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Attorneys for Defendant Michael J. Mandelbrot individually  
and doing business as The Mandelbrot Law Firm

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re:  
J.T. THORPE, INC.,  
Debtor.

Case No. 02-14216-BB  
Chapter 11

J.T. THORPE SETTLEMENT TRUST and  
THORPE INSULATION COMPANY  
ASBESTOS SETTLEMENT TRUST,  
Plaintiffs,

A.P. No. 2:12-ap-02183-BB  
A.P. No. 2:12-ap-02182-BB

vs.

MICHAEL J. MANDELBROT and THE  
MANDELBROT LAW FIRM,  
Defendants.

Date: January 21, 2014  
Time: 10:00 a.m.  
Place: Courtroom 1475  
255 E. Temple St.  
Los Angeles, CA  
Judge: Hon. Sheri Bluebond

**TRIAL DECLARATION OF MICHAEL J. MANDELBROT**

I, MICHAEL J. MANDELBROT, declare:



1           6.       Within the TDP, one section, Section 5.7(a), regulates the manner in which the  
2 Plaintiffs may audit claims submitted to them. Section 5.7(a) provides in part:

3                   5.7(a) **Claims Audit Program.** The Trust with consent of the TAC and  
4 Futures Representative may develop methods for auditing the **reliability of evidence**  
5 **reasonably related to the value of the claim**, including additional reading of x-rays  
6 and verification of pulmonary function tests, as well as the reliability of evidence of  
7 exposure to asbestos, including exposure to asbestos-containing products  
8 manufactured or distributed by Thorpe, and requesting from claimants or other Trusts,  
9 claims materials submitted to other Trusts. In the event that the Trust reasonably  
10 determines that any **unreliable individual** or entity has engaged in a **pattern or**  
11 **practice of providing unreliable medical or other evidence** to the Trust, it may  
12 decline to accept additional evidence from such provider in the future.

13                   (Emphasis Supplied)

14           7.       To paraphrase Section 5.7(a) of the TDP, Plaintiffs are authorized to develop audit  
15 methods in order to ensure the reliability of evidence submitted with claims, *provided* that those  
16 methods have some proportionality to the claims in question, or are “reasonably related to the value  
17 of the claim . . .” Plaintiffs cannot impose audit requirements that will cause either the trust or the  
18 claimant to incur costs disproportionate to his or her likely recovery on the claim.

19           8.       Pursuant to Section 5.3 (a) of the TDP, the Trusts are required to process claims on the  
20 basis of the first in, first out (“FIFO”). The Trusts must establish a “FIFO Processing Queue”  
21 (“FPQ”) and a “claimant’s position in the FIFO Processing Queue shall be” determined and  
22 maintained. Furthermore, nothing in the TDP authorizes the Trusts to remove claims from the FPQ  
23 or create sub-queues to facilitate lengthy claims audits or reviews. Where the Trusts are not satisfied  
24 with a claim they can deny it and let it go to arbitration pursuant to TDP Section 5.9.

## 25                                   II. WESTERN TRUST DISPOSITION

26           9.       The Western Asbestos Settlement Trust (“Western Trust”) also exists and operates  
27 under a virtually identical TDP and Matrix, arising out of a chapter 11 case in the United States  
28 Bankruptcy Court for the Northern District of California, Oakland Division (the “Oakland  
Bankruptcy Court”). The Western Trust is considerably larger than the two Plaintiffs, according to  
Plaintiffs’ and Western Trust’s annual reports filed with the Bankruptcy Court.



1 the same kind of work that I performed at Brayton Purcell, with the addition of doing trial work. In  
2 October of 2004, I became "Of Counsel" with the asbestos law firm of Levin, Simes and Kaiser,  
3 working on all aspects of asbestos litigation (including overseeing bankruptcy claims) until April of  
4 2005 when I left that firm to open my own law firm. Prior to opening my own firm I had filed or  
5 worked on at least 100 claims filed with the Western Trust.

6 15. I specialize in preparing and filing asbestos-related claims with settlement trusts such  
7 as the Plaintiffs. Typically, my clients are referred to me by trial lawyers around the country who are  
8 unfamiliar with the exacting requirements of claims materials and settlement trusts' labyrinthine  
9 review processes, and I am typically paid a portion of the contingency fee earned by the referring  
10 counsel. I have submitted over 13,000 claims to more than 50 trusts nationwide, including more than  
11 4,500 claims filed with the Plaintiffs and Western Trust.

12 16. Until the advent of the controversies raised by the Thorpe Trusts, I had never  
13 encountered any controversy or allegations regarding my reliability or truthfulness from any trust.  
14 Nor had any other trust ever insisted upon elevated audit procedures, much less examinations and  
15 depositions, with respect to my claims.

16 17. I began submitting claims to the JT Thorpe Trust in 2007. In that year, I submitted  
17 330 claims to JT Thorpe Trust. In 2008, I submitted 310 claims to JT Thorpe Trust, and 380 claims  
18 to JT Thorpe Trust in 2009. In late 2010 Thorpe Insulation began accepting claims, and I submitted  
19 820 claims to the two Thorpe Trusts during that year. In 2011, I submitted 780 claims to the two  
20 Thorpe Trusts.

21 18. Attached hereto as **Exhibit "C"** is a true and correct copy of a sample claim submitted  
22 by me to the JT Thorpe Trust, redacted to eliminate private information regarding the claimant, and  
23 reduced in size to fit multiple pages together. The form and content of this claim is similar to other  
24 claims filed against the two Thorpe Trusts. As the sample claim reflects, I and my office staff are  
25 meticulous and very comprehensive in our submissions to the Thorpe Trusts. That is not to say that I  
26 do not make occasional errors, as I assume other claims filers do, and as I know the Trusts do.  
27 Furthermore, the form of the claim is dictated by the Thorpe Trusts, and is not created by my office.  
28

1 The Thorpe Trusts, in their moving declarations, accuse me of “tailoring” my claim submissions. I  
2 am not sure what Ms. Paul and Ms. Brown mean by these accusations or speculations, but I always  
3 followed the claim form questions required to be filled out by the Thorpe Trusts, and of course  
4 always supplied information tailored to fully respond to their questions. To the extent they are  
5 speculating that I altered or changed evidence their testimony and speculation is false. Obviously, the  
6 claim forms require answers to be provided that are responsive to the questions asked, and if that is  
7 ‘tailoring’ than of course I engage in such a process. However, I have never falsified evidence or  
8 taken factual position in a claim not supported by the available evidence.

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10 **IV. EVENTS LEADING UP TO THE THORPE AUDIT**

11 **A. Mandelbrot’s Complaints About Trust Dysfunction**

12 19. Whereas from time to time, a member of the Plaintiffs’ staff has raised isolated issues  
13 regarding singular components in submitted claims, not until December 2011, did either of the  
14 Plaintiffs ever raise any concerns about the veracity of my claim submissions. Furthermore, I have  
15 filed claims with asbestos trusts throughout the United States, and have never been the subject of an  
16 audit in any case prior to December 2011.

17 20. I have had very few verbal communications with Sarah Beth Brown, and a limited  
18 number of verbal communications with Laura Paul. None of these communications related to the  
19 trusts’ audit, nor did either Brown or Paul ever indicate the concerns they now articulate in this  
20 motion.

