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Sent via Overnight Courier

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Re: Audit and Investigative Findings of the J.T. Thorpe Settlement Trust and Thorpe
Insulation Company Asbestos Settlement Trust

Dear Mr. Mandelbrot:

As you know, since late 2011, the Western Asbestos Settlement Trust, the J.T. Thorpe Settlement Trust, and Thorpe Insulation Company Asbestos Settlement Trust (collectively "Trusts"), have investigated claims submitted by you and your firm (collectively "Mandelbrot") to the Trusts pursuant to section 5.7(a) of the Trust Distribution Procedures ("TDPs") of each Trust.¹ This investigation arose out of a variety of issues the Trusts encountered, but were unable to resolve with you, regarding the reliability of evidence (namely declarations and interrogatory responses) supplied by witnesses in various circumstances – most notably in connection with "disembarkation" claims.

¹ December 5, 2011 letter from John Sande to Michael Mandelbrot. C00000991-1059. Section 5.7(a) of the TDPs of each of the Trusts provides:

The Trust with consent of the TAC and Futures Representative may 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.

The J.T. Thorpe Trust first brought this investigation to the attention of its supervising court, the United States Bankruptcy Court for the Central District of California, in February 2012 through an application, supported by an evidentiary showing, to conduct Rule 2004 examinations. The J.T. Thorpe Trust sought examinations of eight witnesses, a sample from a larger number, the Trusts then suspected had submitted unreliable evidence after Mandelbrot rejected Trust requests for interviews of these witnesses. The majority of the examinations sought involved “disembarkation” claims. After substantial litigation, the supervising Central District Bankruptcy Court (and then the U.S. District Court) rejected Mandelbrot’s opposition to these examinations, which nevertheless to this day have not been completed.

After you threatened to sue Trust fiduciaries if the Trusts continued their investigation, including by way of witness examinations, the Trusts commenced adversary proceedings in their supervising bankruptcy courts on the limited issue, raised by Mandelbrot that the investigation was improperly motivated and conducted.

The Trusts have continued to process and pay valid Mandelbrot claims not under investigation.² With the consent of the Futures Representative and respective Trust Advisory Committees, each Trust applied for and obtained permission from their respective supervising Bankruptcy Court to continue to pay unequivocally valid Mandelbrot claims despite broadening concerns about the reliability of evidence submitted by Mandelbrot that was revealed as the investigation continued.

The applications for continued claim payment each submitted evidence supporting Trust concerns about the level of conflict, and the expense and length of the investigation. They also expressed the view that investigation findings would take into account, to the extent reasonable, the extent to which Mandelbrot failed to take advantage of the opportunities to come forward with requested witnesses and information.

The investigation by the Trusts has continued and in March counsel for the Trusts took your testimony in the early stage of the adversary proceedings because of Mandelbrot’s insistence that all examinations – even if taken as part of the investigation – proceed only by way of formally-noticed depositions in the adversary proceedings. See letter of Mr. Davis to Mr. Smith dated March, 28, 2013.

The Trusts have determined that it is unlikely that Mandelbrot will provide further information relevant to the investigation except through formal, contested litigation processes and that, as has been the case so far, future informal cooperation from Mandelbrot will be minimal. That determination was further confirmed by the recent deposition testimony of Mr. Dunning, your former office manager, whose deposition you had earlier offered to provide clarity to the Trusts’ audit.³ In light of these facts, and given the information obtained to date, the Trusts have also

² Some other 524g asbestos trusts have suspended payment on claims submitted by Mandelbrot pending their audits (i.e., “The Trust has directed the Facility to suspend the processing and payment of pending and future claims filed by the Law Firm with the Facility until the successful completion of an audit of the Law Firm’s claims upon the following terms, and conditioned upon the Trust’s determination that the Law Firm’s claims may continue to be processed...” See M0000698-734)

³ On September 17, 2012 Mandelbrot offered the Trusts the opportunity to take the deposition of Mr. Dunning: “So there is some clarity in this audit, we will offer Michael Dunning for deposition at a mutually available time. No Notice is necessary and we will offer Mr. Dunning on shortened time.” However, new counsel for Mandelbrot

determined that it is reasonable at this time for the Trusts to inform you of their conclusions and decisions under section 5.7(a) of their TDPs.

I. Trustees' Conclusions and Decision

Those conclusions and decisions are:

1. Mandelbrot (i.e., the firm and its principal) each are unreliable under the "person" or "entity" requirement of section 5.7(a).
2. Mandelbrot has submitted unreliable evidence to each of the Trusts and, with regard to the J.T. Thorpe and Thorpe Insulation Trusts specifically, has done so in a pattern revealed by the practices that have been the focus of this investigation. The pattern revealed by the investigation has been exacerbated by a lack of cooperation with the Trusts' audit efforts.
3. While the trustees do not make such a determination at this time, there is substantial information to support a conclusion that some of the unreliable evidence submitted to the Trusts was fabricated or manipulated intentionally or with conscious disregard for its accuracy and thus was fraudulent.
4. Subject to the potential for suspension of these remedies, described in paragraph 5, below, the trustees of the J.T. Thorpe Settlement Trust and the Thorpe Insulation Company Asbestos Settlement Trust ("Thorpe Trusts") (a) will accept no further evidence or claims from Mandelbrot, and (b) leave for later a determination whether Mandelbrot should be charged for the Trusts' expenses of conducting this investigation.⁴
5. Upon Mandelbrot's acceptance of certain conditions, specifically including direct and meaningful involvement in the claims process by firms referring claims to it, the remedies described in paragraph 4, above, will be suspended for a period of at least 24 months unless otherwise ordered by the court. At the end of this period, and upon a showing to the supervising court of no further unreliability of the type described in TDP section 5.7(a), the Trusts will resume accepting and processing claims submitted thereafter on the same terms and conditions applied to all persons submitting claims to the Trusts.

In deciding to conditionally suspend the imposition of remedies set forth in paragraph 4, the Trusts view Section 5.7(a) principally as a remedial, rather than a punitive, provision designed to correct dysfunction in the claims submission process through means least injurious to the prerogatives of beneficiaries and the potential underlying merits of their claims. Here, beneficiary prerogatives include preserving, where possible, the ability of claimants and potential beneficiaries to select counsel of their choosing. However, the Trusts also recognize that

insisted the deposition be taken pursuant to a subpoena personally served on Mr. Dunning in the adversary proceeding. See letter of Mr. Smith to Mr. Davis dated April 3, 2013.

⁴ The Western Trust has not so decided because claims filed by Mandelbrot with that Trust less clearly reflect a pattern or practice of unreliability. The Western Trust will, however, continue to closely monitor the evidentiary submissions of Mandelbrot.

otherwise-deserving beneficiaries also may be harmed when counsel, whom they may not have personally selected, overreaches to gain more than the system was designed to provide.⁵

Likewise, the Trusts have considered the unusual circumstances in which Mandelbrot has operated, including especially (1) that the firm, unlike any other, was conceived and always has operated almost exclusively as an agent for other firms for the limited purpose of submitting claims to asbestos trusts; and (2) the nature of Mandelbrot's relationship as agent for referring firms has placed substantial limitations on Mandelbrot's ability to produce reliable information in support of claims, especially in situations involving evidence elicited from witnesses lacking direct knowledge.

The deferral period and associated conditions thus are designed to allow Mandelbrot, as well as referring firms, to establish to the Central District Bankruptcy Court and to the Thorpe Trusts that necessary changes have been made to afford the Mandelbrot firm access to resources and information needed to submit reliable claims, and that Mandelbrot has done so.

