



In the Court of Common Pleas of Allegheny County, PA

Faith Craig, Executrix of the	)	Civil Division - Asbestos
Estate of Robert V. Baird,	)	
Plaintiff	)	Civil Action No. <u>GD-20-001966</u>
	)	
Vs.	)	
	)	
Armstrong World Industries, Inc.	)	COMPLAINT IN CIVIL ACTION
Now Known As	)	JURY TRIAL DEMANDED
Armstrong World Industries	)	
Asbestos Personal Injury Trust	)	Lee W. Davis, Esquire
	)	PA I.D. # 77420
and	)	Law Offices of
	)	Lee W. Davis, Esquire, LLC
Armstrong World Industries, Inc.	)	5239 Butler St, Ste 201
	)	Pittsburgh, Pa 15201
and	)	412-781-0525
	)	lee@leewdavis.com
Trustees of the Armstrong World Industries	)	
Asbestos Personal Injury Trust	)	
And its Trustees,	)	
Anne M. Ferazzi, individually,	)	
and	)	
Harry Huges, individually,	)	
and	)	
Richard E. Neville, individually	)	
	)	
and	)	
	)	
Trust Advisory Committee of the	)	
Armstrong World Industries Asbestos	)	
Personal Injury Trust	)	
and its members,	)	
John D. Cooney, individually	)	
and	)	
Russell D. Budd, individually	)	
and	)	
Joseph F. Rice, individually	)	
and	)	
Steven Kazan, individually	)	
and	)	
Perry Weitz, individually	)	

and )  
 )  
 )  
Future Claimants' Representative of )  
Armstrong World Industries Asbestos )  
Personal Injury Trust )  
and )  
Dean M. Trafelet, individually, )  
 )  
and )  
 )  
Delaware Claims Processing Facility )  
and )  
Mary Ellen Nickel, individually )

Defendants

## NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ON AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

ACBA Lawyer Referral Service  
400 Koppers Building - 436 Seventh Ave.  
Pittsburgh, Pennsylvania, 15219  
412-261-5555  
E-mail: [LRS@acba.org](mailto:LRS@acba.org)

## **I. INTRODUCTION AND SUMMARY OF ACTION**

The Plaintiff Robert V. Baird, Deceased, was exposed to deadly, friable asbestos fibers working as a Laborer for Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, at its Beaver Falls, PA facilities from 1951 until 1963.

1. During the period of time set forth hereinabove, the Plaintiff Robert Baird, while employed as set forth above, was exposed to and did inhale asbestos dust and asbestos fibers, which caused the conditions as hereinafter set forth, resulting in the Plaintiff Robert Baird's impairment and his death.

2. The Plaintiff Robert V. Baird's Mesothelioma was diagnosed on April 26, 2016. Plaintiff was unaware of and could not discover the nature and cause of said Mesothelioma before April 26, 2016.

3. Plaintiff Robert V. Baird suffered, underwent chemotherapy treatment for, and died of, Mesothelioma on October 25, 2016.

## **II. PARTIES**

4. Plaintiff, Faith Craig, is Executrix of the Estate of Plaintiff Robert V. Baird, Deceased. Plaintiff Robert V. Baird (hereinafter Plaintiff Robert Baird) formerly lived in Pennsylvania and Plaintiff Robert Baird formerly worked at Armstrong World Industries, Inc.'s now abandoned and demolished facilities in Beaver Falls, PA.

5. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, is liable, and did not waive, and expressly preserved, any and all claims and defenses that could have been asserted by Armstrong World Industries, Inc., with principal place of business formerly in the Commonwealth of Pennsylvania and incorporated now under the laws of Delaware.

6. Defendants are the Trustees of the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually.

7. Armstrong World Industries, Inc. (hereinafter Reorganized AWI) has principal its place of business in the Commonwealth of Pennsylvania and is incorporated under the laws of the Commonwealth of Pennsylvania continuously since 1891.

8. Defendants are the Trust Advisory Committee of the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust and its Members, John D. Cooney, individually, Russell D. Budd, individually, Joseph F. Rice, individually, Steven Kazan, individually, and Perry Weitz, individually.

9. Defendant is the Future Claimants Representative of the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust and Dean Traftlet, individually.

10. Defendant is the Delaware Claims Processing Facility and Mary Ellen Nickel, individually.

### **III. JURISDICTION**

11. This tort action is brought under the laws of the Commonwealth of Pennsylvania and under the common law of the Commonwealth of Pennsylvania. The Plaintiff herein bring this action based entirely upon the common and statutory laws of the Commonwealth of Pennsylvania, and the Plaintiff does not rely upon any federal constitutional provision, federal statute, or federal law in bringing this action, and does

not seek relief in this Complaint under any federal constitutional provision, statute or law.

