

Jason C. Rubinstein
 Timothy M. Haggerty
 FRIEDMAN KAPLAN SEILER &
 ADELMAN LLP
 7 Times Square
 New York, New York 10036-6516
 Tel: (212) 833-1100

*Attorneys for the Manville Personal
 Injury Settlement Trust*

**UNITED STATES BANKRUPTCY COURT FOR THE
 SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	
	:	
JOHNS-MANVILLE CORPORATION, <i>et al.</i> ,	:	Case Nos. 82 B 11656,
	:	82 B 11657, 82 B 11660,
Debtors.	:	82 B 11661, 82 B 11665 through
	:	82 B 11673 inclusive,
-----	:	82 B 11675, 82 B 11676 (CGM)
MANVILLE PERSONAL INJURY	:	
SETTLEMENT TRUST,	:	
	:	
Plaintiff,	:	
	:	Adversary No. 17-_____
v.	:	
	:	
THORPE INSULATION COMPANY	:	VERIFIED COMPLAINT FOR
ASBESTOS SETTLEMENT TRUST,	:	DECLARATORY RELIEF AND
	:	DETERMINATION OF
	:	<u>GOOD FAITH SETTLEMENTS</u>
Defendant.	:	
-----	X	

Plaintiff Manville Personal Injury Settlement Trust (the “Manville Trust”), alleges for its Verified Complaint (the “Complaint”), upon knowledge of its own acts and upon information and belief as to all other matters, as follows:

I.

INTRODUCTION

1. The Manville Trust is constrained to bring this adversary proceeding to resolve a dispute over the proper construction of its court-approved Trust Distribution Process (“TDP”). Specifically, the Manville Trust seeks a declaratory judgment to resolve the question of whether the TDP bars it from indemnifying a co-defendant—the Thorpe Insulation Company Asbestos Settlement Trust (the “Thorpe Trust”)—for payments that the Thorpe Trust made to claimants who have also settled claims against the Manville Trust based on the same alleged asbestos exposures and the same alleged injuries in the State of California (“California Claimants”). The Manville Trust believes that the TDP bars it from paying indemnification claims in such circumstances and, for this reason, it has not paid the indemnification claims asserted by the Thorpe Trust.

2. Declaratory relief is necessary because there is a live controversy between the Manville Trust and the Thorpe Trust over the Thorpe Trust’s asserted right to be indemnified by the Manville Trust in connection with over \$170 million of settlement payments that the Thorpe Trust made to approximately 4,300 claimants between 2010 and 2017. Upon information and belief, almost all of those claims arose from alleged exposure to asbestos in California and almost all of the approximately 4,300 claimants with whom the Thorpe Trust settled also filed and settled a claim with the Manville Trust. If the Thorpe Trust’s construction of the TDP and applicable California law is correct, the Manville Trust’s indemnification obligation to the Thorpe Trust for the pending claim could be on the order of approximately \$4.1 million.¹

¹ As explained below, the TDP provides a formula to calculate the settlement value of “Distributor Indemnity Claims” asserted by “Distributors” of asbestos products manufactured by

3. The resolution of this dispute will also clarify the parties' rights and obligations with respect to future indemnification claims the Thorpe Trust is likely to assert in connection with settlement payments it makes to claimants. If the Court rules that the Thorpe Trust has a valid right to indemnification under the TDP, at the current rate of Thorpe Trust claims the Manville Trust could be required to pay the Thorpe Trust approximately \$700,000 per year in indemnification going forward.

4. The Manville Trust believes that the TDP bars it from indemnifying the Thorpe Trust for payments the Thorpe Trust has made to the California Claimants because the TDP permits the Manville Trust to pay indemnification claims *only* to the extent they are "valid . . . under applicable law" (among other limitations). Under California law, which governs the Thorpe Trust's claim for indemnification for its settlements with the California Claimants, a co-tortfeasor's good faith settlement of a claim immunizes it against a co-tortfeasor's claim for indemnification or contribution.

