal Injury Settlement Trust Distribution Procedures (“TDP”), many of whom are Medicare Advantage plan beneficiaries. Our Client’s initial due diligence indicates that a number of asbestos claimants processed as “Trust Claims” also seem to appear on the List.<sup>3</sup>

### **Document Production**

Enclosed with this letter is a list of documents our Clients will need to further investigate their rights under the MSP Law and other applicable laws. The document request is based on our review of the annual report and accounting filed recently filed with the Bankruptcy Court.

#### **Item No. 1**

Note 4 to the Thorpe Insulation Settlement Trust Financial Statements December 31, 2019 and 2018 filed with the Tenth Annual Report and Accounting [Exhibit A to Docket No. 158] (“Financial Statements”) provided that:

“The Trust processed and approved approximately \$14,463,000 and \$11,868,000 of Trust Claims during the years ended December 31, 2019 and 2018, respectively.”

Exhibit B to Docket No. 158, under the paragraph “Trust Claims,” provided that during 2019, there were 777 claims received, with 170 offers issued to claimants,

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<sup>2</sup> In the case of liability insurance settlements . . . the following rule applies: If Medicare is not reimbursed as required by paragraph (h) of this section, the primary payer must reimburse Medicare even though it has already reimbursed the beneficiary or other party. 42 C.F.R. § 411.24(i)(1). Pursuant to 42 C.F.R. § 422.108(f), an MA organization will exercise the same rights to recover from a primary plan, entity, or individual that the Secretary exercises under the MSP regulations.

<sup>3</sup> The requested documents are crucial in determining our Clients’ rights as most, if not all, of asbestos claims against the Trust are handled privately outside of the court in accordance with TDP.

Eve H. Karasik  
December 9, 2020  
Page 3

with 184 claims paid. As of December 31, 2019, the total amount paid for Trust Claims was \$237,856.260.

Our Clients seek to cross-reference the List with the processed and approved Trust Claims. As noted in the Enclosure, the applicable period for the document production is from January 1, 2005 to the present.

Items No. 2, 3 and 4

On Page 5, Line 24 of the Tenth Annual Report and Accounting, the Trust attested that:

“Section 2.2(b) of the Trust Agreement requires the Trustees to file income tax and other returns and statements in a timely manner, and comply with all withholding obligations as legally required, including fulfilling requirements to maintain the Trust’s status as a Qualified Settlement Fund.”

Note 8 to the Financial Statements stated that “[f]or federal income tax purposes, the Trust is taxed as a Qualified Settlement Fund (QSF).” It is our understanding that the following conditions must be met for each year the Trust files IRS Form 1120-SF:

- Governmental order or approval requirement,
- Resolve or satisfy requirement, and
- Segregation requirement.

Our Clients seek to confirm that the Trust has fulfilled its obligations to maintain its status as QSF for the years in question, and to confirm that the Trust’s reporting obligations under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 and/or 42 C.F.R. § 411.25.

We would be more than happy to speak with you regarding the scope of documents requested and the necessary handling issues.

**Manner of Production**

We propose that the Rule 2004 production of documents be provided either electronically or via physical copies delivered to our Irvine Office located at 100 Spectrum Center Drive, Suite 600, Irvine, California 92618 no later than January 11, 2021. Please advise if the above date is feasible for the Debtor. If not, let’s discuss this over the phone to set a mutually agreeable date.

Eve H. Karasik  
December 9, 2020  
Page 4

Please get back to me no later than **December 17, 2020** via telephone at (949) 340-3400 or via email at [jkim@shulmanbastian.com](mailto:jkim@shulmanbastian.com) to arrange for a mutually agreeable date, method, and scope of the Rule 2004 production of documents. If we do not hear from you by **December 17, 2020**, we will have no choice but to move forward with a motion to compel examination and production.

Notwithstanding the formality of this letter, if you are willing to provide the above requested documents informally, we can certainly arrange in short order.

Thank you in advance for your cooperation.

