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6 Attorney for Beneficiaries of the Western Asbestos Settlement Trust

7 UNITED STATES BANKRUPTCY COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 SAN FRANCISCO DIVISION

10 **In re:**

**Case No.13-43677**

11 **WESTERN ASBESTOS COMPANY,**

**Chapter 11**

12 **Debtor,**

13 **DECLARATION OF MICHAEL J.**  
14 **MANDELBROT IN SUPPORT OF OPPOSITION**  
15 **TO THE TENTH ANNUAL REPORT AND**  
16 **OBJECTING TO THE DECLARATION OF**  
17 **BENJAMIN SMITH – OBJECTION – FRAUD,**  
18 **PERJURY, MISREPRESENTATION OF**  
19 **MATERIAL FACTS, CONFLICTS OF**  
20 **INTEREST**

Date: June 27, 2014

Time: 9:30 a.m.

Place: 235 Pine Street, 19<sup>th</sup> Floor  
San Francisco, CA 94104

21  
22 I, Michael J. Mandelbrot, declare:

23 1. I am an attorney licensed to practice before all courts in the State of California, and make this  
24 declaration in support of the Beneficiaries and Mandelbrot's Objection to the Tenth Annual Report and  
25 Accounting and to Object to the Annual Report and to the Declaration of Benjamin P. Smith in Support of  
26 Motion to Approve and the Western Settlement Trust's Tenth Annual Report and Accounting.

27 2. I have filed over 1000 claims with Western Settlement Trust since 2011 and represented  
28 hundreds of present and future claimants with the Trust. From 2009-2012, my office filed approximately

1 25% of all claims with the Western Trust on behalf of Law Firms from all over the country.

2 3. I litigated against Western in many cases from 1994 through 1999, while working at the office  
3 of the Chairman of the Trust Advisory Committee, Alan Brayton (Brayton Purcell) and I am intimately  
4 familiar with Western Asbestos, their history, their jobsites, their asbestos products, their employees and  
5 their overall liability in asbestos litigation. I voluntarily left my employ at the office of Alan Brayton in  
6 1999 when I perceived extensive fraud taking place at Alan Brayton's office (Brayton Purcell) on  
7 bankruptcy claims and Western Asbestos default judgments. I raised these issues with then Managing  
8 Partner Francine Curtis and was told "well, just don't work on those."

9 4. I have been in litigation with the Western Trust since 2011. The Western Asbestos case  
10 against me was dismissed by the Honorable Thomas Carlson due to the case having no merit. The  
11 attorney in that case against me was Benjamin P. Smith, a former Brobeck and Morgan, Lewis co-worker  
12 of Western Trustee Stephen Snyder. I have interacted with Mr. Smith on at least 100 occasions through  
13 in-person meetings, phone and written correspondence and throughout the litigation. Mr. Smith, who  
14 clearly is not "disinterested," is a known perjurer and clearly has interests adverse to the beneficiaries.<sup>1</sup>

15 5. I hereby incorporate by reference a Declaration I signed in Opposition to the Thorpe Trust's  
16 Motion to Enforce a Settlement Agreement. This Declaration accurately describes a portion of the facts  
17 and circumstances of the Thorpe and Western Trust's case against me and my office, and the extensive  
18 and ongoing fraud and cover up taking place at the Western Trust since inception.<sup>2</sup>

19 6. The Judge in the Thorpe Trust's case against my office was the Honorable Sheri Bluebond.  
20 The attorneys in that case were Stutman, Treister and Glatt, and Morgan, Lewis. On March 29, 2014, I  
21 discovered Judge Bluebond was simultaneously serving on at least four to five Boards of Directors with  
22 the Stutman firm, was guest speaker at fundraising events sponsored by Stutman, and that Stutman was  
23 actively soliciting positive comments through their sponsored websites for Judge Bluebond's upcoming  
24 reappointment in 2015 all throughout the case with Mandelbrot. Stutman and Judge Bluebond clearly  
25 were friends and Bluebond clearly had a "close and personal" connection to Stutman dating back decades  
26

27 <sup>1</sup> See Exhibit A, Declaration of Michael J. Mandelbrot, dated March 12, 2014, ¶¶ 21, 22, inclusive.