21 21. On the few occasions when I met with or spoke with Sarah Beth Brown or Laura Paul,  
22 the subject of the communication was to bring to Ms. Brown’s attention my concern about the Thorpe  
23 Trust’s problems. I cannot recall Ms. Brown ever contacting me concerning concerns she now says  
24 the Trusts had about my claims filing practices. Issues of Thorpe Trust delays, failure to follow FIFO  
25 requirements and lack of knowledge by trust employees, among other things, did cause me to raise  
26 concerns about the claims review process. On numerous occasions, I expressed dismay over the  
27 length of time required for claims reviews, the repeated requests for information that my staff had  
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1 already provided, requests made by the Trusts for information that did not exist, and the imposition of  
2 new, retroactive requirements for claims already submitted. In addition, I have voiced concern over  
3 what I perceive to be violations by the Trusts of their own FIFO protocols. Prior to 2012, these were  
4 the main subjects of my communications with Ms. Brown and Ms. Paul.

5 22. JT Thorpe Trust made numerous rule changes that adversely affected our ability to  
6 effectively process claims. The rule change with the biggest impact was a rule published on  
7 November 22, 2010 that required verification of interrogatories by the claimant or claimant  
8 representative. On that date JT Thorpe Trust published the following rule change: "At the November  
9 18, 2010 Trustees' meeting, the Trustees, with the consent of the Futures Representative and the  
10 Trust Advisory Committee (Trust Fiduciaries) adapted a new policy regarding verification of  
11 interrogatories. The policy is as follows: For all claims filed with the Trust on or after December 1,  
12 2010, the interrogatories must be verified by the claimant or heir. Any claim submitted without  
13 verified interrogatories will be returned to the firm with a deficiency letter." At the time of this  
14 publication, I had many pending claims on file with JT Thorpe Trust with interrogatories verified by  
15 the attorney as was allowed under the prior procedures. In order to make sure that the rule meant  
16 what it said, my staff communicated by email with Laura Paul, and she confirmed that the rule  
17 change was not retroactive. A copy of that email exchange is attached hereto as **Exhibit "D"**.  
18 Despite the fact that the rule was not retroactive, the JT Thorpe Trust applied it retroactively to our  
19 claims already on file and issued deficiencies on many of my claims filed prior to the rule change.

20 23. Another rule change published by JT Thorpe Trust that created issues was posted on  
21 April 5, 2011. That rule change required that "any claim that is partially supported by a declaration  
22 to verify claimant's presence at a site, asbestos exposure, and/or dates of exposure, or any other facts  
23 relevant to the claim" must be written by a person who "must have direct knowledge of the factual  
24 information relevant to the claim." This rule was used by the Trusts retroactively relating to claims I  
25 had on file, and many deficiencies were issued based on it. Both Sarah Beth Brown and Laura Paul  
26 have filed declarations claiming that the rule change was not a change at all. For example, Paul  
27 declares that the "Trusts" had been applying this rule all along, and that the published rule merely  
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1 “officially formalized the guidelines at that time.” (Paul Declaration ¶ 45). However, no Trust had  
2 ever advised me of such an unwritten guideline, and I had filed claims with declarations that included  
3 knowledge that was not “direct” routinely, which claims passed without complaint from the Thorpe  
4 Trusts.

5 24. Furthermore, the idea that there are informal rules of the Trusts, which are not  
6 published, is foreign to me. I did not have access to such unpublished rules.

7 25. Furthermore, despite the new rule, the Trusts continue to maintain on their websites  
8 required forms of declarations that require statement of facts known only indirectly to claimants. The  
9 Trusts’ **required** “Claim Form” (Paul Declaration Exhibits 5 & 6) published by JT Thorpe and  
10 Thorpe Insulation on their web sites are in the form of a *declaration*, the last page of which requires  
11 that the signature of the claimant be affixed under penalty of perjury stating that the information in  
12 the claim form is true and correct. These required declarations must include an array of answers  
13 which would never be within the claimant’s direct, personal knowledge, such as the details of a  
14 medical diagnosis, the medical readings of chest X-ray forms and CT Scans, and the results of  
15 pathology reports.

16 26. In her declaration, Paul speculates that I was “attempting to avoid compliance” with  
17 this guideline (¶45) or to “evade” this guideline, by using interrogatory answers in lieu of declaration  
18 (¶ 45). However, the Trusts Matrix TDP and published guidelines **never** require use of a declaration  
19 to support a claim, and those same rules require use of interrogatories.

20 27. These retroactive rule changes by the Thorpe Trusts resulted in growing delays in the  
21 processing of claims submitted by my firm, a series of deficiencies asserted by the Thorpe Trusts that  
22 I believed were not well considered, and a lack of responsiveness by the Thorpe Trusts to my firm’s  
23 inquiries. This in turn led to harmful delays for sick and dying claimants, and therefore to increasing  
24 frustration by me, my clients and by my referring counsel. I believe that my complaints about these  
25 and other practices also led, ultimately, to the Thorpe Trusts’ use of Section 5.7(a) of the TDP to  
26 retaliate against me for my complaints.

27 28. Repeatedly, throughout 2010 and 2011, my staff and I asked for meetings with the  
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1 Trusts' staff and principals to discuss these problems, but these requests were ignored by Sarah Beth  
2 Brown and her staff. In a telephone conversation in June 2011 with Ms. Brown, I again complained  
3 about the Trusts' slow reviews of claims, and retroactive imposition of new rules. Ms. Brown agreed  
4 to cause the Trusts' staff to be more responsive to our emails and inquiries, in order to better serve  
5 the claimants. One of the things that Ms. Brown promised to have her staff be more responsive to  
6 was the failure of her claims reviewers to resolve deficiencies posted on "disembark" claims.

7 29. In March 2012, Ms. Brown contacted me regarding my possible appointment to the  
8 TAC, to fill a vacancy. Ms. Brown indicated that I had been recommended as a candidate for the  
9 appointment, and she inquired as to my interest in serving. Attached hereto as **Exhibit "E"** is a true  
10 and correct copy of Ms. Brown's email inquiry regarding the potential appointment.

11 30. In neither the email nor in a follow up conversation that I conducted with Ms. Brown,  
12 did Ms. Brown ever mention any supposed reliability issues, audits or fraud allegations, even though  
13 such issues, or any concern over supposed misconduct of any kind, would have presumably affected,  
14 or precluded altogether, my qualifications to serve on the TAC.

15 31. In fact, in no conversations that I ever had with Ms. Brown or Ms. Paul was there ever  
16 any mention of "unreliability," "fraudulent" or "pattern or practice," or any other suggestion of  
17 improper filing of claims.

18 32. I attempted on numerous occasions to engage the Trusts' staff in discussions to  
19 improve the process of review of the claims filed by my office. Among other requests, I asked to  
20 attend quarterly meetings of the Trusts with their trustees, TAC and other officials, in Reno, Nevada  
21 for the purpose of discussing pending issues and seeking improvements in communications and  
22 processes. I was not allowed to attend any of the meetings—I was only allowed to make a brief  
23 presentation to the assembled officials during a 10-minute coffee break (after having driven for hours  
24 to Reno), after which no questions were asked and no responses or acknowledgements were uttered.  
25 This was in December of 2011, and nothing was said to me at the meeting concerning any problems  
26 with my claim filings or suggesting that there was or would be an audit of my claims.