The conditions of a potential deferral period are set forth in greater detail after the following summary of the unreliable evidence and practices, still unresolved, and demonstrated by the Trusts' investigation.

II. Summary Description of Pattern and Practice of Unreliable Evidence

As in litigation, Trust procedures place the burden on claimants to substantiate their claims. But unlike litigation, and as in settlement of litigation, those procedures emulate settlement processes that permit claimants and counsel to use, among other things, the by-products of litigation, and to rely on assumptions of greater candor found in settlement talks, to meet their administrative burdens.⁶ Particularly in the wake of Manville's 1982 bankruptcy, asbestos litigation in California (where the debtor-predecessors of these Trusts operated and where most of their liabilities were established) was very intense, especially with regard to claims presenting issues of questioned exposure or disease. Litigation by-products submitted in that litigation -- such as discovery responses and declarations given in motions, e.g., to support or defeat summary judgment motions -- had to be credible to survive the special scrutiny that typified that

⁵ It should not be necessary, but regrettably it is, also to point out that legitimate beneficiary interests are not promoted when, unbeknownst to them, counsel's approach to pursuing their interest includes years of unfounded attorney accusations, threats, and unprofessional browbeating of non-attorney staff attempting to evaluate claims.

⁶ Trusts' TDPs and Plan documents require (i.e., place the burden on) claimants to substantiate disease and damage caused by exposure to asbestos for which J.T. Thorpe or Thorpe Insulation were legally responsible and to do so through reliable evidence. See, in addition to TDP section 5.7, TDP at Sections 6.1 and 6.2; Matrix at Section VII(a). The rules of evidence otherwise applicable in litigation, guided by common sense, apply (Matrix VII(a)), such that in evaluating claims the Trusts may consider reliable deposition testimony, invoices, affidavits, business records, military service records, and other "credible evidence." The assumption that counsel is being candid and trustworthy comes at a price, i.e., special responsibilities of lawyers presenting claims to these trusts. Each claim submitted to the Trusts must be signed and verified by the submitting attorney, under penalty of perjury, as true and correct. Section 5.7 of the TDPs also makes clear that the attorney signature, in addition to the other remedies provided trusts under that provision invokes the responsibilities imposed by Federal Rule of Civil Procedure 11. These include the attorney representation that the factual contentions within any claim have evidentiary support or, if specifically so identified, must be likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

adversarial environment. The standard procedures applied even today in California's asbestos litigation reflect and perpetuate much of that intensity.

If the Trusts and Mandelbrot agree on anything it is that, as this investigation shows, a good part of the controversy that arose between the Trusts and Mandelbrot came about as, increasingly, the growing volume of claims being submitted by Mandelbrot employed evidence that had not and never would be subjected to that level of scrutiny, e.g., in the tort system. The so-called disembarkation cases were not the first to pose such issues, but they were the first to do so in substantial volume in a discernible pattern that broadly challenged the wisdom of accepting and valuing as credible non-litigation discovery responses and declarations.

A. Disembarkation Claims:

As you know from the Rule 2004 application, as well as prior correspondence, disembarkation claims submitted by Mandelbrot were the source of the Trusts' original "pattern or practice" reliability concerns. Initially, this was because Mandelbrot submitted verified interrogatory answers or sworn declarations stating that U.S. Navy sailors left (disembarked) their assigned ships during overhauls at shipyards and worked on shore at specified times and locations with or in proximity to J.T. Thorpe Inc.'s or Thorpe Insulation Company's civilian employee operations or asbestos-containing products. These were unique claims. There was no pattern of filing such claims by other firms, including by firms with litigation experience against both those companies.

By 2011, Mandelbrot began filing these claims in substantial number usually with specially-crafted non-litigation declarations and interrogatory responses. Disembarkation exposures were possible but not plausible in normal circumstances. Conclusory evidence asserting such conditions required further substantiation, which was not provided, as it was not supported by military records or usual shipyard and Navy operating practices.⁷ Sometimes these assertions conflicted with other evidence, including earlier responses of claimants in actual litigation, and/or were made by witnesses lacking plausible or credible foundation, especially in light of the considerable detail included in their statements. To date, the Trusts have identified a total of eighty-two (82) disembarkation claims submitted by Mandelbrot to the Thorpe Insulation Trust, and twenty-six (26) submitted to the J.T. Thorpe Trust.

The disembarkation claims stood out because they arrived in substantial number and were unique. But they posed the same question of reliability as did the other evidence submissions that became the subject of investigation: Were the witnesses well-informed, testifying from credible information or recollection? Or were they simply echoing supposition or conclusions found in often standardized, draft interrogatory responses or declarations supplied to them? You and Mr. Dunning explained recently that Mandelbrot's resort to filing disembarkation claims was

⁷ Failure or inability to supply military records accounting for leave time sailors may have taken while their assigned ship was docked also limited the Trusts' ability to determine reliability of evidence of exposure, whether on ship while it was in port. Mandelbrot did furnish the Trusts a copy of a 1977 report entitled "Changes in Navy Ship Overhaul Practices Could Improve Fleet Capability and Crew Effectiveness," written by the General Accounting Office ("GAO"). While the document indicates that the GAO may have contemplated use of Navy sailors for shipyard work, this still was *not* the actual practice as of 1977. Former Navy personnel consulted by the Trusts reaffirm usual practices and indicate that the GAO recommendation was never implemented.

the product of a Trust staff member's statement that this was required to prove exposure. Even if true,⁸ this account does not answer these credibility questions. In fact it begs the question of what recollection or source of information, if any, the witness relied upon to affirm that this sailor disembarked this ship and worked on shore at these times. Since only the witnesses themselves could know the answer, the Trust asked to interview some of them.

Mandelbrot's immediate opposition to any interviews and, later, to any depositions, certainly deepened Trust suspicions.. But that opposition, while unwise, was not entirely inconsistent with the poor quality of Mandelbrot-Trust relations, particularly if Mandelbrot's expressed belief – which the Trusts conclude was unfounded – that it was being unfairly discriminated against is credited as being sincere to any degree.

But Mandelbrot's behavior commencing very soon after its almost immediate categorical rejection of the Trusts' December 5 request to interview witnesses (and its behavior thereafter as it became evident that the Trusts were intent on pursuing their investigation) is not equivocal. After learning of the Trusts' investigation, Mandelbrot not only refused interviews it also began to change the evidence. And in an apparent haste to do so it substituted, without explanation, contradictory evidence sometimes supported by invalid signatures, dates and/or witness verifications. In addition, it began to jettison claims. These actions demonstrate lack of confidence in the reliability of this evidence and a willingness to manipulate evidence to avoid disclosure of unreliability or even impropriety.

Mandelbrot changed the evidence by putting fifty (50) formerly disembarked sailors to work aboard ship by "supplementing" existing verified responses saying they had disembarked, and substituting inconsistent evidence saying they had not disembarked and that they worked on the ship being repaired. The paperwork Mandelbrot submitted to the Trusts in completing these 50 transformations includes instances where the substitute evidence was supported by improper or fabricated verifications or attorney signatures or with backdated and therefore also questionable or improper dating or cross-dating of responses or declarations. And in some of these evidence reversals claimants simultaneously took and pursued for periods of time inconsistent "disembarkation" positions with different Trusts, e.g., where persons with claims against both J.T. Thorpe, Inc. and Thorpe Insulation Company, withdrew existing "disembarkation" evidence and substituted in its stead new, inconsistent evidence against one trust but made no such change in their claim against the other trust.