Very truly yours,

**SHULMAN BASTIAN FRIEDMAN & BUI LLP**

***Jai H. Kim***  
*[Electronic Signature]*

Jai H. Kim

JHK

Enclosure

cc: Lynda T. Bui  
Leonard M. Shulman

**2004 Examination of Documents Request Items<sup>1</sup>**

1. For each claimant who submitted an asbestos exposure related claim to the Trust, and received any form of payment from the Trust (*i.e.*, Trust Claims pursuant to TDP), provide in electronic format the following data fields relating to each claimant:

- a. full name;
- b. date of birth;
- c. gender;
- d. Medicare HIC number (HICN);
- e. Medicare Beneficiary Identifier (MBI);
- f. Social Security number;
- g. telephone number;
- h. address, including county, state, city, and zip code;
- i. date of payment; and
- j. amount of the Trust Claim distribution.

If the Trust does not maintain the data sought in electronic format, provide any such documents maintained by the Trust containing the information sought, including, but not limited to, claim forms and settlement agreements.<sup>2</sup>

2. For those claimants identified in response to request number one, provide documentation demonstrating the Trust's compliance with the mandatory reporting obligations to the Centers for Medicare and Medicaid Services, pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 ("MMSEA") and/or 42 C.F.R. § 411.25.

3. To the extent that the Trust relies on an exemption to its reporting requirements under MMSEA due to its purported status as a Qualified Settlement Fund pursuant to 26 U.S.C. §468B, provide:

- a. All tax forms, including schedules, filed on behalf of the Trust for tax years 2005 through 2011.
- b. All correspondence between the Trust and the Internal Revenue Service relating to the Trust's tax filings for tax years 2005 through 2011.

4. All correspondence between the Trust, the Debtors and/or any governmental agency regarding Trust's status as Qualified Settlement Fund.

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<sup>1</sup> Our Clients are prepared to enter into a HIPAA compliant confidentiality agreement to ensure the privacy of any exchanged protected health information, as defined in 45 C.F.R. § 160.103.

<sup>2</sup> For any such individual, if you do not have all of the information requested, please provide as much information in your possession, custody and/or control.

# Exhibit E



December 21, 2020

Via Electronic Mail

Jai H. Kim, Esq.  
Shulman, Bastian, Friedman  
& Bui LLP  
100 Spectrum Center Drive, Suite 600  
Irvine, CA 92618

Re: Meet and Confer re FRBP 2004 Production of Documents

Dear Mr. Kim:

This correspondence is in response to your “*Meet and Confer re FRBP 2004 Production of Documents*” letters dated December 9, 2020 sent to the Thorpe Insulation Company Asbestos Settlement Trust (the “Thorpe Insulation Trust”) and the J.T. Thorpe Settlement Trust (the “J.T. Thorpe Trust”) and with the Thorpe Insulation Trusts, the “Trusts”) (the “Letters”). In the Letters, you state that your clients are “assignees of recovery rights from numerous Medicare Advantage plans, first tier entities, and downstream entities [footnote omitted] that are ‘secondary payers’ with recovery rights under, *inter alia*, the Medicare Secondary Payer provisions of the Medicare Act, 42 U.S.C. section 1395y(b), et seq.” Your further state that your clients are seeking the production of documents (the “Document Request”) in order to “further investigate their rights under the MSP [Medicare Secondary Payer] Law and other applicable laws . . . .” There are several fundamental and practical flaws in your request and your attempt to use Federal Rule of Bankruptcy Procedure 2004 (“Rule 2004”) in this manner as enumerated below.

***The Document Request Seeks Documents for Claimants Not Subject to the Secondary Payor Provisions of the Medicare Act***

Your clients’ document production request is overly broad and seeks information and documents beyond the scope of the Medicare Secondary Payer provisions of the Medicare Act that you rely upon. These provisions were not effective until December 5, 1980. *See* 42 U.S.C. §1395y(b) and Section 4-1, MMSEA Section 111 Medicare Secondary Payer Mandatory Reporting Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Workers’ Compensation USER GUIDE Chapter III: POLICY GUIDANCE Version 6.1 Rev. 2020/ 10 November COBR-Q4-2020-v6.1 (the “MMSEA Section 111 User Guide”). The Centers for Medicare and Medicaid Services (“CMS”), the agency charged with administering the Medicare Act, has determined that where

Jai H. Kim, Esq.  
December 21, 2020  
Page 2

payments have been on made behalf of a particular company for asbestos claims where the exposure to that companies' products or operations was prior to December 5, 1980, those payments are not subject to the Secondary Payer provisions you have cited. *Id.* at 6-22-24. If CMS is not entitled to receive reimbursement for claims arising from exposure prior to December 5, 1980, then your clients, as assignees of such reimbursement rights, will also have no right to such reimbursement.