5. In accordance with the TDP, the Manville Trust has entered into good faith settlements with the California Claimants (who, upon information and belief, represent the overwhelming majority of the approximately 4,300 claimants with whom the Thorpe Trust has settled and now seeks indemnification from the Manville Trust) for the same alleged asbestos-related injuries at issue in the Thorpe Trust's settlements with the same claimants. As a result of these settlements, California law provides that the Manville Trust may not be sued for

Johns-Manville Corporation (the predecessor to the Manville Trust)—a classification that includes the Thorpe Trust. Under this formula, if the Thorpe Trust's indemnification claim were a valid "Distributor Indemnity Claim" under the TDP, the Thorpe Trust would be entitled to a payment equal to between 2% and 3% of its approximately \$170 million in asbestos-related settlement payments.

indemnification by the Thorpe Trust for losses arising from its own settlements with these California Claimants.

6. Because the Thorpe Trust's indemnification claim for these California Claimants is not valid under California law, the Manville Trust submits that the TDP bars it from making any payment on that claim.

7. Nevertheless, the Thorpe Trust claims entitlement to indemnification from the Manville Trust, and has threatened to commence litigation to vindicate its asserted indemnification rights. For this reason, the Manville Trust seeks a declaration that the TDP bars it from indemnifying the Thorpe Trust for settlement payments the Thorpe Trust made to California Claimants, with whom the Manville Trust has completed good faith settlements for the same alleged asbestos exposures and injuries. In addition, to the extent necessary to resolve this dispute, the Manville Trust seeks a determination from this Court that its settlements with these California Claimants—all resolved pursuant to the express terms of the TDP—constitute “good faith” settlements for the purposes of applicable California law.

II.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 157(a) and 1334 and the Order Confirming Debtors' Second Amended and Restated Plan of Reorganization (the “Confirmation Order” confirming the “Plan”) entered by this Court in *In re Johns-Manville Corporation*, Nos. 82-B-11656, 82-B-11657, 82-B-11660, 82-B-11661, 82-B-11665 through 82-B-11673 inclusive, 82-B-11675, and 82-B-11676, on December 22, 1986. (A true and correct copy of the Plan is attached hereto as **Exhibit A.**) The Plan expressly reserved this Court's jurisdiction to determine “disputes arising under” the Plan, to enforce and administer the Plan, and “[t]o enter such orders as may be necessary or appropriate to facilitate

implementation of the Plan.” (Plan, at 10.1(B), (G), (L).) The TDP is integral to the implementation of the Plan and has been approved by this Court as essential to furthering the Manville Trust’s mission of “us[ing] its limited assets to compensate *bona fide* Manville asbestos victims in the most fair, adequate, and equitable manner possible.” *In re Joint E. & S. Districts Asbestos Litig.*, 237 F. Supp. 2d 297, 300, 317 (E. & S.D.N.Y. 2002).

9. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O).
10. Venue is proper pursuant to 28 U.S.C. § 1409.
11. This matter is an adversary proceeding governed by Part VII of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), pursuant to Bankruptcy Rule 7001(9).
12. The statutory basis for the relief requested herein is 11 U.S.C. § 105(a) and 28 U.S.C. § 2201.
13. Pursuant to Bankruptcy Rule 7008, the Manville Trust consents to entry of final judgment by the Bankruptcy Court.

III.

THE PARTIES

14. The Manville Trust is a trust established under the laws of the State of New York pursuant to the Manville Corporation Second Amended and Restated Plan of Reorganization, dated August 22, 1986, which was confirmed pursuant to the Confirmation Order. The purpose of the Manville Trust, which was created through a trust agreement entered into on November 28, 1988 and subsequently amended, is to resolve asbestos personal injury claims against Johns-Manville Corporation (“Johns-Manville”).

15. The Thorpe Trust is a trust established under the laws of the State of Nevada pursuant to the Thorpe Insulation Settlement Company Trust Agreement, dated October 22, 2010, and subsequently amended, to resolve asbestos personal injury claims against Pacific Insulation Company and Thorpe Insulation Company (“Thorpe”).