28 <sup>2</sup> See Exhibit A, Declaration of Michael J. Mandelbrot, dated March 12, 2014.

1 so that her impartiality was questionable. Judge Bluebond, Stutman and Morgan never notified  
2 Mandelbrot of this close and personal connection or the friendships. As a result of this close and personal  
3 connection, Judge Bluebond clearly had a bias for Stutman and prejudice against me and my office.  
4 Bluebond also had a financial interest in the outcome of the case – her reappointment. On March 27,  
5 2014, these issues were raised by me to the Honorable Bluebond.<sup>3</sup> In addition to the above, Judge  
6 Bluebond had no clue that the Futures Representative attorney since the inception of the Trusts has had  
7 adverse interests (Gary Fergus). Recusal was appropriate due to the close and personal connection  
8 between Stutman and the Judge Bluebond, Judge Bluebond’s financial interest in the outcome of the case  
9 and Judge Bluebond’s reliance on those with adverse interests. A judicial complaint is pending.

10 7. I hereby object to any Declaration from Benjamin Smith attached to the Annual Report as it  
11 materially misstates the evidence and facts and clearly constitutes bankruptcy fraud. Smith’s declaration is  
12 rife with inconsistencies, fraud, perjury and clear misstatements intended to conceal the actual facts of the  
13 Trust’s case against Mandelbrot. The Declaration of Michael J. Mandelbrot filed in the Opposition of the  
14 Motion to Enforce Settlement Agreement and this Objection accurately represents the facts of the cases  
15 against Mandelbrot.<sup>4</sup>

16 8. The May 24, 2013 letter to Mandelbrot referred to in the Smith Declaration of the Western  
17 Annual Report was a fraud. The letter, written by attorneys with a conflict of interest (see Objections,  
18 filed concurrently herewith), relied on a fraudulent and biased “study” of Mandelbrot’s claims using a  
19 defective “control group.” Extensive perjury was committed by the Trust and its attorneys regarding this  
20 study, including testimony of Benjamin Smith, Laura Paul and Stephen Snyder. As a result of that  
21 fraudulent study of Mandelbrot’s claims, the Thorpe Trusts improperly terminated Mandelbrot’s privilege  
22 to file claims.<sup>5</sup>

23 9. Any representations regarding the case against my office are complete misrepresentations of  
24 facts and a fraud upon the Court. In fact, prior to trial on January 21, 2014, the Attorneys for the Trust  
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26 <sup>3</sup> See Exhibit Q, *J.T. Thorpe, v. Mandelbrot*, March 27, 2014 transcript of proceedings.

27 <sup>4</sup> See Exhibit A, *Declaration of Michael J. Mandelbrot*, dated March 12, 2014.

28 <sup>5</sup> See Exhibit H, *Fraudulent “May letter” sent by Trust to Mandelbrot and signed by Snyder*, dated May 24, 2013.

1 offered to settle on behalf of the Thorpe Trusts, the Western Trust and the Plant Insulation Trust on the  
2 exact terms of the settlement agreement up on appeal. I immediately rejected the Trust's offer on  
3 January 21, 2014, and indicated "Plant and Western aren't even part of this case." I was looking forward  
4 to taking the stand at trial on January 23, 2014, and only "hesitantly" agreed to resolve the matters under  
5 duress and fraud.<sup>6</sup>

6 10. In addition, during trial and as an example of Judge Bluebond's misconduct and bias, she  
7 indicated to me that I "better settle" or I "won't like the result." This factor also played into my decision  
8 to "hesitantly" settle the case.