Both Trusts are Bankruptcy Code section 524(g) trusts that were created through the confirmation of chapter 11 plans in bankruptcy cases. As set forth in the Chapter 11 confirmation pleadings and documents, both Trusts were established for companies that performed many of their asbestos operations or sold asbestos products for significant periods prior to December 5, 1980. While the Trusts do not have a business reason to separately track claimed exposure dates in relation to December 5, 1980, their experience has shown that many of the Trusts' claim payments relate only to claimed exposures prior to that date.<sup>1</sup>

The Trusts' claim administrative process is governed by the Bankruptcy Court approved their respective Trust Distribution Procedures (the "TDP") and Case Valuation Matrix (the "Matrix"). Pursuant to the TDP and Matrix, the Trusts only collect information necessary for the Trusts to evaluate and value each claim. The Trusts pay claims based upon the claimed exposure to the companies' asbestos operations or asbestos products. The collected information used by the Trusts to evaluate and pay the claims is included in proprietary case processing systems ("Claims Systems"). While the Claims Systems capture the claimed exposure history relied upon by the Trusts to pay claims, the data is not organized and the Trusts do not have the internal programming capabilities to select just those claimants whose claimed exposure is on or after December 5, 1980. The Trusts would be required to pay an outside vendor to do this programming and reporting as described below.

Even if your data request was appropriate, which it is not, the fees and costs for all professionals to segregate and review this data would have to be paid in advance. Moreover, because this would be an additional programming request to a vendor who has other clients and commitments, the Trust does not know how soon this work could be done, quality controlled and completed.

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<sup>1</sup> Thorpe Insulation Company began operations in 1948. (*See* First Amended Disclosure Statement Concerning The First Amended Joint. Plan Of Reorganization Of Thorpe Insulation Company And Pacific Insulation Company Under Chapter 11 Of The Bankruptcy Code, page 5. J.T. Thorpe Company began operations in 1932. (*See* Disclosure Statement for Joint Plan of Reorganization Dated February 25, 2005, page 11.)

Jai H. Kim, Esq.  
December 21, 2020  
Page 3

Moreover, before any claimant's personal private confidential information could be produced by the Trust, the Trust procedures require that the Trust notify claimants and provide them an opportunity to object to the production of such information.

***The Trusts Are Qualified Settlement Funds and are Not Responsible Reporting Entities***

As your letter anticipated, the Trusts are qualified settlement funds within the meaning of section 468B of the Internal Revenue Code ("QSF"). See Order Confirming First Amended Plan of Reorganization Dated August 5, 2005 and Granting Related Relief at page 5 for the J.T. Thorpe Trust and Order Confirming Sixth Amended Joint Plan of Reorganization of Thorpe Insulation Company and Pacific Insulation Company filed May 8, 2013 at page 5 for the Thorpe Insulation Trust. We can also confirm that the Trusts have filed Form 1120-SF, U.S. Income Tax Return for Settlement Funds, each year since their formation.<sup>2</sup>

QSF's are not Responsible Reporting Entities under the Medicare, Medicaid and SCHIP Extension Act of 2007 (the "MMSEA"). 42 U.S.C 1395y(b)(8) See Section 6.5, MMSEA Section III User Guide ("(Note: QSFs under Section 468B of the IRC are not RREs.)"). Accordingly, the Trusts, as QSFs, are not Responsible Reporting Entities.

***The Document Request Seeks Confidential Private Personal Information From Court Appointed Fiduciaries Without any Showing that Your Clients Have Paid Anything for Any Trust Beneficiary Whose Asbestos Exposure Occurred On or After December 5, 1980***

You have offered to enter into a "HIPAA compliant confidentiality agreement to ensure the privacy of any exchange protected health information, as defined in 45 C.F.R. §160.103." See, footnote 1 to Document Request. We appreciate that you recognize that the Trusts have in their possession confidential information regarding their beneficiaries. However, your clients are third party private entities with no relationship to the Trusts. Your clients have no right to receive any of the Trusts' beneficiaries' confidential information unless your clients' assignors made a payment on behalf of a specific individual who has also been paid by the Trusts. Your clients' desire to create a cross reference "List" does not give your clients any right to obtain confidential information from the Trusts for individuals unrelated to those where your clients are assignees of

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<sup>2</sup> Your request for all of the Trusts' tax records and correspondence is overly broad and seeks confidential information. You have demonstrated no compelling need for such additional tax documents. The Trusts' financial statements prepared by their independent certified public accountants, which are attached to each annual report filed in the Bankruptcy Cases, are of public record and of provide ample financial information for the Trusts.