Within these 50 evidence transformations – and also in connection with other claims under investigation over time – Mandelbrot also withdrew a substantial number of claims, often claiming Trust harassment if the claim involved a witness the Trust wished to interview. Having withdrawn the claim, Mandelbrot then has taken the position that it no longer represents, and therefore cannot produce, witnesses or further information sought by the Trusts in their investigation, viz.: "many of the 'claimant' examinations you are demanding relate to people who

⁸ The Trusts' investigation does not support this account as a matter of fact, and it conflicts with TDP provisions permitting recovery for sailors exposed on board ship under certain circumstances during repairs. The account is consistent with Mandelbrot staff efforts to find formulaic language solutions that the Trusts would accept across groups of claims, but not with Trust staff efforts to confine discussions to facts presented by actual, individual claims.

have withdrawn claims, and are hence no longer claimants.” See April 18, 2013 letter of Dennis Davis to Trust counsel. This has increased the difficulty of gaining access to the witness, and has placed (inappropriately) claimants and their attorneys other than Mandelbrot directly in the path of the investigation.

Thorpe Insulation claim No. 317 illustrates several of these questionable behaviors. In this claim, Mandelbrot submitted interrogatory responses to the Thorpe Insulation Trust on June 24, 2011. See A00035620-22; B00005254. The responses were dated May 24, 2011, signed by counsel and verified by Mrs. C on June 7, 2011. In them, Mrs. C certified under penalty of perjury that while the USS Brush DD-745 was being repaired at Long Beach Naval Shipyard for specified periods of time in 1966 and 1968, Donald C, her deceased husband, was exposed to asbestos as follows:

Plaintiff disembarked and continued his normal duties at the shipyard itself. Plaintiff spent at least 166 days *working on site* at Long Beach Naval Shipyard. Plaintiff performed his duties *in all areas of the shipyard*, including in boiler rooms and steam rooms. Plaintiff worked within ten feet of shipyard insulation workers that were completing the tear-out and replacement of insulation products *all over the site*, including pipe covering and block insulation sold, supplied and distributed by Thorpe Insulation, asbestos paper, asbestos millboard, woven combination asbestos and cotton tapes and cloths, asbestos braided and twisted rope, insulation cements, adhesive and sealers. Plaintiff worked within ten feet of pipe and block insulation distributed, supplied, and/or installed by Thorpe Insulation and was exposed to asbestos from this work. *He also worked within ten feet of work performed both inside and outside of boiler rooms, engine rooms and steam rooms during repair activities.* The asbestos-containing refractory, gasket and insulation materials were easily disturbed and dusty *at the site*.

A00035621 (emphasis added)

The answer is a very detailed, but hodge-podge, description of work of a sailor who disembarked and worked on shore, albeit mixing in terms (“engine room” or “boiler room”) often found in responses describing work performed on a ship rather than in a ship yard.

Six months later, on December 20, 2011, Mandelbrot submitted interrogatory responses with the same trust, Thorpe Insulation Trust, which bore the same date of May 24, 2011 and were signed by counsel and which had the identical verification of Mrs. C dated June 7, 2011.

A00036112-14; B00005255. Without explanation these responses changed the detailed factual recitation to delete the specific references to working in the shipyard. Instead, Mrs. C certified under penalty of perjury that for the exact same period, Donald C. remained and worked on the ship and experienced very different exposure to asbestos except for a general reference to other repair activities:

Plaintiff remained on the ship and worked within ten feet of shipyard insulation workers that were completing the tear-out and replacement of asbestos-containing insulation products *all over the ship*, including asbestos pipe covering and asbestos block insulation sold, supplied and distributed by Thorpe Insulation, asbestos paper, asbestos millboard, woven combination asbestos and asbestos-containing cotton tapes and cloths, asbestos

braided and twisted rope, asbestos-containing insulation cements, asbestos-containing adhesive and asbestos-containing sealers. Plaintiff worked within ten feet of asbestos-containing pipe and asbestos-containing block insulation distributed, supplied, and/or installed by Thorpe Insulation and was exposed to asbestos from *his work while aboard the USS BRUSH (00-745)* at Long Beach Naval Shipyard. *He also worked within ten feet of work performed both inside and outside of boiler rooms during repair activities at Long Beach Naval Shipyard.* The asbestos-containing refractory, gasket and insulation materials were dusty *on the ship* while at Long Beach Naval Shipyard, causing Plaintiff to breathe the visible asbestos-containing dust. Plaintiff was exposed to asbestos from asbestos-containing pipe insulation and other asbestos materials *on this ship.*

A00036113 (emphasis added)

There was no explanation for these changed, equally detailed accounts of Donald C's time spent while the USS Brush was docked at Long Beach Naval Shipyard or why the same verification and date was used for both the first and later interrogatory responses.⁹

Over twenty percent of these later-submitted and inconsistent responses purport to be signed by Mr. Mandelbrot on the identical date as the initial responses.¹⁰ In some, for example claim number 914, the two inconsistent responses appear to attach the same photocopied signature page. In others, for example Thorpe Insulation claim 753, the later-submitted inconsistent response attaches a wholly different signature page, and is signed separately by Mr. Mandelbrot, yet bears the identical date as the inconsistent response submitted many months earlier. At their depositions, neither Mr. Mandelbrot nor Mr. Dunning could explain or justify any of these anomalies or identify those responsible for them.

While Mandelbrot began in December 2011 to craft substitute evidence submitted to the Thorpe Insulation Trust that claimed, contrary to withdrawn answers, sailors now remained and worked on board their ships, Mandelbrot did not do so in claims submitted to the J.T. Thorpe Trust. Thorpe Insulation Trust claim No. 724 and J.T. Thorpe Trust claim No. 1890 illustrate this practice. On July 21, 2011, Mandelbrot submitted interrogatory responses with the J.T. Thorpe Trust, signed by counsel, where Mrs. R. certified under penalty of perjury on July 12, 2011 that

⁹ At least three of these 50 claims (including Thorpe Insulation claim No. 317, summarized above) involve identical or suspect verifications. In Thorpe Insulation Case No. 914, and on September 19, 2011, Mandelbrot submitted a signed, verified interrogatory response that the sailor disembarked his ship. On February 28, 2012, Mandelbrot submitted an interrogatory response stating the sailor remained and worked on board. The exact same attorney signature, signed on the same date, together with the exact same verification, is attached to both sets of interrogatory responses. In Thorpe Insulation Case No. 934, Mandelbrot submitted Trust-created interrogatory responses on October 19, 2011 stating that the sailor disembarked the USS Princeton during overhaul at the Long Beach Naval Shipyard. These responses were supported by a verification apparently submitted by another law firm dated February 12, 2008, and which on its face verified San Francisco Superior Court General Order No. 129 interrogatory responses, not those submitted to the Trust.

¹⁰ In addition to Thorpe Insulation claim number 317, see Thorpe Insulation claim numbers 506, 521, 724, 753, 789, 914, 969, 973, 974, 1002, 1890, and 5132.

Raymond R., her deceased husband, disembarked the USS INCREDIBLE (AM-249) and was exposed to asbestos in 1952 and 1953.¹¹

On July 25, 2011, four days later, Mandelbrot filed identical interrogatory responses with the Thorpe Insulation Trust signed by counsel on the same day as the J.T. Thorpe interrogatory responses, again certified under penalty of perjury by Mrs. R. on July 12, 2011. A00053416-18; B00005518.