16. This Court has personal jurisdiction over the Thorpe Trust pursuant to Bankruptcy Rule 7004(f) because the Thorpe Trust has its principal place of business in the United States, at 300 East Second Street, Suite 1410, Reno, Nevada 89501, and has engaged in substantial conduct related to this adversary proceeding, including the settlement of the underlying personal injury claims that are at issue in this adversary proceeding, and the assertion of the indemnification claim that is the subject of this adversary proceeding, in the United States.

17. Prior to their respective bankruptcies, Johns-Manville had been the largest North American producer of asbestos and asbestos-containing products, and Thorpe had distributed Johns-Manville asbestos-containing products in the State of California. Both Johns-Manville and Thorpe filed petitions under Chapter 11 of the Bankruptcy Code due to their projected asbestos-related personal injury liabilities. Since their formation (in 1988 as to Johns-Manville and 2010 as to Thorpe), the Manville Trust and the Thorpe Trust have been the exclusive entities from which to seek compensation for existing and future asbestos health claims caused by exposure to Johns-Manville products (in the case of the Manville Trust) and exposure to asbestos products distributed or installed by Thorpe (in the case of the Thorpe Trust).

IV.

FACTUAL ALLEGATIONS

The Thorpe Trust’s Indemnification Claim

18. In 2014, the Thorpe Trust asserted a claim against the Manville Trust seeking indemnification for payments that the Thorpe Trust had made to California Claimants

between 2010 and 2014. In total, the Thorpe Trust sought indemnification for approximately \$83 million of payments made to 1,649 claimants. Upon information and belief, nearly all of these 1,649 claimants are California Claimants.

19. In 2017, the Thorpe Trust asserted a claim against the Manville Trust seeking indemnification for payments that the Thorpe Trust had made to California Claimants between 2014 and 2017. In total, the Thorpe Trust sought indemnification for approximately \$88 million of payments made to approximately 2,700 claimants. Upon information and belief, nearly all of these approximately 2,700 claimants are California Claimants.

20. The Thorpe Trust asserted that it was entitled to indemnification from the Manville Trust because these claimants had been exposed to asbestos-containing products manufactured by Johns-Manville, which Thorpe had in turn distributed or installed.

21. All of these California Claimants had also asserted claims against the Manville Trust. The Manville Trust has settled these claims pursuant to its court-approved TDP. The Thorpe Trust has never asserted that the settlements did not comply with the TDP.

The Manville Trust's TDP

22. The TDP governs the manner in which the Manville Trust resolves and pays claims against it. Among other things, the TDP provides that claims asserted against the Manville Trust by its beneficiaries (including indemnification and contribution claims by other companies with asbestos-related liabilities to their employees and customers) must be submitted to the Manville Trust for processing and cannot be pursued in court. The Plan, including the establishment of the TDP, was the product of years of negotiations and deemed effective only after extensive court review, including by the U.S. Court of Appeals for the Second Circuit.²

² See *In re Joint E. & S. Districts Asbestos Litig. (Findley v. Falise)*, 878 F. Supp. 473, 486, 494, 590 (E.D.N.Y. 1995), *aff'd sub nom. In re Joint E. & S. Dist. Asbestos Litig.*, 100 F.3d

23. The Manville Trust's TDP specifically addresses the circumstances and manner in which the Manville Trust is permitted to pay indemnification claims asserted by distributors of Johns-Manville products. A true and correct copy of the TDP is attached hereto as **Exhibit B**.

24. For purposes of this dispute, the relevant provision of the TDP is Section I.7 ("Distributor Indemnity Claims"). The "Definitions" section of that provision states:

A Distributor is any entity that: (i) was engaged in the business of distributing Manville asbestos or asbestos-containing products; (ii) was not engaged in the business of mining asbestos or manufacturing asbestos-containing products; and (iii) is not a member of the MacArthur Subclass. ***A Distributor Indemnity Claim means any Indemnity Claim by a Distributor which constitutes a valid claim for indemnification under applicable law.*** Distribution means the purchase, shipment, storage, sale and delivery of asbestos or asbestos-containing products which were not remanufactured, altered, re-labelled or installed by the Distributor.