Jai H. Kim, Esq.  
December 21, 2020  
Page 4

some claim. Without any foundation that your clients' assignors are entitled to the confidential information of any Trust beneficiary and that particular claim has been assigned to your clients, your offer to enter into a confidentiality agreement and your clients' rights as a generic assignee of purported Secondary Payors do not create a right for your clients to receive such information.

***The Significant Burden of the Overly Broad Document Request***

Finally, of extreme importance to the Trusts is the significant burden and expense that the Document Request imposes on the Trusts. Even though the requests are few in number the work necessary to identify the responsive data is significant for several reasons. First, the sheer volume of claims paid by the Trust creates a burden (JT Thorpe Trust has paid approximately 7,500 claims inception to date; the Thorpe Insulation Trust has paid almost 10,000 claims inception to date). The Trusts' goal is to maximize recoveries for their claimant beneficiaries who have suffered from serious disease and in many instances death. In order to reduce the Trusts' administrative costs so there are more funds for beneficiaries, the Trusts share four individuals (employed by another Bankruptcy Code section 524(g) Trust) who review and handle claims with one shared Claims Director.

As described above, the Trusts' Claims Systems have reporting capabilities for the purposes of evaluating and processing claims pursuant to the Trusts' TDP and Matrix. However, the reporting capability does not extend to preparing queries and reports in the form necessary to respond to all aspects of the Document Request. Moreover, the Trusts used a different legacy claims processing system for the first decade of their existence. There was no reason for the Trusts to import all of the information from the legacy system to the current system for claims that had already been paid. Further, none of the individuals working with the Trusts have the expertise to write and test the programs that would be necessary to retrieve all of the information requested from the legacy system or the Claims Systems. Moreover, to do the processing by hand would mean that the Trusts would have to curtail its primary function of processing and paying the claims of individuals injured by the operations and products of the companies for whom the Trusts were created, which the Trusts are not prepared to do. Therefore, if the Trusts were to respond to the Document Request, the Trusts would have to incur the burden and expense of having a vendor create the necessary programs both for the legacy system and the Claims Systems, and then test these programs to confirm that they are reliable before being able to retrieve information responsive to the Document Request. Your clients do not propose to pay for the cost of the necessary document retrieval process required.<sup>3</sup>

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<sup>3</sup> The Trusts' TDP and Matrix require that images of numerous documents be submitted in support of claims (e.g., interrogatories, depositions, social security records, medical records).

Jai H. Kim, Esq.  
December 21, 2020  
Page 5

***Improper Use of Rule 2004 In This Context***

Your clients have proposed that they will use Rule 2004 to obtain the requested documents if the Trusts do not provide the requested documents informally. However, Rule 2004 is not available to your clients. As an initial matter, the Chapter 11 plans of J.T. Thorpe, Inc. and Thorpe Insulation Company (the “Debtors”) were confirmed years ago, and the “estate of the debtor[s] cease[d] to exist upon confirmation.” *In re ACandS, Inc.*, 2011 WL 3471243, at \*2 (Bankr. D. Del. Aug. 8, 2011). As a result, the scope of Federal Rule of Bankruptcy Procedure 2004 (“Rule 2004”) is narrowed, and the requested documents cannot be obtained pursuant to Rule 2004. The court in *In re Cinderella Clothing Indus., Inc.*, 93 B.R. 373 (Bankr. E.D. Pa. 1988) stated:

“[A] 2004 examination is generally a pre-confirmation discovery tool. Nonetheless, the broad language of Rule 2004(b), referring to “any matter which may affect the administration of the debtor’s estate,” the “source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan,” and “any other matter relevant to the case” allows, in a *narrow context*, the use of Rule 2004 post-confirmation. ***The examination, though, must be limited to issues which the court, at that time, still has the power to entertain. That is, it is restricted to the administration of the case post-confirmation.*** The binding effect of confirmation upon debtors and creditors alike under 11 U.S.C. § 1141 . . . makes the primary purpose of a 2004 examination inapplicable. Yet, the use of such a discovery tool to obtain information relevant to the continued administration of the case post-confirmation, such as a possible motion under §§ 1112, 1127, 1142 or 1144, is supportable, if so limited.”