On January 30, 2012, seven months later, Mandelbrot substituted interrogatory responses with the Thorpe Insulation Trust (signed by counsel purportedly on with the same date as the other two earlier interrogatory responses). These responses eliminated all references to disembarking and work in the shipyard. In them, Mrs. R., for the exact same periods and ship, stated that

¹¹ "While the USS INCREDIBLE (AM-249) was in for repair at Long Beach Naval ... *Plaintiff disembarked and continued his normal duties at the shipyard itself. Plaintiff spent at least 90 days working on the premises of Long Beach Naval Shipyard. He performed his Pipefitter duties in all areas of the shipyard, including in boiler and steam rooms.* During this time, plaintiff was exposed to asbestos while working within ten feet of work performed both inside and outside of boiler/pump rooms/powerhouses during repair and maintenance. This work included the mixing of asbestos containing cements, plasters, compounds, sealants, raw asbestos fibers and adhesives, installation of refractory products and block insulation of boilers, the removal and fabrication of gaskets, and handling and cleaning of other asbestos-containing refractory materials previously worked on by J.T. Thorpe, Inc. The asbestos-containing refractory, gasket and insulation materials were easily disturbed and dusty *at this site*. Plaintiff was exposed to and worked within ten feet of boiler and refractory materials sold, supplied and/or installed *at this site* by J.T. Thorpe, Inc. *Additionally, Plaintiff worked within ten feet of shipyard insulation workers that were completing the tear out and replacement of insulation products all over the site*, including pipe covering and block insulation sold, supplied and distributed by Thorpe Insulation, asbestos paper, asbestos millboard, woven combination asbestos and cotton tapes and cloths, asbestos braided and twisted rope, insulation cements, adhesive and sealers. Plaintiff worked within ten feet of pipe and block insulation distributed, supplied, and/or installed by Thorpe Insulation and was exposed to asbestos from this work. He also worked within ten feet of work performed both inside and outside of boiler rooms, engine rooms and steam rooms during repair activities. The asbestos-containing refractory, gasket and insulation materials were easily disturbed and dusty *at the site*." A00007505-07; B00000909 (emphasis added)

Mandelbrot originally had submitted a Declaration from Mrs. R dated April 30, 2009 swearing to the J.T. Thorpe Trust that Raymond R. had disembarked for the entire time the USS Incredible was at Long Beach Naval Shipyard for repairs. A00007237.

Raymond R. remained and worked on the ship.¹² But no substitute responses were filed in the claim against the JT Thorpe trust.¹³

Thus, from January 30, 2012 until May 23, 2012 (when Mandelbrot ultimately withdrew J.T. Thorpe Trust claim No. 1890), Mandelbrot was claiming that Raymond R. remained aboard ship for purposes of his Thorpe Insulation Trust claim, while simultaneously claiming to the J.T. Thorpe Trust that Raymond R. disembarked the ship and worked in the shipyard. B00000907.¹⁴

Mandelbrot has withdrawn many of the claims that have been the subject of this investigation.¹⁵ The practical effect in many instances has been to put problem witnesses beyond the reach of the investigation.

The circumstances of withdrawal give rise to the concern that Mandelbrot was prepared to leave unreliable evidence in play on the chance that its flaws would escape detection. A brief summary of what began with the Trust's simple request for an interview of a client who verified evidence in two disembarkation claims – Thorpe Insulation Claim No. 1002 and J.T. Thorpe Claim 5132 – illustrates this practice and shows the difficulties presented to the Trusts in their efforts to determine the reliability of such evidence. On October 27, 2011, Mandelbrot submitted on behalf of a single client unverified interrogatory responses in Claim 1002 and Claim 5132 stating that the same sailor disembarked his ship and worked ashore during overhaul of his ship at the Long Beach Naval Shipyard. On January 24, 2012, after receiving notice of the Trusts' investigation, Mandelbrot submitted – solely in Thorpe Insulation Claim No. 1002 – a supplemental interrogatory response (now verified but bearing the same date as the first

¹² “While the USS INCREDIBLE (AM-249) was in for repair at Long Beach Naval Shipyard *Plaintiff remained on the ship for at least 90 days*. While on the USS INCREDIBLE (AM-249) at Long Beach Naval Shipyard Plaintiff worked within ten feet of shipyard insulation workers that were completing the tear-out and replacement of asbestos-containing insulation products *all over the ship*, including asbestos pipe covering and asbestos block insulation sold, supplied and distributed by Thorpe Insulation, asbestos paper, asbestos millboard, woven combination asbestos and asbestos-containing cotton tapes and cloths, asbestos braided and twisted rope, asbestos-containing insulation cements, asbestos-containing adhesive and asbestos-containing sealers. Plaintiff worked within ten feet of asbestos-containing pipe and asbestos-containing block insulation distributed, supplied, and/or installed by Thorpe Insulation and was *exposed to asbestos from this work while aboard the USS INCREDIBLE (AM-249)* at Long Beach Naval Shipyard. He also worked within ten feet of work performed both inside and outside of boiler rooms *on the ship* during repair activities at Long Beach Naval Shipyard. The asbestos-containing refractory, gasket and insulation materials were dusty *on the ship* while at Long Beach Naval Shipyard, causing Plaintiff to breathe the visible asbestos-containing dust. Plaintiff was exposed to asbestos from asbestos-containing pipe insulation and other asbestos materials *on this ship*.” A00053487-489; B0005518 (emphasis added).

¹³ Claims processing Trust staff would not have been aware of these differences as they occurred. Claims against different trusts by the same claimants are not processed together or, often, even by the same processors. Each trust has its own FIFO claims processing order and each submission to each claim is processed separately -- twice, in fact -- on its own merits as submitted.

¹⁴ For other examples of this practice, compare Thorpe Insulation Claim No. 753 with J.T. Thorpe claim 3712; Thorpe Insulation Claim No. 613 with J.T. Thorpe Claim 4796; and Thorpe Insulation Claim No. 1002 with J.T. Thorpe Claim 5132.

¹⁵ After December 5, 2011 and notification of the Trusts' investigation was provided to Mandelbrot, Mandelbrot withdrew many claims the Trusts had identified as supported by unreliable evidence. Of these claims, each withdrawal after December 5, 2011 was either a disembark claim or a claim for which the Trusts had requested a verifying witness examination. See letter of Mr. Davis to Mr. Smith, dated April 18, 2013.

response) that the sailor had remained aboard ship during the overhaul. No corresponding change was made with respect to J.T. Thorpe Claim No. 5132. Mandelbrot refused to allow an interview of the verifying witness. The J.T. Thorpe Trust then filed its Rule 2004 application requesting that the court order the examination of that client. The court granted the Trust's request in March 2012. The Trust then noticed and subpoenaed the client for deposition in April 2012. Mandelbrot still refused to produce the witness who did not appear for deposition. Instead, Mandelbrot appealed the court's order to the District Court. The appeal was finally resolved in the Trust's favor in July 2012. Thereafter, the Trust again subpoenaed the client for deposition to occur on August 24, 2012. Eight days prior to the scheduled date of that deposition, on August 16, 2012, Mandelbrot submitted two supplemental interrogatory responses in Claim No. 5132 to the J.T. Thorpe Trust (one using the same verification as was submitted in January which stated that the sailor remained aboard the ship during repair, and the other a verification from the same client dated October 17, 2011 which said that the sailor got off the ship). On August 24, 2012, the J.T. Thorpe Trust appeared through counsel to examine the client as to why she had verified these two contradictory responses, but the witness again did not appear for deposition, and Mandelbrot said he was unable to produce her. Recently, when the Trusts renewed their request to examine this client Mandelbrot informed them she no longer had any claims with either Trust. A few days later, on April 22, 2013 Mandelbrot withdrew the clients' claim against the Thorpe Insulation Trust.¹⁶

Inexperience and/or excusable neglect can lead to what amounts to occasional error and apparent unreliability. Absent proof of grave incapacity it is difficult to describe as merely "error," however, a) submitting, within the time and under the circumstances described above and without plausible explanation, 50 "verified" interrogatory responses in as many claims contradicting previously-submitted evidence on exactly the same subjects and/or b) maintaining for any appreciable period contemporaneous claims with two trusts, one seeking to qualify for compensation with a trust by a sworn statement that a decedent stayed aboard a certain ship and another, before another Trust, seeking to qualify based on an entirely inconsistent sworn statement that the decedent disembarked that same ship during the same period and worked ashore.