27 33. I have made repeated efforts to engage the Trusts' staff in discussions to assist and  
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1 facilitate that review, including requesting informal discussions on numerous occasions in order to  
2 ensure that the Trusts had received all information needed to review and resolve the claims  
3 expeditiously, but none of those efforts hastened the process of review. Instead, I believe that my  
4 complaints spawned the backlash now exhibited in these Adversary Proceedings.

5 34. One of the problems I encountered is that any deficiency notice on a claim appeared to  
6 pull the claim out of the FIFO queue. I repeatedly requested the Thorpe Trusts to explain to me how  
7 they were interpreting and implementing their obligation to follow the FIFO protocols. Trust  
8 employees routinely ignored or deflected my requests for an explanation. In discovery in this case I  
9 attended the depositions of trust officials and listened to Thorpe Trust employees try and explain how  
10 they implemented the FIFO protocol, but none of these witnesses was able to provide a coherent  
11 explanation. Finally in October of 2013, in an attempt to respond to Judge Carlson's request that  
12 Western Trust address my complaint about FIFO delays, the Trusts published a description of how  
13 they implement FIFO protocols. Attached hereto as **Exhibit "F"** is a copy of that explanation. As I  
14 suspected, the Trusts created numerous FIFO queues. Once a claim received a deficiency notice, it  
15 was pulled out of the main FIFO queue and inserted into a "new" FIFO queue. When the trust  
16 deemed the deficiency cured, the claim returned to the regular FIFO queue—but at the end of the  
17 line. The Trusts' Matrix and TDPs do not provide for multiple FIFO queues, and such multiplicity of  
18 queues makes the term "FIFO" meaningless, because it allowed the Trusts to pull my claims out of  
19 queue simply by delivering a deficiency notice.

20 35. Those delays, and the trust's persistent demands for more documentation based on  
21 new rules, kept many claims in limbo for years without a final determination. This prevented me  
22 from pursuing arbitration and/or state court litigation, as permitted under the TDP, where I believe  
23 that my clients would receive prompter and more just outcomes. Only recently, and apparently in  
24 anticipation of this trial, have the Thorpe Trusts given final determinations on a significant number of  
25 claims, allowing me to proceed to arbitration. Had the Trusts simply denied the claims, for alleged  
26 lack of information, or disputes over valuation, I could have initiated arbitration procedures and  
27 progressed toward third-party review and decision years ago. But as a result of serial requests by the  
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1 Trusts for more information that I did not have, no final (even if adverse) decision was provided to  
2 me and the claims remained in limbo for years.

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4 **B. Mandelbrot Complaints About TAC**

5 36. Attached hereto as **Exhibit "G"** is an Order And Opinion in the case of *Kananian v.*  
6 *Lorillard Tobacco Company*, a case in which Kananian sued Lorillard claiming his cancer derived  
7 from smoking Lorillard products. In that case, the court found that TAC member Al Brayton's firm  
8 Brayton Purcell had "forfeited their privileges to practice before this court". That finding arose out of  
9 the court's discovery that Brayton Purcell had filed a claim in the Western Trust case claiming that  
10 Kananian's cancer derived from asbestos, and then misled the Ohio court in the tobacco case to  
11 believe that tobacco was the cause of cancer.

12 37. I discovered this decision and brought it to the Trustee's attention because of the  
13 accusation of fraud against the TAC member. I repeatedly asked for an investigation of Mr. Brayton  
14 and was stonewalled by Sarah Beth Brown and Trustee Steve Snyder. I have asked them about  
15 whether there was any investigation every time we meet during this case, and Brayton always gave a  
16 vague answer.

17 38. Attached hereto as **Exhibit "H"** is an excerpt of Ms. Brown's deposition in the  
18 *Kananian* case showing she was made aware of the charges against Brayton in March of 2010.

19 39. Attached hereto as **Exhibit "I"** is a privilege log of communications between the  
20 Thorpe Trusts and Brayton in which they discussed my law firm. I believe that my complaints to the  
21 Trusts about Brayton were passed on to Brayton, who then encouraged the Trusts to retaliate against  
22 me. To this day the Trusts have refused to produce these communications.

23  
24 **C. Thorpe Passes Off Its Dishonest and Dysfunctional Employee on**  
25 **Mandelbrot**

26 40. In October of 2010, John Lynch applied to my firm for employment. I knew Lynch  
27 from his work at the Thorpe and Western Trusts, where he had been employed at the Trusts since  
28 April of 2009, working as a claims examiner. When I hired Lynch I did a background check but did

1 not learn that he had a criminal record, that he had been arrested and incarcerated for domestic abuse  
2 while employed at the Trusts and that he had been terminated from his employment with the Trusts  
3 because of his failure to perform his duties as a claims examiner. Additionally, I did not know that  
4 Lynch was involved in litigation with a Trust claims processor (Whitney Lauren) who had loaned  
5 him money and then sued him, and was pursuing collection of a judgment against Lynch while he  
6 was employed by me. The Trusts never disclosed these facts to me, and I did not learn of them of  
7 until after I dismissed Lynch in June of 2012. I requested and received Lynch's resignation after I  
8 discovered his embezzlement at my firm.

9  
10 41. Shortly after I dismissed Lynch for embezzling funds, he sent an unsolicited letter to  
11 the Trusts falsely claiming that he knew of fraudulent conduct of my firm in submitting claims to the  
12 Trusts. Mr. Lynch's letter was sent just days after I had discovered that he had embezzled funds from  
13 me, and his employment was terminated. The Trusts, knowing that Lynch had a criminal record and  
14 knowing that Lynch had been terminated for being unreliable, used Lynch's letter as a pretext to  
15 ramp up their investigation of my firm, as alleged in their amended complaints herein.

16 42. Mr. Lynch's allegations were false, and his personal criminal history and work with  
17 the Thorpe Trusts revealed him to be an unreliable witness. Among the facts about Mr. Lynch I have  
18 discovered by listening to testimony of Trust employees in this case are the following:

19 (a) In early 2012, Whitney Lauren, an employee of the Thorpe Trusts, sued and  
20 obtained a judgment against Mr. Lynch for non-payment of a loan for approximately \$20,000,  
21 ostensibly to hire a lawyer to defend himself against battery charges filed against him, while  
22 he was employed by the Trusts.

23 (b) In a sworn declaration dated August 13, 2012, Ms. Lauren filed a complaint  
24 against Mr. Lynch with the Reno Police Department for harassing her and for fabricating a  
25 threatening email from Ms. Lauren to make it appear as if she was harassing him.

26 (c) In a sworn statement filed on December 23, 2011, in Sonoma County Case No.  
27 SFL-055781, Randy Malm, son of the Trust's Chief Financial Officer Barbara Malm  
28 described Mr. Lynch as a "pathological liar." Mr. Malm also stated that he has known Mr.

1 Lynch for years, that he allowed Mr. Lynch to live with him and his wife for a time, and  
2 “almost every sentence that came out of [Mr. Lynch’s] mouth was a lie. I watched him tell  
3 people repeatedly that he was a lawyer; he often used this to swindle and threaten people.”  
4 Mr. Malm also stated that he watched Mr. Lynch “inflict injuries on himself, which he  
5 photographed and claimed [his wife] had caused. He submitted these to the court in order to  
6 persuade the court to give him custody of the children.”