*Id.* at 377–78 (emphasis added). See also *In re Express One International, Inc.*, 217 B.R. 215, 216–17 (Bankr. E.D. Tx. 1998) (in a post-confirmation case, stating that a Rule 2004 examination is limited to those matters relating to the administration of the case, and that the court “has the power to entertain.”).

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The Trusts capture in the Claims Systems data fields that information necessary for the Trusts to evaluate and pay claims. There is undoubtedly other information contained in those documents some of which may be responsive to the Document Request. The Trusts have no capacity to review what could be hundreds or even thousands of pages per claimant to see if those records might have some of the requested information. For claims that were filed under the legacy system, it would be even more difficult because during that period claimants submitted large image files that contained all the supporting documents rather than breaking them up into specific categories (*e.g.*, medical, work history). The burden to review these older images will be significant.

Jai H. Kim, Esq.  
December 21, 2020  
Page 6

Here, the discovery that your clients are seeking is outside the scope of, and/or cannot be obtained through Rule 2004 for several reasons.

First, your clients' post-confirmation investigation of their rights under the "MSP Laws" has nothing to do with the administration of the Debtors' plans and cases to justify the application of Rule 2004. Specifically, your clients are not seeking to modify the plans, revoke the confirmation orders, or to "seek compliance with the terms of the confirmed plan[s] or to have the case[s] dismissed or converted to chapter 7." *See id.* at 378-79.

Further, your clients are alleged to be "secondary payors" with certain recovery rights against parties, which do not include the Trusts as the Trusts are QSFs and are not Responsible Reporting Entities. Rule 2004 cannot be used by your clients in an attempt to "identify another entity [that it] might be able to collect from." *See In re J&R Trucking, Inc.*, 431 B.R. 818, 822-823 (Bankr. N.D. Ind. 2010) ("As for movants' desire to identify third parties who may also be liable to them, that, quite simply is neither this court's concern nor the purpose of Rule 2004 . . . . No Matter how artfully one tries to disguise the requested examinations, by dressing them up in robes of bankruptcy administration, their real purpose is to identify another entity movants might be able to collect from, and whether those efforts would have any impact on the bankruptcy estate is of no real concern to them.")<sup>4</sup>

Moreover, as you are aware, the purpose of Rule 2004 is generally to "provide the Trustee [or other interested parties] . . . a very broad discovery device to aid in an efficient and expeditious ingathering of all of the pertinent facts necessary in the effective administration of the estates . . . . [and i]t is not intended to give the rehabilitated debtor post confirmation a strategic advantage in fishing for potential private litigation." *In re Good Hope Refineries, Inc.*, 9 B.R. 421, 423 (Bankr. D. Mass. 1981). Although in certain circumstances, it may be proper for a bankruptcy or liquidating trustee to use Rule 2004 to obtain information about potential claims that a debtor may hold or bring against third parties, this is not the case here. Putting aside the fact that there is no trustee seeking to use Rule 2004 to investigate litigation claims, the purpose of the post-confirmation 524(g) Trusts is not to commence litigation or to recover assets for creditors, but instead to "provide for mechanisms ensuring [their] value and pay present and future claimants in substantially the same manner." *See also id. In re J T Thorpe Co.*, 308 B.R. 782, 791 (Bankr. S.D. Tex. 2003) ("The principal purpose of the Plan is implementation of an

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<sup>4</sup> To the extent that your clients are attempting to use Rule 2004 to seek information regarding "private litigation" regarding your client, on the one hand, and another third party, this is also inappropriate. *In re Good Hope Refineries, Inc.*, 9 B.R. 421, 421 (Bankr. D. Mass. 1981).

Jai H. Kim, Esq.  
December 21, 2020  
Page 7

orderly process, utilizing Section 524(g) of the Bankruptcy Code, to compensate legitimate Asbestos Claimants fairly, while preserving the Debtor's business.").