B. Other Conflicts With, or Absence of Support By, Litigation Discovery, Government, Business or Military Records

The Rule 2004 application, and preceding correspondence, also revealed that the Trusts were investigating i) the basis of witness testimony apparently lacking sufficient foundation and ii) the veracity of unusual and/or unexpected claimed exposures given the occupations involved (e.g., military police or hospital worker) and the claimed means of exposure (e.g., mixing, installation, and chipping of refractory products).

¹⁶ Of the eight Mandelbrot claims subject to the court's order regarding the Trust's 2004 examinations motion, Mandelbrot has now withdrawn six, and claims the production of another is not within his control. By letter dated April 18, 2013, Mandelbrot counsel also advised that three additional claimants would not submit to examination and instead have withdrawn their claims. Mandelbrot has also disclaimed control over the clients who verified the evidence underlying the two Thorpe claims numbered 753 and 317 noted above, referring the Trust's request for examinations to the law firm who referred Mandelbrot those clients.

1. Lack of Witness Foundation for Testimony or Response

In J.T. Thorpe claim No. 300, the claimant alleged secondary asbestos exposure from her father's work at a Trust-approved worksite. Evidence provided to the Trust supporting this claim was verified by the claimant's son, even though the alleged exposure to the father occurred years before the claimant's son was born. The evidence submitted to the Trust conflicted with evidence from prior litigation regarding the location and circumstances of the claimed initial exposure to the father. Prior litigation interrogatory responses indicate that the claimant's family lived on the East Coast during the period of claimed exposure, and not in Alhambra or elsewhere in Southern California as claimed in verified interrogatory responses submitted to the Trust. The Trust requested that Mandelbrot provide further litigation documents, including deposition transcripts, to explain the discrepancy between the Trust interrogatory responses and litigation documents. Mandelbrot indicated in response that the deposition transcript did not discuss the claimed exposure, and then claimed the deposition transcript did not exist. The Trusts obtained the claimant's litigation deposition transcript independently, which confirmed that she did *not* live in Southern California where the claimed exposure supposedly occurred. Last month, Mandelbrot withdrew this claim.

2. Unusual Occupational Exposure

Western Trust claim No. 8144 is an example of an unusual occupation claim. In August 2010, Mandelbrot first submitted a declaration of the claimant's daughter, which contended, under penalty of perjury and based upon the daughter's discussions with the claimant's mother, that the mother worked at a hospital and that this work "included the mixing, installation, and chipping of refractory products, scraping of gaskets and handling and cleaning of other asbestos-containing materials." Approximately one year later, the claim was resubmitted with an interrogatory response verified by the daughter (and signed by you, although you indicated in your recent deposition (p. 184) that your signature had "probably" been "forged"), this time stating – again under oath – that her mother "spent at least 90 days working within five feet of construction work which included the removal of ceiling tiles which exposed pipe insulation and block sold, supplied and distributed by Western Asbestos." There was no reference in the interrogatory responses to the prior claim of mixing, installing, and chipping of refractory products. Several months later, Mandelbrot submitted the deposition transcript of the mother, wherein she testified that she could not even tell "for sure" that she was exposed to *any* asbestos products while working at the hospital. Mandelbrot also recently withdrew this claim, charging that the Trusts request to examine this verifying witness constituted harassment.

The Trusts so far have determined that more than 50 claims involve one or more of these problems. They all share essentially the vice, also found in the disembarkation category of claims, of stretching witness credibility beyond plausible limits outside of a context, such as contested litigation in the tort system, where credibility would be subject to validating scrutiny.

III. Mandelbrot Practices and Conclusion Regarding Cure Alternative

The Trusts cannot accept the explanations recently provided by you for occurrences such as the contradictory disembarkation evidentiary submissions,¹⁷ and view the absence of a believable explanation as a serious and significant hurdle in affording the deferral and cure period alternative outlined above. This is especially so where, as here, the trustees have asked to speak to the witnesses, but have been met with resistance by Mandelbrot in response to these requests.

The reasons that motivate the trustees to offer a deferral and cure period largely are the same ones that cause the trustees to conclude, without further investigation, that Mandelbrot was, is and – in the absence of correction – will remain unable to provide reliable evidence in more challenging circumstances¹⁸ such as those often presented by the J.T. Thorpe and Thorpe Insulation Trusts (as distinguished from the Western Trust).

Those reasons include the fact that law firms, some known by the Trust to be capable in the conduct of asbestos litigation, have elected to refer at least some of their clients' claims to Mandelbrot for submission to the Trusts. Referral to a responsible local attorney makes sense given the unique nature of these Trusts, which exist to resolve liabilities that arose largely out of *regional* – not national – asbestos liabilities, i.e., liabilities that were defined and established in the course of regional litigation by regional lawyers knowledgeable in the unique circumstances of the debtors whose asbestos bodily injury responsibilities the Trusts have assumed.¹⁹

¹⁷ The trustees cannot accept the various explanations for these contradictory submissions and these explanations are not supported by other evidence:

a. that U.S. Navy sailors worked “eight hours a day on ship and eight hours in that same day off of ship” (Mandelbrot deposition 252:3-18);

b. that the inconsistencies do not matter since the sailor can show exposure in either instance (ashore or on the ship) based on underlying military records assigning the sailor to the ship, i.e., that the claim qualifies *in spite of* the unreliability of the witness evidence sent to the trust (Mandelbrot deposition 318:19-319:25, 324:23-325:11) or,

c. as discussed on page 6, that the entire disembarkation enterprise was a mistake induced by a Trust employee providing bad guidance that sailors could not qualify for Thorpe Insulation compensation during repairs unless they were put ashore.

¹⁸ Data analysis of Mandelbrot's filing practices shows that Mandelbrot tends to press more challenging claims in more challenging circumstances. Analysis Research Planning Corporation (“ARPC”) assessed claims filed by Mandelbrot in comparison to other filing firms. You have been provided copies of these reports. The results of ARPC's assessment show: (1) Mandelbrot is essentially the only firm filing “disembarkation” claims; (2) Mandelbrot claims are far less likely to be supported by evidence from underlying litigation; (3) Mandelbrot changes the evidence to support claimed exposure more often than other firms; and (4) when Mandelbrot files claims for deceased individuals, he is more likely to support the claims of exposure with verifications from relatives who are unlikely to have known the details or extent of the claimants' exposure.

¹⁹ The Trusts are relatively well-funded, and their requirements are objective and transparent in an effort to afford access to filers lacking experience in the underlying, largely regional, litigation. Partly as a result of this, these requirements are complex and exacting compared to those found in other asbestos trusts designed to resolve broadly-defined national asbestos liabilities. Despite efforts (such as visits by trust staff to firms submitting claims or on-line tutorials) to make trusts mechanisms accessible and useable by counsel everywhere, lawyers for “foreign” claimants not represented by counsel familiar with the Trusts' regional litigation history as reflected in the Trusts' claims-filing requirements, may conclude (as Mandelbrot's marketing materials state) that their clients stand to benefit if they have access to an alternative, reliable local counsel even for this limited purpose.