TDP § I.7(a) (emphasis added).

24. Pursuant to these definitions, Thorpe was a Distributor.

25. Also pursuant to these definitions, the Manville Trust may not recognize and pay an indemnification claim by a Distributor unless the indemnity claim is "valid . . . under applicable law," in which case it is recognized as a "Distributor Indemnity Claim" and subject to payment pursuant to the formulas set forth elsewhere in Section I.7.

26. The TDP provides a formula for the payment of valid "Distributor Indemnity Claims." The first input in this formula is the Distributor's "Distributor Indemnity Claim Percentage" ("DICP"):

944 (2d Cir. 1996), and *aff'd sub nom. In re Joint E. & S. Dist. Asbestos Litig.*, 100 F.3d 945 (2d Cir. 1996), and *aff'd in part, vacated in part sub nom. In re Joint E. & S. Dist. Asbestos Litig.*, 78 F.3d 764 (2d Cir. 1996).

The [DICP] is the proportion of a Distributor's asbestos-related loss in any particular case which shall be treated by the Trust as constituting a Distributor Indemnity Claim. Distributors who meet the following two requirements shall have the right to process Indemnity Claims against the Trust using the Distributor Indemnity Claim percentage described below: (i) 35% or more of the asbestos or asbestos-containing products purchased by the Distributor were distributed by it; and (ii) 35% or more of the asbestos or asbestos-containing products distributed by the Distributor were purchased from Manville.

Except as specifically provided otherwise in the Stipulation of Settlement, the [DICP] shall be equal to the product of: (i) the percentage of asbestos or asbestos-containing products distributed by the Distributor that it purchased from Manville; (ii) the percentage of asbestos or asbestos-containing products purchased by the Distributor which were distributed by it; and (iii) 95% if the Distributor filed a proof of claim for indemnity in Manville's bankruptcy which was not expunged and 86% otherwise. Thus, by way of example only, a Distributor that purchased 50% of the asbestos it dealt in from Manville, and which distributed 50% of the asbestos it purchased, and that filed a timely proof of claim would be assigned a [DICP] of 23.75% (50% x 50% x 95%).

TDP § I.7(c). The procedures for submitting the evidence necessary for the calculation of the Distributor's DICP are set forth in TDP § I.7(d). Before this dispute arose, the Thorpe Trust's DICP was set at 47.77%.

27. The second input in the formula for payment of valid "Distributor Indemnity Claims" is the *pro rata* payment percentage³ applicable to all Trust Claims:

Once a Distributor Indemnity Claim percentage has been established for a Distributor, the Distributor shall make any Distributor Indemnity Claims by submitting proof to the Trust that it has sustained an asbestos-related loss in a case which has been finally resolved by settlement, judgment or otherwise. Upon proof of such a loss, the Trust shall process and pay, in accordance with the procedures set forth in Section G, an amount equal to the

³ The Manville Trust's finite resources are insufficient to pay its *bona fide* beneficiaries the full liquidated value of their claims. Because of these resource constraints, the Manville Trust currently pays most *bona fide* beneficiaries a *pro rata* share (5.1%) of a claim's scheduled value.

[DICP] of such loss times the same pro rata share applicable to all Trust Claims, as described in Section H.

TDP § I.7(e). The *pro rata* payment percentage currently applicable to all Trust Claims is 5.1%.

28. The amount of the Manville Trust's payment on a valid Distributor Indemnity Claim is thus calculated as the product of the claim amount multiplied by the DICP multiplied by the *pro rata* payment percentage. For example, if a Distributor submitted a valid Distributor Indemnify Claim for \$1 million, and that Distributor's DICP was 47.77%, it would receive payment of \$24,363 ($\$1,000,000 \times .4777 \times .051$).