7 (d) In Douglas County, Colorado, Mr. Lynch was charged and convicted of  
8 various crimes, including larceny, theft, and computer crime in Case No. CR000319.

9 43. I have subsequently learned in discovery in this case, that the Trusts already knew Mr.  
10 Lynch’s history while he was employed there. When the Trusts terminated Lynch’s employment  
11 with them, I hired Lynch because he had experience with the Trusts and I thought he would enhance  
12 my firm’s ability to handle claims processing with the Trusts. Nobody at the Thorpe Trusts advised  
13 me of Lynch’s criminal past, of the fact that he had been arrested and incarcerated while an employee  
14 of the Trust, of the fact that he had used the credit card of the Trust’s Controller for a personal  
15 purchase without her knowledge or consent, or of the fact that his employment terminated because he  
16 was not doing his job. Had I known of these facts, I would not have hired Lynch.

17 44. Significantly, the Trusts’ claim processor, Whitney Lauren, who had lent money to  
18 Lynch and then hounded him for collection, suing him and appearing repeatedly in his bankruptcy  
19 cases, was **at the same time** processing our law firm’s claims. She knew at the time that Lynch was  
20 employed at my firm working on claims. I knew nothing of either Lynch’s problems, or Lauren’s  
21 claims against my employee, until after Lynch was dismissed. After I let Lynch go for embezzling  
22 funds from me, I learned of Lauren’s lawsuit. I demanded that she be taken off work on all my  
23 claims because I feared she was impartial, but the Thorpe Trusts refused to remove her from working  
24 on my claims despite the appearance of impropriety. They only removed her from processing my  
25 claims in the Fall of 2012 when they filed this lawsuit.

26 45. The Trusts passed off their “bad apple” John Lynch on me and used his false  
27 testimony early on in this case to justify their audit and this adversary proceeding.  
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## V. THE THORPE AUDIT

46. The Trusts claim to have commenced their audit under Section 5.7(a) of the TDP on December 5, 2011, when John Sande III wrote a letter to me indicating that he was requesting evidence relating to 11 specified claims “to determine the reliability of the claims of exposure made by your firm on behalf of these claimants under Section 5.7(a)” (Exhibit 64 Molland Declaration). This was the very first time that **any** trust had invoked an audit procedure as to my office. The Sande letter asks for information concerning eleven claims, only eight of which are claims against the plaintiff Thorpe Trusts. Significantly, Sande did not advise me that the Trusts were auditing my firm on any other claims or that the audit was being used to look for a “pattern” or “practice” of unreliability by the law firm. I personally responded to Mr. Sande and provided the information he requested (Molland Exhibits 65 & 66). Of the 8 Thorpe claims, 3 are not listed by the Thorpe Trusts as claims under investigation. Of the 5 claims identified by Sande that are listed by the Thorpe Trusts as being under investigation, 1 of the claims has been resolved by an offer from Thorpe Insulation Trust (Hubbard). Of the 4 unresolved Thorpe Trust claims under investigation, 2 are what the trusts call “Decedent” claims (Applequist & Anzulis) and 2 (Calkins & Minks) are “disembark” claims.

47. Prior to receipt of the December 5, 2011 letter from Mr. Sande, I was never advised of any audit by the Thorpe Trusts, or any other Trust, and no one from the Trusts had ever suggested that I was unreliable or that I had provided unreliable evidence. Prior to that time, my communications with the Trusts had concerned the unreliability of the Trusts’ positions.

48. Much of the Trusts’ justification for their audit is based on the charge supported or insinuated in the Laura Paul declaration that that I withheld evidence. This is untrue. I have never withheld evidence from the Thorpe Trusts and have always produced what I was required to produce with the claims and responded with additional documents requested by the claims examiners.

49. I have reviewed each of our claims filed between April 2011 and December 2011 to determine which trust claim examiner was assigned to each of our claims. This information is posted to each claim by the trusts in their online system available to me. Attached hereto as **Exhibit “J”** is a

1 chart reflecting the number and percentage of our claims assigned to each trust claims examiner.  
2 Whitney Lauren handled 60.69% of our claims during this critical period. I attended Lauren's  
3 deposition at which she testified she never knew me to withhold documents, that I was always  
4 responsive to her requests, that she never had any problems with me and that she knows of no  
5 fraudulent claim I ever filed (See Lauren Paul Deposition excerpts filed herewith).

6 50. Mr. Sande wrote only two letters to me before December 5, 2011 and those letters  
7 were in response to my complaints about the Thorpe Trusts dragging their feet in establishing site and  
8 ship lists, their delay in processing my complaint, and my claim that they were not following the  
9 FIFO protocols. Prior to February of 2011, Sarah Beth Brown had responded to my inquiries  
10 regarding the lack of a site list by telling me that most if not all trusts do not maintain site lists. On  
11 February 8, 2011 I asked Ms. Brown in writing where she got that information, as I knew it to be  
12 wrong. She responded by email lashing out at me for focusing on a "throw-away comment" made  
13 while she was "learning about asbestos trusts" and told me that because I "seem to misinterpret our  
14 conversations" that she would never again have verbal conversations with me "about any trust policy  
15 issues". A true and correct copy of that email is attached hereto as **Exhibit "K"**. It was after that  
16 outburst by Ms. Brown when Mr. Sande began writing letters to me, dismissing my complaints in  
17 very generic terms. Sande wrote to me on April 15, 2011 and November 2, 2009. True and correct  
18 copies of these letters are attached hereto as **Exhibits "L" and "M"**. These letters respond to **my**  
19 complaints about how the Trusts were doing their job. At no time during these earlier  
20 communications did Mr. Sande or anyone at the Trusts claim that they were investigating my claims  
21 practices. Attached hereto as **Exhibit "N"** a true and correct copy of my April 19, 2011 response to  
22 Mr. Sande.

23 51. By letters of December 12 and 15, 2011, I responded to each inquiry made by Mr.  
24 Sande regarding the 11 claims in his December 5 letter, refuting his charges as to some claims, and  
25 agreeing to supplement or withdraw others. (Molland Declaration Exhibits 65 and 66). I declined  
26 Mr. Sande's request for interviews with the claimants. Never before had such interviews been  
27 requested. Moreover, the request was grossly out of proportion to the size of the claims involved --  
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1 the claimants were scattered around the country, and the total expected payout on most of the 11  
2 claims was less than \$3,000. As a result, several of the claims were resolved informally.

3 52. By letter dated January 27, 2012, Michael Molland of the Morgan, Lewis firm  
4 demanded formal depositions of eight claimants as part of the Plaintiffs' Section 5.7(a) audit of  
5 specific claims, advising me that the Trusts had expanded their investigation to three additional  
6 claimants—Robert Gosch, Frank Rodi and Alan Johnson (Molland declaration Exhibit 67). These  
7 are each disembark claims, and one of them (Gosch) has been resolved by payment. Each of these  
8 claimants is on the Thorpe Trusts list of claims under investigation, even though the Gosch claim was  
9 settled in 2013.