To the extent that your clients are considering filing an adversary proceedings against the Trusts in the Bankruptcy Court, upon the actual filing of such action, we can discuss whether such discovery is appropriate in that context, but Rule 2004 is not the proper procedural vehicle. *See In re Coffee Cupboard, Inc.*, 128 B.R. 509, 516 (Bankr. E.D.N.Y. 1991) ("Rule 2004 examinations should not be used to obtain information for use in an unrelated case or proceeding pending before another tribunal."); *In re Bellville*, No. 00-11144, 2002 WL 31761279, at \*3 (Bankr. D. Vt. Aug. 9, 2002) ("This Court will not enter an Order which permits the movant to thwart the adversary proceeding rules and obtain through a Rule 2004 examination of Mr. Baker in the debtor's chapter 13 case what it cannot obtain from Mr. Baker in the context of the discovery permitted in the adversary proceeding."); *In re GHR Energy Corp.*, 35 B.R. 534 (Bankr. D. Mass. 1983) (moving party cannot use "rule 2004 to circumvent the procedural safeguards provided litigant by the Federal Rules of Civil Procedure[.]").

In the abundance of caution and in order to preserve any objections, please be apprised that the Trusts object to the Letters' document production request and the attempt to obtain the requested documents using Rule 2004. We look forward to discussing these issues with you at our telephonic meet and confer set forth December 23, 2020 at 11:00 a.m.

Very truly yours,

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.



By: \_\_\_\_\_  
EVE H. KARASIK,  
A Partner of the Firm

cc: Steve Bray, Esq.  
Gary Fergus, Esq.  
Jeanine Donohue, Esq.

# Exhibit F



July 6, 2021

Via Electronic Mail

Alan J. Friedman  
Shulman, Bastian, Friedman  
& Bui LLP  
100 Spectrum Center Drive,  
Suite 600  
Irvin, California 92618

Re: Litigation Against the J.T. Thorpe Settlement Trust

Dear Alan,

I write in response to your clients' June 11, 2021 correspondence with attached draft Complaint that seeks double damages against the J.T. Thorpe Settlement Trust (the "Trust"). As a condition to avoid the threatened litigation, your clients have (1) insisted that the Trust surrender personal confidential information of Trust beneficiaries without any showing by your clients' that the Trust has made a single payment of Medicare-covered expenses on behalf of any Trust beneficiary; and (2) demanded that the Trust voluntarily assume regular reporting obligations not required by the facts or law with regard to the Trust. I am sure you and your clients are aware both that the Trust's assets are protected by injunctions arising under 11 U.S.C. Section 524(g) against any unauthorized claims and that there are significant consequences for the violation of those injunctions.

We have carefully considered the draft Complaint, which contains both factual errors, and erroneous legal conclusions. In the Trust's December 21, 2020 letter response to your client's prior threat of an examination under Rule 2004 of the Federal rules of Bankruptcy Procedure, the Trust described in general terms the factual and legal basis for the Trust's fiduciary obligation to decline to comply with your clients' unwarranted demands. The draft Complaint ignores the factual and legal issues raised by the Trust in the December 21, 2020 letter (the "Letter").

We also have examined your clients' litigious history throughout the United States in connection with Medicare Secondary Payments. It appears that your clients' business model is to sue regardless of the particular facts and law.

Accordingly, from the Trust's perspective, it therefore seems useless to try to explain further the applicable facts and law, including the facts and law regarding, but not limited to, the Trust's confidentiality obligations to its claimants and its lack of Medicare registration and reporting obligations, as made clear in the relevant agency and

governmental guidance documents applied to Section 524(g) trusts and as summarized in the Letter.

Should your clients continue on this litigation path, the Trust reserves any and all rights that it may have in response.

Very truly yours,

A handwritten signature in blue ink that reads "Eve H. Karasik" with a long horizontal flourish extending to the right.

Eve H. Karasik

Cc: Steve Bray, Esq.  
Gary Fergus, Esq.  
Jeanine Donohue, Esq.