The Applicable Law: Cal. Civ. Prac. Code § 877.6(c)

29. The law of the State of California is the "applicable law" for determining the validity of the Thorpe Trust's indemnification claim against the Manville Trust. That is because the claims as to which the Thorpe Trust seeks indemnification arose as the result of alleged asbestos exposures and related injuries in California.

30. California Civil Practice Code § 877.6(c) provides that:

a determination by [a] court that [a] settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

31. Based on this provision, the Manville Trust determined that the Thorpe Trust's indemnification claim relating to its settlements with the California Claimants is invalid under California law because the Manville Trust entered into good faith settlements with the California Claimants in relation to the same alleged asbestos exposures and injuries. Under Cal. Civ. Prac. Code § 877.6(c), such settlements bar the Thorpe Trust—as a joint tortfeasor—from seeking indemnification from the Manville Trust. Because the Thorpe Trust's indemnification

claim is not valid under California law, the TDP prohibits the Manville Trust from paying the claim.

32. In addition, the Thorpe Trust's indemnification claim, which seeks payment in relation to settlements concluded by the Thorpe Trust as early as 2010, is invalid under California law, and therefore not payable under the TDP, to the extent that it is untimely under the applicable statute of limitations.

The Present Dispute

33. In or around 2015, the Manville Trust advised the Thorpe Trust that the TDP does not permit it to pay the Thorpe Trust's indemnification claim because that claim is not valid under California law. Since then, the parties have exchanged extensive and detailed correspondence regarding the Thorpe Trust's indemnification claim. True and correct copies of the parties' written correspondence regarding this dispute are attached hereto as **Exhibits C-F**.

34. Despite the unambiguous language of the TDP and the California statute, the Thorpe Trust has continued to assert that it is entitled to indemnification from the Manville Trust. Most recently, the Thorpe Trust threatened to commence litigation over this dispute, and it has asserted a series of arguments for why it believes it is entitled to indemnification under California law, and by extension, the TDP. *See* Exhibit F; *see also* Exhibit D.

35. *First*, the Thorpe Trust contends that Cal. Civ. Prac. Code § 877.6(c) is inoperable where indemnification is created pursuant to an express contract. The Thorpe Trust asserts that it entered into a settlement in 1994 that—according to the Thorpe Trust—formed an express contractual obligation for the Manville Trust to indemnify the Thorpe Trust. The Thorpe Trust further argues that the TDP is an express indemnification agreement.

36. The Manville Trust believes that these contentions are incorrect. Among other reasons, the 1994 settlement upon which the Thorpe Trust relies specifically provided that

indemnity claims arising after July 25, 1994 (the date of the settlement) “shall be governed by the TDP.” *In re Joint E. & S. Districts Asbestos Litig. (Findley v. Falise)*, 878 F. Supp. at 578. That is, the settlement is not a standalone indemnification agreement.

37. Nor is the TDP. To the contrary, it is a detailed and court-approved process created to ensure the efficient and fair payment of valid claims. *See In re Joint E. & S. Dist. Asbestos Litig.*, 78 F.3d 764, 770–71 (2d Cir. 1996) (“The TDP sets forth the procedures for processing and evaluating claims against the Trust”) (quoting TDP at 1). In the case of indemnification claims by Distributors, the TDP’s procedures require that the Manville Trust determine whether the indemnity claim is valid and payable under applicable state law as a prerequisite to paying that claim under the TDP.

38. Because the TDP only permits the Manville Trust to pay indemnity claims that are “valid . . . under applicable law,” both the settlement and the TDP *require* the Manville Trust to evaluate the validity of indemnification claims under California law.

39. *Second*, the Thorpe Trust contends that it is entitled to indemnification under a different provision of the TDP, section I.7(c) (formerly H.7(c)), which establishes the formula by which the Manville Trust calculates the DICP of each Distributor. As shown above, the DICP is the percentage of the Distributor’s total indemnity claim that shall be treated as indemnifiable by the Manville Trust, as calculated based on (among other things) the percentage of asbestos-containing products that the Distributor purchased from Johns-Manville. For example, a Distributor with a \$1 million indemnity claim and a DICP of 45% would result in a Distributor Indemnity Claim of \$450,000.