10 53. Following is a list of the eight witnesses Mr. Molland sought to depose, followed by  
11 their state of residence as of early 2012 and the anticipated payout on each claim at that time:

- 12 (a) Joseph Anzulis, in Maryland – expected payout of \$470.70;
- 13 (b) Joyce Applequist, in North Carolina – expected payout of \$287,031.80;
- 14 (c) Mike Calkins, in Florida – expected payout of \$202.48;
- 15 (d) Robert Gosch, in California – expected payout of \$2,725.22;
- 16 (e) Delbert Hall, in Arizona – expected payout of \$45,156.47;
- 17 (f) Alan Johnson, in California – expected payout of \$877.85;
- 18 (g) Marshal Minks, in Florida – expected payout of \$1,036.25; and
- 19 (h) Frank Rodi, in California – expected payout of \$209.08.

20 54. Thus, in all but two claims, the expected payout was less than \$3,000, but Mr.  
21 Molland demanded depositions that would have cost thousands of dollars each for out-of-pocket  
22 expenses alone. Although the Plaintiffs cited to Section 5.7(a) of the TDP as their authority for such  
23 depositions, they ignored that section's requirements that audit procedures be "reasonably related to  
24 the value of the claim." For that reason, among others, I declined to arrange depositions, and asked  
25 again for a meeting to explore a less hostile resolution of the dispute. At my request, I met twice with  
26 the Morgan, Lewis attorneys, on April 3, 2011 and on August 29, 2011, and offered, in place of  
27 depositions, comprehensive sworn affidavits of the claimants, accompanied by any additional,  
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1 available documentation requested. The Trust's lawyers did not respond at the meetings, but later  
2 corresponded with me to tell me that nothing short of depositions would suffice.

3 55. The Trusts thereafter applied for and obtained a Rule 2004 order to conduct the  
4 examinations. (Exhibit 73 to Molland Declaration). As stated in that Order, "Counsel for the Trust is  
5 hereby authorized to **issue subpoenas** to" Justin Appelquist, Mike Calkins, Marshall Minks, Debbi  
6 Tomkinson, Mary Fuchsluger, Robert Gosch, Susan Johnson and Marilyn Rodi [emphasis supplied].  
7 To my knowledge, the Trusts counsel issued subpoenas to only three or four of the witnesses. As to  
8 the others, counsel engaged in a letter war to bully the witnesses into appearing without subpoena.  
9 Trust counsel scheduled two depositions pursuant to subpoena. One witness (Rodi) appeared and  
10 was examined. The other (Johnson) did not appear at her examination through no fault of mine. I  
11 appeared and expected Mrs. Johnson to be there as well. The Trusts did not seek an order enforcing  
12 their Johnson subpoena. As to Mr. Gosch, I arranged to provide a declaration in lieu of deposition  
13 and Gosch's claims were thereafter settled based on that declaration. Mr. Gosch received an offer  
14 from Thorpe Insulation to settle his claim dated July 31, 2013. He accepted that offer and withdrew  
15 his second claim against JT Thorpe. As set forth hereinabove, the remaining witnesses had claims  
16 worth nominal amounts. Several of the claims were withdrawn because it was not worth it to the  
17 clients to pursue such small claims in the face of the expense and inconvenience of their  
18 examinations, despite the fact that each of these claimants had a valid claim.

19 56. I attended the deposition of Marilyn Rodi, an 82-year old widow of a claimant. She  
20 corroborated all pertinent facts in her late husband's claim. The Trusts have marked portions of her  
21 deposition for trial. In the portions they marked for trial, counsel asked Ms. Rodi very vague  
22 questions about events in the distant past. She testified that could not remember the answers on the  
23 date of the deposition. Plaintiffs left out of their filed excerpts Mrs. Rodi's testimony that she feared  
24 she had developed Alzheimer's disease because of memory loss over the last couple years since  
25 signing her declaration. They also left out her testimony that she executed the declaration supporting  
26 the claim and that she was certain of its truth at the time she executed it, even though her mental  
27 deterioration made it impossible for her to remember the details any longer. Attached hereto as  
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1 **Exhibit “O”** are true and correct excerpts from that deposition.

2 57. Another witness the trusts indicated they wished to depose was Debra Hall,  
3 representative of Delbert Hall. Laura Paul claims in her declaration that the claim of Delbert Hall  
4 does not evidence that he disembarked a ship and worked in the shipyard. However, we supplied the  
5 Trust with a declaration of Delbert Hall signed February 23, 2005 in which he stated that there was  
6 not enough work on board and that he was “assigned to shipyard cleanup duty at the Navy Shipyard.”  
7 Attached hereto as **Exhibit “P”** is a copy of that declaration. We also supplied interrogatory  
8 responses from state court litigation confirming this information. Attached hereto as **Exhibit “Q”** is  
9 a copy of the interrogatory answers we supplied.

10 58. A deposition was in the process of being set for Debra Hall, but Mr. Molland pushed  
11 off the date, and then the filing of this lawsuit intervened. Attached hereto as **Exhibit “R”** is a copy  
12 of Mr. Molland’s email about rescheduling the deposition. We requested that any further depositions  
13 be taken in conjunction with this adversary proceeding, so the witnesses would only have to testify  
14 once. The trusts never noticed any depositions or subpoenaed any claimants in this proceeding.

15 59. At no time prior to late 2012, did either Thorpe Trust advise me that their Section  
16 5.7(a) audit had been expanded to include claims other than the handful of claims identified in the  
17 Sande letter of December 5, 2011 and the Molland letter of January 27, 2012. On September 12,  
18 2012 Mr. Molland wrote to me advising that the investigation had expanded to look into an alleged  
19 “pattern and practice.” (Molland Exhibit 133). I believe that Mr. Molland’s September 12, 2012  
20 letter was the first written notification of a “pattern of practice” audit. The subject of such an  
21 expanded audit may have been mentioned or inferred in a meeting shortly before that time.

22 60. The complaints filed by the Thorpe Trusts in October of 2012 do not specify what  
23 claims were under audit. Even after the complaints were filed, the Trusts did not specify which  
24 claims were under audit **until after** they had made their “decision” as set forth in Mr. Snyder’s May  
25 24, 2013 letter. The first time that the Thorpe Trusts provided me with a list of the claims they  
26 contended were under investigation, was in response to my interrogatories in July 2013, when they  
27 produced a list of approximately 200 claims.

28 **A. Disembark Claims**

1           61.     The Trusts claim that they first became concerned about claims filed by my office that  
2 they have labeled as “disembarkation” or “disembark” claims.

3           62.     These claims involve enlisted US Navy sailors who were assigned to ships that came  
4 in for overhaul at Navy shipyards on the conceded site lists for the Thorpe Insulation Trust. The  
5 typical disembark claim involves a sailor who remained assigned to his ship but was required to  
6 spend some of his time performing duties in the shipyard. In some cases, claims were filed against  
7 both of the Thorpe trusts because one Thorpe trust provided asbestos materials on the ship and the  
8 other Thorpe trust provided asbestos materials in the shipyard. The Trusts have presented a grossly  
9 distorted picture of the history of these claims and how they were presented by my office and how the  
10 Trusts dealt with them.