Mandelbrot is to our knowledge (and to his knowledge as well) the first and only firm in California, or in the United States for that matter, that devotes itself entirely to serving as an agent for other firms for the limited purpose of submitting claims to asbestos trusts. Mandelbrot does not represent clients in the tort system. It has not been called upon to answer to local courts or opponents in litigation.

In its niche, therefore, Mandelbrot has had no “best practices” model to work from or competition to work against. As an agent retained for this limited purpose, Mandelbrot has minimized the resources it devotes to substantiating claims²⁰ and remains very dependent on referring firms. For example, based on the testimony of Mandelbrot and others, Mandelbrot lacks direct client access with respect to over 50% of the clients it purports to represent. Responsibility for the evidence preparation of specific claims (i.e., whether evidence was supplied or created by referring counsel or the Mandelbrot firm) varies from firm to firm and claim to claim. In some instances Mandelbrot prepares forms of declarations and discovery responses to submit to these trusts in support of claims. In other instances it accepts evidence prepared by the referring firm. Nobody has been able to identify who at the Mandelbrot office is responsible for the evidence preparation of specific claims and apparently there is no way to make such a determination.

None of Mandelbrot’s current quality assurance processes identified or prevented the problems created by the disembarkation claims, including the “off board” then “on board” evidentiary flip flops, or the series of “clumsy” and obvious fabrications and frauds in filings with a number of East Coast-based trusts that were identified only after the Thorpe Trusts initiated this investigation. *See, e.g., C00001107.*

The false verifications sent to these Trusts were discovered by the Trusts, not Mandelbrot. Even after the Thorpe Trusts had been pursuing this investigation for more than a year and a half, neither you nor your office manager had any plausible explanation for what appears to be false verifications and signatures used to support some of those claims. Mandelbrot denies any intent to submit fraudulent information and further denies knowledge of its occurrence. Yet, so far, no one has been identified as the author of or taken credit for these declarations and verifications or

²⁰ Mandelbrot’s first claims were submitted in late 2005 to the Western Trust. Since that time:

In submitting claims to trusts Mandelbrot never has been more than a one-lawyer firm.

Initially it operated with one employee, Michael Dunning, having no claims experience working out of his home. Dunning became office manager and the firm’s most experienced employee until he left this year.

Other employees, none (save one) with claims experience, came and went with high turnover even as the firm’s attractive referral terms increased the client base to thousands. The one experienced employee had only nominal experience, was hired after he left the employ of Western, and all seem to agree he was young, charming, and intelligent but turned out to be lazy or dishonest or both.

Mandelbrot systems changed over time and are difficult to describe, but quality assurance essentially boiled down to file reviews by Mandelbrot, who supposedly reviewed and signed every claim and discovery response, and by office manager Dunning, no longer employed at Mandelbrot, who supposedly reviewed and uploaded and electronically “filed” every claim with these trusts. Mandelbrot file maintenance and review practices make it labor-intensive to determine if claim submissions have been modified over time. For example, quality control processes did not include a comparison between supplementary submissions and prior submissions.

the unexplained inconsistencies in the evidence they purport to verify.²¹ Seen in its best light Mandelbrot may be capable of submitting claims of acceptable quality where it has ready access to reliable information. But this is not the case in more challenging circumstances where access is lacking or available only to those with experience, time and resources needed to obtain the evidence, or where the objective is to achieve Mandelbrot's advertised capability to get more from claims than other lawyers.

Mandelbrot's systemic deficiencies may be curable if referring firms in contact with clients and in possession of complete files, commit the time and resources necessary to become directly involved, where necessary, with the Trusts and to screen claims and provide reliable and responsive evidence. Attempting this seems worth a try in deference to the choice of counsel by those firms referring claims to Mandelbrot. But if the Trusts are to respect these firms' choice of local specialty counsel, the Trusts conclude that they are entitled to have the benefit of the active participation of these referring firms. This does not appear to ask too much, especially since the referral agreements Mandelbrot has offered to attract business provide the referrer 75% of the attorney contingent fee collected on net recoveries, and commit Mandelbrot to front and accept the risk of loss of the \$250 filing fee required for each claim.²²

IV. Mandelbrot's Lack of Cooperation with the Trusts

The difficulties the Trusts have encountered in completing this investigation continue a progressively troublesome relationship with Mandelbrot dating from late 2006, about the time the J.T. Thorpe Trust came into existence. By that time, Mandelbrot and/or its principal already had experience filing claims with the Western Trust which first began accepting claims in August 2004.

As far as the Trustees can tell, Mandelbrot, which apparently had hundreds or thousands of pending claims, did not appear or articulate interest in the J.T. Thorpe bankruptcy proceedings, the birthplace of the J.T. Thorpe Trust and its TDP and Matrix, even though one would expect they would have had an interest in doing so. The J.T. Thorpe TDP and Matrix were more complex than their Western predecessor. Mandelbrot's early and strident complaints to the J.T. Thorpe Trust related to the claimed unfairness of the TDP and the lack of TDP clarity regarding early Trust accumulation and publication of J.T. Thorpe job site and ship list information. Disputes continued, including, for example, whether the "adequate documentation" requirement for claims economic loss in excess of the Matrix base case of \$200,000 (see, e.g., J.T. Thorpe Trust Matrix II (b) (v)) could be satisfied by expert reports based on, e.g., phone calls with attorneys.²³

²¹ While Mandelbrot has identified Mr. John Lynch as a source of "fraudulently created" affidavits and "forged documents" submitted to other trusts, Mandelbrot has avoided identifying Mr. Lynch as the source of any false submissions to these Trusts. See Mandelbrot Depo. at 61:6-25. Instead, Mr. Mandelbrot insisted on his deposition that all evidence submitted by his firm to the Trusts has been and is reliable.

²² The effect of this generosity on Mandelbrot's operating resources is amplified since these Trusts, unlike others, cap attorney's fees at 25% of net recoveries.

²³ The Trusts' requests for additional information regarding economic loss reports led Mandelbrot to complain that the Trusts were engaged in a "bad faith effort to screw victims"; to accuse Trust staff of "bad faith," lies, and misstatements; and to resort to ad hominem attacks. C00000756-763.

By the time this investigation had commenced in late 2011, Mandelbrot had adopted the view that the Trusts were working against him, and had by then repeatedly charged Trust fiduciaries with breaches of their duties and threatened to sue them or have them removed.²⁴ These allegations were unfounded and were brought to the attention of the supervising courts in Trust annual reports, affording Mandelbrot the opportunity to act upon them.²⁵ Mandelbrot's response to this investigation – a refusal to cooperate with the Trusts' efforts to deal with the issues of reliability as they multiplied – reflected this same view even though the volume of claims Mandelbrot filed with each of the Trusts had increased substantially year over year, and even though the rate at which those claims had been approved compared favorably to approval rates for all other filers.²⁶ As they contended in their motion to allow them to process and pay claims of deserving claimants, the Trusts believe that it is reasonable to take this lack of cooperation into account in reaching their conclusions. Specifically, the measures Mandelbrot took to frustrate Trust efforts to interview witnesses who authored suspect evidence, even viewed in light of the knowledge now available that Mandelbrot undoubtedly had little or no witness access or control because of the nature of his arrangements with referring firms, leads the Trusts to conclude that the testimony of those witnesses, had it been given, would have been unfavorable to Mandelbrot.²⁷ The same conclusion is reasonably drawn from Mandelbrot's seriatim

²⁴ For example, in 2006, you threatened "an injunction to stop the [J.T. Thorpe] Trust from currently processing and paying claims" until your concerns regarding statutes of limitations and ship lists were addressed. D00000529. In 2007 and 2008, you alleged the Trusts and their representatives and fiduciaries engaged in "delay, negligence, and bad faith." D00000717; D00000197. In 2009 and 2011, you accused the Thorpe Trusts of bad faith regarding ship lists. D00001089-1090, D00000910-911. You also accused the Trusts of "Bad Faith" regarding proposed changes to interrogatory requirements, threatening individual liability against the Trustees. D0000097-106. Also in 2011, you accused the Trust of "misappropriating funds" and "ongoing Bad Faith and refusal to pay valid claims." D00000950. And, in August 2012, you threatened a lawsuit as retaliation for the Trusts' audit and investigation: "[s]hould this audit continue, I can assure we will be Noticing Trust Representatives Depositions pursuant to Rule 2004 and/or filing a Direct Lawsuit against the Trust." C00000878.