40. The Manville Trust believes that this contention is incorrect. Among other things, the DICP formula establishes the *amount* of claims that otherwise meet the definition of

“Distributor Indemnity Claim”—*i.e.*, claims that are “valid . . . under applicable law.” TDP § I.7(c). It does not change that definition, or enlarge the universe of claims that the Manville Trust may indemnify.⁴

41. *Third*, the Thorpe Trust contends that Cal. Civ. Prac. Code § 877.6(c) does not apply because the Manville Trust has not obtained rulings from California state court judges that each settlement has been entered in good faith.

42. The Manville Trust believes that this contention is incorrect. Any showing of good faith required by California law is satisfied by the Manville Trust’s compliance with its TDP, which provides a court-approved process for the streamlined determination of claims subject to a functionally judicial process.

43. *Fourth*, the Thorpe Trust contends that, even though they were made in accordance with the TDP, the Manville Trust’s settlements with the California Claimants were not in good faith because the settlement amounts were too low to be proportionate with the Manville Trust’s actual liability.

44. The Manville Trust believes that this contention is incorrect. This Court has already determined that settlements made in accordance with the TDP are fair and reasonable. Moreover, the Thorpe Trust is estopped from challenging the reasonableness of settlements made by the Manville Trust in accordance with the TDP in view of its stipulation of settlement that “[a]ny and all Indemnity Claims arising from losses paid by members of the Manville Distributors Subclass [including Thorpe] after the date of the execution of this

⁴ Relatedly, the Thorpe Trust asserts that once it was assigned a DICP, it was entitled to expedited payment of any “asbestos-related loss” under TDP § I.7(e). The Manville Trust also believes that this contention is incorrect because this provision of the TDP again expressly pertains only to “Distributor Indemnity Claims.” As discussed above, such claims are those that are “valid . . . under applicable law.”

Stipulation [July 25, 1994] shall be governed by the TDP.” *In re Joint E. & S. Districts Asbestos Litig. (Findley v. Falise)*, 878 F. Supp. at 578.

45. *Fifth*, the Thorpe Trust contends that the Manville Trust has not provided notice of its settlements with the California Claimants, and thus is not entitled to immunity under Cal. Civ. Prac. Code § 877.6.

46. The Manville Trust believes that this contention is incorrect. Cal. Civ. Prac. Code § 877.6 does not require the Thorpe Trust to have been provided with prior notice of the Manville Trust’s settlements with California Claimants. *See Gackstetter v. Frawley*, 135 Cal. App. 4th 1257, 1273-74 (Ct. App. 2006).

47. *Sixth*, the Thorpe Trust contends that the Manville Trust previously paid indemnification on claims asserted by Thorpe, and thus under some species of “waiver” is required to pay indemnification on these disputed claims as well.

48. The Manville Trust believes that this contention is incorrect. Among other things, the Manville Trust is without the power to waive compliance with the court-approved TDP.

COUNT I

DECLARATORY JUDGMENT

49. The Manville Trust repeats and realleges the allegations in the preceding paragraphs of this Complaint.

50. There is a live, concrete, and justiciable dispute between the parties because the Thorpe Trust contends that it is entitled to indemnification from the Manville Trust for payments that the Thorpe Trust made to California Claimants who were allegedly exposed to and injured by asbestos or asbestos-containing products manufactured by Johns-Manville and subsequently distributed or installed by Thorpe, despite the fact that those same claimants have

entered into good faith settlements with the Manville Trust based on the same alleged exposures and injuries. The Manville Trust believes that the Thorpe Trust's contention is incorrect and that its indemnification claim for the California Claimants is invalid under Cal. Civ. Prac. Code § 877.6(c). Accordingly, the Manville Trust submits that the TDP bars it from paying the Thorpe Trust's indemnification claim.