9 11. The Smith Declaration referred to in the Annual Report also entirely mischaracterizes and  
10 misstates the evidence both against the Trust and Mandelbrot. For example, references to Mr. Genthner  
11 and Captain F.J. Burger, both Mandelbrot experts are entirely incorrect. Both Genthner and Burger fully  
12 supported Mandelbrot's position and claims.<sup>7 8</sup>

13 12. The "Stipulated Resolution" described in the Annual Report is clearly void, unethical and  
14 unconscionable. I have never filed an unreliable claim with any Trust. The Western Trust, and its  
15 Trustees, Attorneys and Agents, have committed extensive criminal fraud as detailed in this Objection. In  
16 addition, the resolution with the Western. Asbestos Company Trust and the Plant Insulation Trust is  
17 clearly invalid as the Honorable Thomas Carlson must approve the settlement.

18 13. On and after January 29, 2014, I unequivocally rescinded the settlement agreement prior to its  
19 formation and opposed the enforcement of the same.<sup>9</sup>

20 14. On March 27, 2014, despite my vociferous and extensive objection on multiple legal, ethical  
21 and jurisdictional grounds, the Honorable Sheri Bluebond determined the settlement was not only  
22 enforceable, but that the Trust could publish extensive defamatory material relating to Mandelbrot. (See  
23 Hearing Transcript, March 27, 2014.) I filed a timely Appeal to Judge Bluebond's improper Orders and a  
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25 <sup>6</sup> See Exhibit A, Declaration of Michael J. Mandelbrot, dated March 12, 2014.

26 <sup>7</sup> See Exhibit K, Declaration of Captain Frank J. Burger, USN (Ret.) dated October 15, 2013.

27 <sup>8</sup> See Exhibit L, Declaration of Paul Genthner, Long Beach Navy Shipyard employee dated October 1,  
2013.

28 <sup>9</sup> See Exhibit M, Mandelbrot's Opposition to Trusts' Motion to Enforce Disputed Settlement Agreement  
dated March 14, 2013.

1 Motion to Stay Enforcement of the Settlement Agreement. Judge Bluebond denied the Motion to Stay on  
2 March 27, 2014.

3 15. At a minimum, all Orders signed on April 7, 2014, as they relate to the Western Asbestos  
4 Settlement Trust and the Plant Insulation Settlement Trust should be deemed invalid as Judge Bluebond  
5 did not have authority to enter these Orders.<sup>10</sup>

6 16. The implementation of the settlement agreement by the J.T. Thorpe, Inc., Plant, Western and  
7 Thorpe Trusts is retaliatory, in bad faith, fraudulent and causes irreparable harm to the beneficiaries and  
8 claimants. The law is also very clear that the settlement is illegal and void. I've raised these and other  
9 issues in my appeal. The implementation of the "void" settlement agreement requires claimants to find  
10 another lawyer despite the fact they want me as their lawyer. The implementation also requires hundreds  
11 of valid claims with Trusts to be re-filed to the extreme detriment of beneficiaries.

12 17. In my 20 years as a licensed California attorney, I have interacted with thousands of attorneys  
13 and legal representatives. I have never personally encountered or dealt with attorneys like those at the  
14 Trusts who are willing to commit perjury, the subornation of perjury, the misappropriation of funds and  
15 fraud. The specific attorneys who I know have committed extensive perjury and fraud are Benjamin  
16 Smith, Gary Fergus, Alan Brayton, Sara Beth Brown and, of course, the biggest criminal Stephen Snyder.  
17 I have no doubt that each has engaged in a criminally unethical pattern of fraud, bad faith,  
18 misappropriation of funds from this Trust and each has adverse interests to the Trust.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
20 true and correct to my own knowledge, except as to those matters which are herein alleged on information  
21 and belief, and as to those matters, I believe them to be true.

22  
23 Dated: June 6, 2014

24   
25 MICHAEL J. MANDELBROT  
26 Attorney for Beneficiaries

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28 <sup>10</sup> See **Exhibit F**, *Department of Justice Chapter 11 Trustee Handbook*, published May 2004, pg. 47,  
Chapter 8 (Compromises and Settlements).