B1040 (FORM 1040) (12/15)

| <b>ADVERSARY PROCEEDING COVER SHEET</b><br>(Instructions on Reverse)  |   | <b>ADVERSARY PROCEEDING NUMBER</b><br>(Court Use Only) |
|---|---|--|
| <b>PLAINTIFFS</b><br>Please see attachment  | <b>DEFENDANTS</b><br>Please see attachment  |  |
| <b>ATTORNEYS (Firm Name, Address, and Telephone No.)</b><br>Please see attachment   | <b>ATTORNEYS (If Known)</b><br>Please see attachment  |  |
| <b>PARTY (Check One Box Only)</b><br><input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin<br><input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other<br><input type="checkbox"/> Trustee  | <b>PARTY (Check One Box Only)</b><br><input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin<br><input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other<br><input type="checkbox"/> Trustee  |  |
| <b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)<br>Plaintiffs assert causes of action for (1) declaratory relief pursuant to 28 U.S.C. Section 2201, 42 U.S.C. Section 1395y(b)(8) and 42 C.F.R. Section 411.25 seeking a declaration that Defendant Trust is a primary plan with reporting obligations and (2) a private cause of action for damages pursuant to 42 U.S.C. Section 1395y(b)(3)(A) for the Trust's failure to provide for primary payments or reimbursement to Plaintiffs for their Medicare payments.  |   |  |
| <b>NATURE OF SUIT</b>   |   |  |
| (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)  |   |  |
| <b>FRBP 7001(1) – Recovery of Money/Property</b><br><input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property<br><input type="checkbox"/> 12-Recovery of money/property - §547 preference<br><input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer<br><input checked="" type="checkbox"/> 14-Recovery of money/property - other<br><br><b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b><br><input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property<br><br><b>FRBP 7001(3) – Approval of Sale of Property</b><br><input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)<br><br><b>FRBP 7001(4) – Objection/Revocation of Discharge</b><br><input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)<br><br><b>FRBP 7001(5) – Revocation of Confirmation</b><br><input type="checkbox"/> 51-Revocation of confirmation<br><br><b>FRBP 7001(6) – Dischargeability</b><br><input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims<br><input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud<br><input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny<br><br>(continued next column) | <b>FRBP 7001(6) – Dischargeability (continued)</b><br><input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support<br><input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury<br><input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan<br><input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)<br><input type="checkbox"/> 65-Dischargeability - other<br><br><b>FRBP 7001(7) – Injunctive Relief</b><br><input type="checkbox"/> 71-Injunctive relief – imposition of stay<br><input type="checkbox"/> 72-Injunctive relief – other<br><br><b>FRBP 7001(8) Subordination of Claim or Interest</b><br><input type="checkbox"/> 81-Subordination of claim or interest<br><br><b>FRBP 7001(9) Declaratory Judgment</b><br><input checked="" type="checkbox"/> 91-Declaratory judgment<br><br><b>FRBP 7001(10) Determination of Removed Action</b><br><input type="checkbox"/> 01-Determination of removed claim or cause<br><br><b>Other</b><br><input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i><br><input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) |  |
| <input type="checkbox"/> Check if this case involves a substantive issue of state law   | <input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23   |  |
| <input type="checkbox"/> Check if a jury trial is demanded in complaint   | Demand \$ Unknown at this time.   |  |
| <b>Other Relief Sought</b>  |   |  |
| 1. Declaratory Relief    2. Money Damages   |   |  |

B1040 (FORM 1040) (12/15)

| BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES           |  |   |
|---|--|---|
| NAME OF DEBTOR<br>Thorpe, Insulation Company.                       |  | BANKRUPTCY CASE NO. 2:07-bk-20016-BB &<br>Jointly Administered with 2:07-bk-19271-BB (Closed) |
| DISTRICT IN WHICH CASE IS PENDING<br>Central District of California | DIVISION OFFICE<br>Los Angeles                             | NAME OF JUDGE<br>Hon. Sheri Bluebond  |
| RELATED ADVERSARY PROCEEDING (IF ANY)                               |  |   |
| PLAINTIFF<br>Please see attachment                                  | DEFENDANT<br>Please see attachment                         | ADVERSARY<br>PROCEEDING NO.<br>Please see attachment  |
| DISTRICT IN WHICH ADVERSARY IS PENDING<br>Please see attachment     | DIVISION OFFICE<br>Please see attachment                   | NAME OF JUDGE<br>Please see attachment  |
| SIGNATURE OF ATTORNEY (OR PLAINTIFF)<br><br>/s/ Gary A. Pemberton   |  |   |
| DATE<br>August 13, 2021   | PRINT NAME OF ATTORNEY (OR PLAINTIFF)<br>Gary A. Pemberton |   |

### INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**ATTACHMENT TO ADVERSARY COVER SHEET**

**PLAINTIFFS**

MSP RECOVERY CLAIMS, SERIES LLC, a  
Delaware Series Limited Liability Company

MSPA CLAIMS 1, LLC, a Florida Limited  
Liability Company

MAO-MSO RECOVERY II LLC, SERIES  
PMPI, a Segregated Series of MAO-MSO  
Recovery II LLC, a Delaware Series Limited  
Liability Company

MSP RECOVERY CLAIMS SERIES 44, LLC,  
a Delaware Series Limited Liability Company

**ATTORNEYS**

Alan J. Friedman - Bar No. 132580  
Gary A. Pemberton - Bar No. 126159  
**SHULMAN BASTIAN FRIEDMAN &  
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GPemberton@shulmanbastian.com

Aida M. Landa - Florida Bar No. 136451  
**MSP RECOVERY LAW FIRM**  
2701 S. Le Jeune Road, 10<sup>th</sup> Floor  
Coral Gables, Florida 33134  
Telephone: (305) 614-2222  
Email: alanda@msprecoverylawfirm.com

**DEFENDANTS**

THORPE INSULATION COMPANY  
ASBESTOS SETTLEMENT TRUST, a Nevada  
Trust

JOHN F. LUIKART, Co-Trustee of the Thorpe  
Insulation Company Asbestos Settlement Trust

SANDRA R. HERNANDEZ, M.D., Co-Trustee  
of the Thorpe Insulation Company Asbestos  
Settlement Trust

**ATTORNEYS**

Eve H. Karaski, Esq.  
Jeffrey S. Kwong, Esq.  
**LEVEN, NEALE, BINDER, YOO & BRILL  
L.L.P.**  
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Telephone: (310) 229-1234  
Facsimile: (949) 229-1244  
Email: ehk@lnbyb.com

**RELATED ADVERSARY PROCEEDING**

| <b>PLAINTIFFS</b>   | <b>DEFENDANTS</b>   | <b>ADVERSARY NO.</b> |
|---|---|----------------------|
| MSP RECOVERY CLAIMS, SERIES LLC, a Delaware Series Limited Liability Company  | THE J.T. THORPE SETTLEMENT TRUST, a Nevada Trust                          | 2:21-ap-01154-BB     |
| MSPA CLAIMS 1, LLC, a Florida Limited Liability Company   | JOHN F. LUIKART, Co-Trustee of the J.T. Thorpe Settlement Trust           |                      |
| MAO-MSO RECOVERY II LLC, SERIES PMPI, a Segregated Series of MAO-MSO Recovery II LLC, a Delaware Series Limited Liability Company | SANDRA R. HERNANDEZ, M.D., Co-Trustee of the J.T. Thorpe Settlement Trust |                      |
| MSP RECOVERY CLAIMS SERIES 44, LLC, a Delaware Series Limited Liability Company   |   |                      |

| <b>DISTRICT IN WHICH ADVERSARY IS PENDING</b> | <b>DIVISION OFFICE</b> | <b>NAME OF JUDGE</b> |
|---|------------------------|----------------------|
| Central District of California                | Los Angeles            | Hon. Sheri Bluebond  |

**RELATED ADVERSARY PROCEEDINGS**

| <b>PLAINTIFFS</b>   | <b>DEFENDANTS</b>  | <b>ADVERSARY NO.</b> |
|---|--|----------------------|
| MSP RECOVERY CLAIMS, SERIES LLC, a Delaware Series Limited Liability Company  | THE WESTERN ASBESTOS SETTLEMENT TRUST, a Nevada Trust;                         | 21-03037             |
| MSPA CLAIMS 1, LLC, a Florida Limited Liability Company   | JOHN F. LUIKART, Co-Trustee of the Western Asbestos Settlement Trust           |                      |
| MAO-MSO RECOVERY II LLC, SERIES PMPI, a Segregated Series of MAO-MSO Recovery II LLC, a Delaware Series Limited Liability Company | SANDRA R. HERNANDEZ, M.D., Co-Trustee of the Western Asbestos Settlement Trust |                      |
| MSP RECOVERY CLAIMS SERIES 44, LLC, a Delaware Series Limited Liability Company   |  |                      |

| <b>DISTRICT IN WHICH ADVERSARY IS PENDING</b> | <b>DIVISION OFFICE</b> | <b>NAME OF JUDGE</b>       |
|---|------------------------|----------------------------|
| Northern District of California               | San Francisco          | Hon. Hannah L. Blumenstiel |