51. The Manville Trust seeks a declaratory judgment pursuant to 11 U.S.C. § 105(a), 28 U.S.C. § 2201, and Rule 7001(9) of the Federal Rules of Bankruptcy Procedure confirming that its TDP bars payment of the Thorpe Trust's indemnification claim for these California Claimants.

COUNT II

DETERMINATION OF GOOD FAITH SETTLEMENTS

52. The Manville Trust repeats and realleges the allegations in the preceding paragraphs of this Complaint.

53. The Manville Trust reviewed and resolved the California Claimants' claims pursuant to the procedural requirements of the TDP, which establishes a functionally judicial process in which claimants' submissions are regulated by the Manville Trust's court-approved TDP.

54. The Manville Trust's settlement payments to the California Claimants were set in accordance with the TDP's Schedule of Asbestos-Related Disease Categories and Values and *pro rata* payment percentage in effect at the time of the settlements. Those payment amounts are within the reasonable range of the Manville Trust's liability, taking into account all relevant factors, including without limitation the Manville Trust's financial condition and resource constraints.

55. The Manville Trust's settlements with the California Claimants were not collusive, fraudulent, or tortious, and were not aimed at injuring the interests of any other person or entity, including the Thorpe Trust.

56. The Manville Trust is entitled to a determination pursuant to Cal. Civ. Prac. Code § 877.6(c) that its settlements with the California Claimants were entered in good faith.

V.

PRAYER FOR RELIEF

WHEREFORE, the Manville Trust respectfully requests relief as follows:

A. The entry of a declaratory judgment:

(1) Confirming that the TDP bars the Manville Trust from indemnifying the Thorpe Trust for the Thorpe Trust's payments to the California Claimants if such indemnification claim is invalid under California law;

(2) Confirming that the settlements consummated by the Manville Trust and the California Claimants pursuant to the TDP were in good faith, as required by Cal. Civ. Prac. Code § 877.6(c), either (a) because such settlements were made in accordance with the TDP or (b) based on the Court's independent determination that such settlements were in good faith;⁵

(3) Confirming that, under Cal. Civ. Prac. Code § 877.6(c) and the TDP, the Thorpe Trust does not have a valid right to indemnification from the Manville Trust for payments the Thorpe Trust made to California Claimants with whom the Manville Trust has completed good faith settlements, provided that the payments for which the Thorpe Trust seeks

⁵ As the Thorpe Trust has never disputed the Manville Trust's compliance with the TDP, the Manville Trust respectfully submits that the Court can and should make this determination without individualized fact-finding as to whether the Manville Trust's settlements with each of the California Claimants with whom it settled were made in good faith.

indemnification relate to the same alleged asbestos exposures and injuries as the Manville Trust settlements;

(4) Confirming that the TDP bars the Manville Trust from indemnifying the Thorpe Trust for the Thorpe Trust's payments to the California Claimants to the extent such indemnification claim is time-barred under California law; and

B. A determination that the Manville Trust entered into good faith settlements with the California Claimants within the meaning of Cal. Civ. Prac. Code § 877.6(c).

C. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 27, 2017

Respectfully submitted,

FRIEDMAN KAPLAN SEILER &
ADELMAN LLP



Jason C. Rubinstein (jrubinstein@fklaw.com)
Timothy M. Haggerty (thaggerty@fklaw.com)
7 Times Square
New York, New York 10036-6516
Tel: (212) 833-1100
Fax: (212) 833-1250

*Attorneys for Plaintiff
Manville Personal Injury Settlement Trust*

VERIFICATION

I, Jared S. Garelick, am General Counsel of the Manville Personal Injury Settlement Trust, the plaintiff in this adversary proceeding. I have reviewed the Verified Complaint in this adversary proceeding and declare under penalty of perjury under the laws of the United States of America that the facts alleged therein are true and correct except as to matters alleged therein on information and belief and as to those, I believe them to be true.

Executed on October 27, 2017



Jared S. Garelick