11           63.     These shipyard based claims arose during the year of 2010 when we began to file  
12 claims with the JT Thorpe Trust relating to sailors assigned to ships in for overhaul who spent part of  
13 their time in the shipyard. Initially, we did not include in the claims for such sailors any language  
14 about sailors disembarking the ship, because I do not believe that the JT Thorpe Matrix requires it.  
15 That Matrix provides, at part “VII. Exposure Requirements”, subsection(c)(1)(b) that “[e]xposure on  
16 board a ship at a shipyard during a repair or overhaul will constitute an exposure at that shipyard if  
17 the Injured Person remained on board during the repair or overhaul, subject to meeting the duration of  
18 exposure requirements herein.” Thus, it has been my understanding that I did not need to  
19 demonstrate that a sailor disembarked the ship to demonstrate exposure to JT Thorpe product used in  
20 the shipyard during a ship overhaul where that sailor remained on board during shipyard overhaul.  
21 Thereafter, when J.T. Thorpe Trust refused to accept this position, I began investigating whether  
22 some of my sailor clients had disembarked their ship and provided services in the shipyard. Where I  
23 thought the evidence supported it, I amended their claims to so reflect.

24           64.     The reasons stated by the Trusts for auditing these claims have “evolved” over time.  
25 Initially, the Trusts took the position in their audit that **all** “disembark” claims were invalid, because  
26 sailors never left their ships and performed services in the shipyards. For example, in its First  
27 Amended Complaint, JT Thorpe, Inc. alleges as its first example of Mandelbrot’s alleged “practices  
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1 of submitting questionable evidence” that the “disembarkation” claims were “facially implausible.”  
2 (FAC paragraph 21).

3 65. Ben Smith’s letter of December 26, 2012 (Exhibit 138 to Smith declaration) spells out  
4 the Trusts’ early position. He states that the investigation “began over a year ago, after the Trusts  
5 inquired into a small number of claims—**particularly** including JT Thorpe ‘**disembarkation**  
6 **claims**” (emphasis supplied) followed by a laundry list of very general reasons why the Trusts had  
7 concerns. Smith goes on to claim “the Trusts have repeatedly questioned disembarkation claims  
8 because U.S. Navy sailors, while in port and/or on leave, rarely migrate to the shipyard to continue  
9 their normal duties, and *even more rarely (if ever) engage in work that is historically performed by*  
10 *unionized workers in the shipyard.*” I have added the emphasis to the Trust’s “straw man” argument.  
11 We never contended that sailors did the work of unionized shipyard workers. Smith gets to the point  
12 at page 7 of his letter where he claims that “military records that have been provided to the Trusts do  
13 not, in the Trusts’ assessment, support the exposure claimed in the interrogatories or declarations  
14 prepared by Mandelbrot.”

15 66. Furthermore, the Trusts claim that the disembark claims were what caused them to  
16 start of their investigation in late 2011. If that is true, the Trusts kept it a secret. Even now they have  
17 not produced any documentary evidence that they were investigating disembark claims prior to  
18 December 5, 2011 or that they ever advised me of such an investigation.

19 67. Steve Snyder’s letter of May 24, 2013, in which the Thorpe Trusts terminated my right  
20 to represent my clients before the Thorpe Trust states that “the investigation arose out of a variety of  
21 issues the Trusts encountered . . . notably in connection with “disembarkation claims”. Mr. Snyder is  
22 notably vague about what the variety of issues consisted of. We were always very open about our  
23 practices and in particular went to great lengths to work with and resolve any concerns that the  
24 Thorpe Trusts had about the claims of sailors exposed in shipyards.

25 68. In 2010, we were filing numerous “disembark” claims with the JT Thorpe Trust, and  
26 noticed that the trust was taking an inconsistent position on processing the claims. On September 13,  
27 2010, Mr. Dunning of my office sent an email to Laura Paul asking for clarification as to why JT  
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1 Thorpe Trust was taking inconsistent positions. We could never get a straight answer from Laura  
2 Paul but we continued attempting to work with the JT Thorpe Trust on this issue. Laura Paul then  
3 started issuing routine deficiencies demanding that we produce military records reflecting the fact  
4 that these sailors disembarked and worked part of their time in the shipyard. We repeatedly told  
5 Laura Paul that military records would not reflect such activity but the JT Thorpe Trust insisted that  
6 we were wrong and continued to the issue deficiencies based on our failure to produce military record  
7 reflecting sailors spending time in the shipyard. It was not until the Trusts disclosed their expert  
8 witness reports in this litigation that they finally admitted that they were wrong. Their own experts  
9 have testified that sailors did in fact spend time in shipyards (they now focus on how much time).  
10 One plaintiff expert testified that military records would not reflect the fact that sailors left the ship  
11 and spent time in the shipyard.

12 69. Attached hereto is **Exhibit "S"** is an email string between my office and Laura Paul  
13 attempting to work out these deficiencies. For example, on March 11, 2011, Ms. Paul, in an email  
14 addressed to me insisted that there was "confusion" because the "Enlisted Performance Record shows  
15 the claimant on board the USS Canberra and the USS G. I do not see an entry that the claimant  
16 disembarked at Long Beach on the Enlisted Performance Record." Mr. Dunning replied to Ms. Paul  
17 on March 14, 2011 that "enlistment records don't ever list ship repairs since even during an overhaul  
18 they are assigned to the ship regardless of if they are on board the ship or in the shipyard." We told  
19 the same thing orally to Ms. Paul and others at the JT Thorpe Trust on many occasions but the JT  
20 Thorpe Trust continued to send us deficiencies because the military record did not reflect that the  
21 sailors had disembarked.

22 70. On July 13, 2011, in a similar exchange of emails with claims examiner Whitney  
23 Lauren of the JT Thorpe Trust, Whitney Lauren persisted in issuing the deficiency as to the claim of  
24 Harrison Graham, because "his Naval record show him as assigned to the ship" rather than spending  
25 any time in the shipyard. Mr. Dunning replied to Ms. Lauren on July 13, 2011 that "military records  
26 will always say the ship of their assignment as he was not assigned to the shipyard. This doesn't  
27 mean he didn't work in the shipyard." A copy of that email string is attached hereto as **Exhibit "T"**.  
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71. Notwithstanding this advice, the Thorpe Trusts continued to issue deficiency notices on disembark claims because the military records of the claimants did not reflect the fact that the sailor had disembarked and spent time in the shipyard. For example, on October 20, 2011, Thorpe Insulation issued a deficiency on a disembark claim demanding that Mandelbrot “provide all military records of the claimant which are related to the claimed exposure . . . [including] enlistment records, leave records, and any records which demonstrate the claimant’s presence during the claimed exposure” in the shipyard (Exhibit 139 to Ben Smith declaration). Mr. Smith persisted in demanding “complete (as opposed to partial) military records” relating to this same claim as late as February 8, 2013. We had long since turned over complete military records, and more significantly, had been telling the Trusts for at least a year that no amount of military records would prove or disprove whether a sailor disembarked and worked in the shipyard, because such activity is never logged in the military records. Another example of the Trusts issuing deficiencies for lack of military record support for disembarkation is found at Exhibit 141 to Ben Smith’s declaration, where JT Thorpe issued a deficiency on August 27, 2012 on a disembark claim demanding that Mandelbrot “provide all military records of the claimant” proving his exposure during disembarkation. Again, on September 19, 2012 the JT Thorpe issued the identical deficiency on another disembark claimant (Smith declaration Exhibit 141). Despite our repeated statements to the Trusts that military records would not reflect disembarkation, on March 8, 2013, Mr. Smith again demanded we provide the following information for the purpose of “demonstrating reliability”. In Smith’s own words “[i]n particular, please tell the Trusts, whether there are any military or work records for any of these claimants that corroborates the claimed circumstances and duration of land-based exposure in shipyards, as opposed to aboard ship.” (Smith declaration Exhibit 142).