²⁵ See, e.g., J.T. Thorpe, Fifth Annual Report and Accounting, Audited Financial Statements, and Claim Report, filed April 27, 2011; Thorpe Insulation, First Annual Report and Accounting, Audited Financial Statements, and Claim Report, filed April 27, 2011; and Western Asbestos Trust, Seventh Annual Report and Accounting, Audited Financial Statements, and Claim Report, filed April 28, 2011. These annual reports deny all such allegations made by Mandelbrot. See, e.g., Western Asbestos Trust's Seventh Annual Report at paragraph 25(e), "the allegations lack merit" and the Trust "is considering whether to petition this court for instructions about whether further investigation is necessary and appropriate." Further, Mr. Mandelbrot appeared at the May 24, 2011 hearing to contest the Western Asbestos Trust's motion to approve the Trust's Seventh Annual Report, and the Court overruled his oral objection. See Transcript of hearing, Docket 1758. At that hearing, the Court invited Mr. Mandelbrot to file "an appropriate motion and notice it" should he wish the Court to address his objections. Docket 1758 at p. 13. Mandelbrot failed to do so.

²⁶ The approval or "passing" of Mandelbrot claims by the Trusts has been touted by Mandelbrot in marketing materials. For example, in marketing correspondence, Mandelbrot indicated that it files more claims with the Western Asbestos Settlement Trust and J.T. Thorpe Settlement Trust "than any firm in the Country and knows every angle necessary to get these worthwhile and valuable claims passed."

²⁷ There is no reason to infer otherwise, especially in light of the two requested Rule 2004 examinations that resulted in additional evidence. The deposition of Marilyn R. was taken, and contrary to her verified interrogatory responses submitted by Mandelbrot, Marilyn R. disclaimed knowledge of her husband's Naval asbestos exposure, testifying that she had no knowledge whatsoever regarding it because she first met Frank R. in 1982, decades after he retired from the Navy. C00001835. Similarly, in the case of Robert G., a declaration was provided by Mandelbrot in lieu of the requested Rule 2004 examination that both contradicted and significantly weakened the original claim of asbestos exposure contained in Robert G.'s original evidentiary submission. Compare A00018655 with C00001237.

withdrawal of claims questioned by the Trusts in apparent efforts to avoid claimant examinations.

And the facts that, (1) Mandelbrot did not discover the misuse of verifications and attorney signatures examined during the Mandelbrot deposition and produced to Mandelbrot by the Trusts and (2) to this day would have the Trusts turn a blind eye to the impropriety of 50 witness about-faces in sworn testimony, supports the conclusion that while Mandelbrot denies knowledge of or participation in any fraud, its attitude toward these Trusts and its firm culture certainly appear to permit if not countenance or even invite such behavior.

For the deferral and cure alternative to have any prospect of success this must change. The Trusts conclude that such an alternative has no hope of success unless responsible members of referring firms become directly involved changing the trajectory of their local agent's dealings with these Trusts.

There may be additional information Mandelbrot has but that the Trusts do not have or explanations that Mandelbrot has not brought to the Trusts' attention. The Trusts believe they have given Mandelbrot more than ample opportunity to come forward with such information or explanations. If Mandelbrot chooses to disclose such additional information in the future, the Trusts do not believe under these circumstances that it would or should alter their conclusions or decisions or, for that matter, their reasonableness.

V. The Trusts' Investigation of Concerns Raised by Mandelbrot

In connection with their investigation, the Trusts have also assessed Mandelbrot's contention that the investigation was improperly motivated and that the Trusts have discriminated and/or demonstrated "bias" against Mandelbrot. The various claims of discrimination Mandelbrot has asserted over the years relate to policies that the Trusts have applied to *all* filing firms. Because of this, the Trusts have never agreed with Mandelbrot's bias claims, especially in light of the claim filing results Mandelbrot has experienced with the Trusts.

A. Retroactive Application Claim

Mandelbrot has complained repeatedly about uniform rules and procedures supposedly applied "retroactively" to the firm's disadvantage. However, the Trusts have published rules and additional claims criteria, among other reasons, to respond to Mandelbrot's requests for formulas or rules to be applied across classes or large volumes of claims. The rules and procedures were not "retroactive" because they simply codified the standards the Trusts are obligated to apply to determine whether claimants had met their burden and, if they did not meet that burden, what additional information would be required for them to do so. The Trusts do not act retroactively²⁸ simply by providing guidance to filing firms about minimum requirements, and any discrimination that results from their application is a direct product of the quality of evidence being submitted. Thus, to the extent Mandelbrot perceives discrimination, it likely results from circumstances such as those identified by ARPC, e.g., Mandelbrot's more frequent submission of

²⁸ For example, the J.T. Thorpe Trust's policy requiring verified interrogatories took extra measures to avoid this charge. It was announced in November 2010, and applied only to claims filed on or after December 1, 2010.

“non-litigation” declarations or interrogatories – sometimes verified by witnesses with no or only tenuous foundations – that conflict with or are not supported by other records, including underlying litigation records generated through the tort system.

B. Whitney Lauren and John Lynch Accusations

With regard to Mandelbrot’s claim of bias arising out of the dispute between Trust processor Whitney Lauren and John Lynch, the Trusts have been unable to find any evidence of bias reflected in the evaluation of the merits of Mandelbrot’s claims. As you know, when Mandelbrot first asserted this allegation of bias, as a prophylactic measure, Ms. Lauren was no longer assigned the review of Mandelbrot’s claims. Thereafter, the Trusts re-reviewed every active claim filed by Mandelbrot as of October 2012 for which Ms. Lauren initially served as one of two claims processors. This review demonstrated no bias or improper treatment of claims submitted by Mandelbrot.

Mandelbrot claims as an affirmative defense in the adversary proceedings that these Trusts, whose financial interests would be most directly challenged if Mr. John Lynch was inclined to perpetrate fraud in his work at Mandelbrot, are responsible for failing to alert Mandelbrot to Lynch’s deficiencies. The Trusts do not agree. Lynch worked for these Trusts as a claims processor for 18 months, until October 2010. In October/November of the same year, Mandelbrot hired Lynch without notice to or inquiry of these Trusts and soon placed Lynch, in addition to his other duties, in charge of reviewing claims against these Trusts for quality before they went to Mr. Mandelbrot or others. Mandelbrot’s dealings with Lynch while he was employed at the Mandelbrot firm, including what Mr. Dunning in his declaration to the court describes as a request by Lynch to Mandelbrot that Mandelbrot file a false claim on Lynch’s behalf, disclose aspects of his character that might have, but apparently did not lead Mandelbrot to conclude that Mr. Lynch was not a valuable claims expert.