72. The Thorpe Trusts have persisted in asserting that the disembark claims are “unique” and deficient until recently, based on the lack of support in military records. For example, in their motion filed herein on August 26, 2013, they complain that my “initial filings generally did not include the military records of these sailors. The Trust requested them from Mandelbrot. The military records of these sailors eventually provided by Mandelbrot did not support the verified

1 statements of exposure claimed by Mandelbrot as a result of such disembarkation.” (Motion docket  
2 132 at 14:10-13). My claim filings always included available military records despite the fact that  
3 disembarkation is **never** reflected in such records. Often times, the claimed exposure was not  
4 “military based” and so military records were not relevant. Furthermore, I promptly gathered and  
5 provided additional military records from other sources when either of the Trusts requested them.  
6 The Trusts’ implication that I withheld records, or failed to include required records, is not true.

7 73. In late 2011 the Thorpe Insulation Trust began accepting claims and, as to some of the  
8 earlier claimants who filed disembark claims for exposure in the shipyard, these individuals filed an  
9 additional claim against the Thorpe Insulation Trust relating to their exposure on board ship.

10 74. In the motion, the Thorpe Trust disingenuously suggests that these claimants were  
11 “switching” from one to the other in reaction to JT Thorpe Trust’s investigation. In fact, the reason I  
12 began filing the Thorpe Trust claims at a later date was because the Thorpe Trust was not formed and  
13 accepting claims until that later time. Claims were filed in the Thorpe Insulation Trust case at that  
14 time later because they could not have been filed any earlier. Furthermore, the Trusts claim that  
15 claims against the two Thorpe Trusts must be inconsistent. However, as the claims reflect, as my  
16 testimony reflects and as I have been telling the Trusts from the beginning, soldiers who disembarked  
17 also spent much of their time on board and were exposed to asbestos both on board and in the  
18 shipyard.

19 75. On September 30, 2013, the deposition of the Trust’s expert witness Captain Richard  
20 Hepburn was taken. He testified that when sailors disembarked their vessels in for repairs and  
21 entered the shipyards for purposes like taking materials into shipyards, picking up materials from  
22 shipyards—where “it was a short distance and he did not have to leave the immediate area” then the  
23 disembarkation would not be noted in military records, because the permission required would be  
24 oral permission from the sailor’s supervisor. A true and correct copy of excerpts from that deposition  
25 is attached hereto as **Exhibit “U”**. Despite this evidence, Laura Paul persists in testifying that in her  
26 experience “Navy performance enlistment records” track when a sailor disembarks a ship “to perform  
27 their duties in a shipyard.” (§ 68). She does not provide a single example when this has ever  
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1 happened.

2 76. Despite the fact that the Trusts claim that disembark claims are “unique” and that no  
3 such claims are possible, the two Thorpe Trusts have allowed and made offers on 49 of the 120  
4 disembark claims listed by them as “under investigation.” Attached hereto as **Exhibit “V”** is a copy  
5 of a chart prepared by the Trusts and provided to us titled “Mandelbrot Claims Under Investigation In  
6 This Proceeding.” The claims that have either been paid or on which the Trusts have made an offer  
7 are highlighted in yellow. Most of the offers were made recently in 2013.

8 77. The Trusts claim that certain disembark claims filed by particular claimants against  
9 both JT Thorpe Trust and Thorpe Insulation Trust are inconsistent. They claim that a series of claims  
10 where the claimant makes claims for shipboard exposure and shipyard exposure are “contradictory”  
11 (see Laura Paul declaration paragraphs 80 through 88). I disagree. As to each such claims we filed,  
12 my investigation (including review of litigation documents and witness interviews) showed that the  
13 sailor spent part of his day on board and part in the shipyard.

14 78. Mr. Paul argues (§ 41) that the Anzulis claim is defective for several reasons. First,  
15 she complains that the claim is signed by decedent Anzulis’ niece who was only seven years old at  
16 the time of the exposure. However, the niece is the decedent’s heir and she must sign the claim. Her  
17 claim is not only based on her memory but also on all the other extensive records we supplied. In  
18 2013 I discovered the existence of a deposition of Anzulis and provided it to the Trusts. Mr. Paul on  
19 “information and belief” states that I was “aware of” this transcript. Her vague declaration appears to  
20 suggest that I was aware of it prior to 2013 and withheld it. That speculation is wrong. She goes on  
21 to state (§ 52) that in “all but a handful” of the 200 claims under investigation, “circumstances and  
22 extent” of exposure was not established by decedent’s testimony in prior litigation or by “work or  
23 military records.” Again, Ms. Paul exaggerates and is incorrect. It is true that most of my clients  
24 were not involved in prior asbestos litigation. However, I did supply complete military records to  
25 establish exposure as to each claim. I agree that in many cases, exposure would have to be  
26 established by circumstantial evidence, but there is nothing unusual about that. She also complains (§  
27 57) that I did not usually submit “prior litigation records” with the initiated claims. That is because  
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1 the Trusts' procedures do not require it. When requested, I supplied every responsive document I  
2 could locate.

3 **B. Decedent Shipyard Worker Claims**

4 79. The J. T. Thorpe Trust also claims to be investigating a generalized category of claims  
5 that it has labeled "decedent claims". This category appears to relate to (a) civilian shipyard workers  
6 who were exposed to asbestos on board ships; (b) while the ships were docked for repairs at  
7 shipyards; (c) where the claimant has subsequently died.

8 80. J. T. Thorpe appears to argue that such claims are "implausible" because the evidence  
9 supplied to support the shipyard worker's presence aboard ships is not based on the testimony of the  
10 dead claimant, but instead on his surviving family members. In other words, the objection is that the  
11 witnesses did not in many cases personally see the claimant on board specific ships and the claims  
12 "depended solely on the credibility to a witness [sic]". (Motion For Instructions docket 132 at 20:13-  
13 16). JT Thorpe claims that prior litigation records relating to these claims "did not support the extent  
14 and duration of the exposure claims aboard any JT Thorpe qualified ship". JT Trust questions these  
15 claims, because (according to Laura Paul) they are "unique". (Paul declaration ¶ 92). Paul also  
16 questions the claims because the claimed time of exposure actually *matches* military records (Paul  
17 declaration ¶¶ 93-96). Paul goes on to complain that I supplied no work records and that I rarely  
18 supplied underlying litigation evidence or deposition transcripts with the original claims (Paul  
19 declaration paragraphs 99-100). However, the claims forms mandated by the Trusts do not call for  
20 inclusion of such records with original claim filings. When they were requested **and existed**, I did  
21 supply all such records I could obtain.

22 81. There is nothing unique about claims filed by workers who embarked a JT Thorpe  
23 vessel and became exposed to asbestos. Indeed, JT Thorpe has passed at least 100 of these claims,  
24 including 7 of the claims under investigation.

25 82. Ms. Paul's statement (in paragraph 32 of her declaration, that "I [Lauren Paul] gained  
26 the impression that Mandelbrot was attempting to position claimants") that I "position" claimants to  
27 enhance their recovery is pure speculation and untrue. Each claim is supported by documentary  
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1 evidence and witness testimony. I have never falsified a claimant's work history.

2 83. Paul also states (paragraph 35) that she "gained the impression" that I was "tailoring  
3 evidence submissions" to meet compensation criteria. Again, Paul's statement, which is backed by  
4 no facts, is pure speculation. I never falsified evidence as Paul speculates. In paragraph 40 of her  
5 declaration, Paul claims I "altered" interrogatory responses in response to deficiency notices. Of  
6 course, the whole point of a deficiency notice is to give the claimant an opportunity to supplement the  
7 claim submission, and the claim submission is grounded on an interrogatory answer. So, revising  
8 interrogatory answers in response to a deficiency notice is not improper. To the extent Paul is  
9 inferring that such revisions and supplements provide false information, she is incorrect. I cannot  
10 respond to any specific point as Paul is vague about which specific responses she is referring to.

11 84. It appears that Ms. Paul is tailoring her evidence to reach a result rather than  
12 attempting to accurately state the record. For example, she includes a representation that the claim  
13 filed by Edward Coderre, Jr. was not supported by the evidence. Attached hereto as **Exhibit "W"** are  
14 copies of portions of Coderre's claim that Ms. Paul did not include in her declaration. The claim  
15 submission included prior litigation interrogatory responses detailing the exposure as well as  
16 dependent Coderre's testimony from other litigation placing him on board the subject vessel and  
17 stating that he went into the engine spaces where he was exposed to asbestos.

18 85. Paul also makes a point of stating that we did not supply prior litigation records with  
19 our initial claims, and that when later asked for prior litigation records, we only supplied such records  
20 for some but not all such claimants. Unlike many other attorneys who regularly represent claimants  
21 who have been involved in prior litigation, a lower percentage of my clients were involved in prior  
22 litigation. Furthermore, neither the TDP, the Trusts' claim form nor any published rules of the Trusts  
23 require that any litigation papers (other than a face page) be included with the initial claim. When  
24 prior litigation records were requested by the Trusts, I did everything in my power to turn over what  
25 existed. I never withheld any litigation records from the Trusts. To the extent that Ms. Paul's  
26 testimony infers that I withheld such records, her testimony is speculative and wrong.

27 86. Paul singles out the claim of Frederick Bakken in her declaration saying his claim is a  
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1 “disembarkation claim,” and his claim does not show he disembarked. However, the Trust’s own list  
2 of claims under investigation shown Bakken is a “Deceased Civilian Shipyard Worker” claim.  
3 Attached hereto as **Exhibit “X”** is a copy of litigation interrogatory answers we supplied to the  
4 Thorpe Trusts which confirm his claim and exposure.

5 87. Ms. Paul also testifies about her conclusion that prior litigation records “contradict”  
6 information in my claims, referring to Exhibit 34, an elaborate chart which purports to show these  
7 “contradictions”. However, even a cursory review of the chart shows that Ms. Paul has embraced a  
8 definition of “contradict” that is unreliable. For example, on the first page of her exhibit, she says  
9 that the claim of Scott Adams is subject to “contradictory evidence” **not** because the naval records we  
10 produced show that the USS Owens where Adams claims exposure was not where Adams said it was,  
11 but because Naval records show that other ships were **also** at the same shipyard. Exhibit 34 is filled  
12 with similar claims by Ms. Paul. In virtually every listing of “contradictory evidence” included in  
13 that chart, the evidence may not conclusively establish certain facts without human testimony, but the  
14 evidence is consistent with the claims. Attached hereto as **Exhibit “Y”** is a spreadsheet I have  
15 prepared responding to each line item in the Paul spreadsheet.

16 **C. Occupation/Exposure Issues**

17 88. The Trusts claim they have identified for investigation “approximately twenty” claims  
18 where the “job description of the exposed person appeared incongruous with the exposure claimed by  
19 the declarant, or the claimed exposure appeared implausible.” (Motion at 22:28-23:2).

20 89. This is another of the Trusts’ categories of suspect claims that has “evolved” over  
21 time. In the First Amended Complaint, the Trusts alleged that I “submitted improbable evidence that  
22 nurses, aircraft mechanics or military police were engaged in the specialized labor of working with  
23 boilers.” (JT Thorpe FAC, Paragraph 21, second “bullet”). First, I have never filed a claim for a  
24 nurse. I have filed a claim for a hospital worker, and others who came into hospitals, claiming that  
25 they worked in proximity to insulation and around others who came into contact with boilers.

26 90. Each of these 20 claims is supported by written statements, medical evidence, and  
27 other reliable supporting documentation. I believe each claimant is entitled to compensation.

28 **D. Problems With Verifications**

1 91. I have reviewed the exhibit to the Laura Paul deposition which claims to outline  
2 suspicious verifications. These were not brought to my attention by the trustees as part of their  
3 investigation or audit. Instead, I first learned of these when the trusts conducted my deposition I did  
4 not have an opportunity to investigate the verifications before that time, nor was I presented with full  
5 files to review at my deposition, but left to speculate about how these situations occurred.

6 92. Most of the verifications they complain of are situations where interrogatory answers  
7 were supplemented because of deficiency notices issued by the Thorpe Trusts, where the old  
8 responses and verifications were used as a starting point for the modifications. In several cases my  
9 staff failed to update the date on the form verification and I did not notice the mistake.

10 93. In other situations, I have not been able to positively identify the problem, but I do  
11 note that all of these problems occurred during the time we were using the Trust's troubled former  
12 employee John Lynch. I suspect that the problems may have occurred because of the laziness of Mr.  
13 Lynch.

14 94. We have removed all former employees who could possibly have had a hand in these  
15 verification mistakes. This type of mistake has not occurred in years.

## 17 VI. REMEDIATION EFFORTS

18 95. On May 24, 2013, the Trusts sent their "findings" to me. In this letter, the Trusts gave  
19 me what they called a "deferral and cure alternative". I authorized and caused my attorney to accept  
20 the deferral and cure alternative provisions that related to the cure aspects of the audit. The only  
21 aspect of the deferral and cure alternative I rejected related to a demand that I stipulate that the  
22 "actions, and the conduct of this investigation" by the Trusts and its fiduciaries was "approved." In  
23 other works, the Trusts demanded that I provide them cover for their actions, and also demanded that  
24 we agree to notify all of our co-counsel of the Trusts "conclusions and decisions." I agreed, as an  
25 alternative, to send notice to creditors of our agreement to abide by the cure demands, but without an  
26 agreement that the Trusts' actions were "approved". Attached hereto as **Exhibit "Z"** is a true and  
27 correct copy of our response to the Trust's. May 24, 2013 letter. The Trusts promptly rejected our  
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acceptance of the cure terms.

I declare under penalty of perjury that the foregoing is true and correct, and that this

Declaration was executed on December 17, 2013 at San Francisco, California.



/s/ Michael J. Mandelbrot

MICHAEL J. MANDELBROT