Mandelbrot has not claimed that Mr. Lynch was responsible for submitting any of the unreliable or falsified evidence to the Trusts. Regardless of whether this contention changes, given the remedial focus of the Trusts’ action, the more salient fact is that Mandelbrot did not discover any of the unreliable evidence submitted to these Trusts in the process of reviewing claims or after being placed on notice of the Trusts’ concerns. As Mr. Mandelbrot correctly noted during his deposition, “I personally authorized the filing of every claim, so it comes back to me.”

C. Other Accusations

The Trusts do not agree with Mandelbrot’s other and continuing accusations of bias, bad faith and collusion among trust fiduciaries.

VI. Court Approval and Terms of Deferral:

The adversary proceedings seek a determination of whether the Trusts’ actions under Section 5.7(a) of the TDPs were reasonable and not the result of bias, bad faith, collusion or improper discrimination as asserted by Mandelbrot. The Trustees have provided you with the information, including detailed examples, they relied upon in reaching their conclusions and decisions. They believe that this information, and these examples adequately show that the conclusions of the Trustees are reasonable and that this fully resolves the issues in dispute in the adversary

proceeding. You may disagree, of course. However if you are of the view that the Trusts inappropriately relied upon any information please so inform counsel to the Trusts immediately, within 10 days at least, so the matter can be brought to the attention of the supervising court.

Section 5.7(a) provides that in the event the Trusts reasonably determine and find “unreliability” of the types described, they “may decline to accept additional evidence” from the provider found to be unreliable. Section 5.7(a) is self-effectuating, non-judicial, and operates based on the reasonable determinations of the trustees. Nevertheless, in consideration of the interests of all beneficiaries, the Trusts will file motions before the supervising courts to approve the actions taken as reasonable and to instruct the Trusts. In those motions, the Trusts will seek approval to distribute this letter to Trust beneficiaries and interested parties.²⁹ The Trusts will seek supervising court instructions whether or not Mandelbrot agrees to accept the deferral and cure conditions set forth below.

Mandelbrot may accept the terms of this deferral and cure alternative by signing and returning a copy of this letter where indicated within thirty (30) days of its date. During that period, the Thorpe Trusts will continue to process pending claims based on existing evidence but will not accept and process new claims from Mandelbrot except for the limited purpose of preserving FIFO queue priority in the event deferral and cure is timely accepted. All TDP remedies to alternative dispute resolution under Matrices Section 5.9 (“ADR”) or exit to the tort system will be preserved for rejected claims, but each file of each of the claims that are the subject of this investigation will make reference to these conclusions and decisions.

By accepting the deferral and cure alternative Mandelbrot agrees:

- a. to submit to a professional, competent independent quality-control audit to be performed and completed during the deferral period at Mandelbrot’s expense, i.e., at no cost to claimants;
- b. that during the deferral period
 - (i) in each claim filed with the Trusts in advance of the deferral period, and now pending, and for which the Trusts have indicated a deficiency that relates to the investigation pursuant to TDP section 5.7(a), the Trusts may deny the portion(s) of the claim affected by the deficiency and allow the claim to go to ADR and/or exit to the tort system. The Trust file for any ADR will include a notice of the Trusts’ conclusions and decision set forth in this letter, relevant court filings and orders from the Rule 2004 proceedings and adversary proceedings.
 - (ii) in each claim now pending, Mandelbrot will identify referring co-counsel, if any, and afford the Trusts direct access to referring co-counsel as

²⁹ The Trust agreements require these fiduciaries to consult with each other on virtually all issues, including issues investigated pursuant to TDP section 5.7, relating to trust administration as well as the trustees providing notice to the Futures Representative and the Trust Advisor Committee with respect to litigation such as these adversary proceedings. Counsel for the Trust Advisory Committees has been provided notice and offered or provided a copy of this letter as required by the Trust Agreement. See Section 2.1(c)(viii) and 2.1(e).

- required to assist in resolving deficiencies if reasonable efforts to do so with Mandelbrot prove unsuccessful;
- (iii) in each future claim filed within the deferral period, referring co-counsel will co-sign and enter into along with Mandelbrot the standard agreement with the Trusts setting forth the terms under which the Trusts accept claims;
 - (iv) Mandelbrot will identify the individual(s) within his firm working on each claim and the person making each submission;
 - (v) each claim will identify any litigation, past or pending, related to the claim, with identification of claimant (or claimant-related party) interrogatory responses, declarations, and depositions, if any, created as part of that litigation;
 - (vi) where not already provided in support of a claim, upon reasonable request by the Trusts (taking into account, among other things, the amount being claimed) Mandelbrot will supply to the Trusts all material identified in paragraph (v) above in connection with its claims submissions;
 - (vii) Mandelbrot will submit full standard interrogatory responses (broadly defined) with each claim and the factual foundation upon which any hearsay evidence or assertions made on information or belief in declarations or interrogatory responses will be fully disclosed;
- c. To join in a petition for instruction by the supervising courts approving these actions, and the conduct of this investigation, by the Trusts and also of the actions of all Trust fiduciaries.
 - d. To supply each referring firm with a notice referring to these conclusions and decisions and the terms and conditions of this agreement.
 - e. The Trusts may resume their normal staffing for the review of all claims including the assignment of Whitney Lauren to review claims submitted by Mandelbrot.
 - f. Unless otherwise agreed by the Trusts in a given instance, the terms "referring firms" or "referring co-counsel" used in the deferral and cure process will be applied broadly and consistent with the purposes of this agreement to obtain the cooperation and the direct involvement of persons having responsibility to obtain from any source recoveries for bodily injury or death from asbestos exposure on behalf of claimants.

If at any point during the deferral period the Trusts become aware of evidence of unreliable evidence of the type described by section 5.7 having been submitted by Mandelbrot or of evidence that Mandelbrot is not complying with the conditions of deferral, the Trustees may bring this to the attention of the supervising courts and/or take other appropriate action.


Each of these conditions under (b)(i) through (b)(vii) will be discontinued, and newly-filed Mandelbrot claims will be accepted and processed in the same way as those submitted by other claimants or their counsel, at the end of the deferral period, if the appropriate supervising Bankruptcy Court finds upon motion by the Trusts or Mandelbrot that Mandelbrot has satisfied the terms of these conditions, and if no further patterns and practices as described under section 5.7 are shown to exist. Actions, if any, to be taken in the absence of such a finding will be determined by the appropriate supervising bankruptcy court.

VII. Election Not to Accept Deferral and Cure

If Mandelbrot elects not to accept the deferral and cure alternative, the Trusts will implement their decision described in paragraph 4 above, complete processing of pending claims based on evidence already submitted, and will not accept any additional evidence or claims submitted by Mandelbrot, either voluntarily or in response to deficiencies identified by the Trusts, PROVIDED THAT the Trusts may consider an appropriate procedure for pending claims that might require additional evidence. All Trust remedies to ADR or exit to the tort system will be preserved for rejected claims.

This letter sets forth the conclusions and decisions the Trusts have reached under Section 5.7(a) of their TDPs as part of the resolution of the issue that is the subject of these adversary proceedings. It is not an offer of compromise or for settlement. However, the Trusts are prepared to meet with you and discuss any of these subjects.

Sincerely,


Stephen M. Snyder
Managing Trustee
J.T. Thorpe Settlement Trust,
Thorpe Insulation Company Asbestos
Settlement Trust and
Western Asbestos Settlement Trust

cc: Peter J. Benvenuti, Esq., Peter Van N. Lockwood, Esq.

Accepted and Agreed:

Michael J. Mandelbrot individually and d.b.a. Mandelbrot Law Firm

Date: _____