12. The laws of the Commonwealth of Pennsylvania and the common law of the Commonwealth of Pennsylvania governs the liquidation of Armstrong World Industries, Inc. PI Trust Claims in the case of Individual Review, arbitration, or litigation in the tort system shall be the law of the Claimant's Jurisdiction "Claimant's Jurisdiction" is the jurisdiction "in which the claim... the claimant may elect as the Claimant's Jurisdiction either (i) the jurisdiction in which the claimant resides at the time of diagnosis or when the claim is filed with the PI Trust; or (ii) a jurisdiction in which the claimant experienced exposure to an asbestos-containing product for which AWI has legal responsibility. § 5.3(b)(2) Valuation Factors to be Considered in Individual Review Second Amended and Restated TDP as of September 26, 2017 (Exhibit 6)

13. Plaintiff Robert Baird was a lifetime resident of Pennsylvania, was exposed to Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, asbestos containing products at Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, facilities in Pennsylvania establishes Jurisdiction according to the §5 (b)(2) SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION PROCEDURES (Exhibit 6), thus the governing law is the statutory and common law of the Commonwealth of Pennsylvania regarding all aspects of this matter.

14. Pursuant to the SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION PROCEDURES § 7.6 Suits in the Tort System: If the holder of a disputed claim disagrees with the PI Trust's determination regarding... the liquidated value of the claim, and if the claimant has first submitted the claim to non-binding arbitration as provided in Section 5.10 above, the claimant may file a lawsuit in the Claimant's Jurisdiction. [T]he claimant may file a lawsuit in the Claimant's Jurisdiction as defined in Section 5.3(b)(2).

15. § 5.3(b)(2) states:

For these purposes, the "Claimant's Jurisdiction" is the jurisdiction in which the claim was filed (if at all) against AWI in the tort system prior to the Petition Date. If the claim was not filed against AWI in the tort system prior to the Petition Date, the claimant may elect as the Claimant's Jurisdiction either (i) the jurisdiction in which the claimant resides at the time of diagnosis or when the claim is filed with the PI Trust; or (ii) a jurisdiction in which the claimant experienced exposure to an asbestos-containing product for which AWI has legal responsibility.

16. The acknowledged Jurisdiction is the Commonwealth of Pennsylvania because Plaintiff was both Diagnosed with Mesothelioma and was exposed to asbestos containing products for which Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, has legal responsibility under several distinct legal theories in Pennsylvania.

17. As explained in detail below, Plaintiff Robert Baird disagrees specifically and only with the liquidated value after the Individual Review of Plaintiff's claim following reviews under the SECOND AMENDED AND RESTATED ARMSTRONG WORLD



INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST  
DISTRIBUTION PROCEDURES.

18. On October 16, 2019, Plaintiff Robert Baird was issued a “Right to Sue” letter for his claims against Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust. (Attached as Exhibit 1)

19. To the extent that any Defendant will contend that the Plaintiff Robert Baird is seeking relief in this Complaint under a federal constitutional provision, statute or law, the Plaintiff expressly denies said contentions. The Federal Courts lack subject matter jurisdiction over this action, as there is no federal question and incomplete diversity due to the presence of Pennsylvania Defendants. Removal is improper. Every claim arising under the Constitution, treaties, or laws of the United States is expressly disclaimed (including any claim arising from any act or omission on a federal enclave, or of any officer of the U.S. or any agency or person acting under him occurring under color of such office). No claim of admiralty or maritime law is raised. Plaintiff did not sue a foreign state or agency. Accordingly, since Plaintiffs have waived all potential federal causes of action, there is no federal question jurisdiction under 28 US .C §1331.

20. The Plaintiff Robert Baird further alleges that complete diversity of citizenship between the parties does not exist. Furthermore, the citizenship and/or residency of the resident defendants cannot be disregarded for purposes of creating diversity jurisdiction under 28 U.S.C. §1332, as the Plaintiff has stated valid Pennsylvania causes of action against local Pennsylvania manufacturers and/or employers and/or

suppliers in this Complaint, and that these local Pennsylvania manufactures and/or employers and/or suppliers are neither nominal nor fraudulently joined Defendants with respect to the claims brought against them by the Plaintiff Robert Baird herein.

21. The Plaintiff Robert Baird disclaims any cause of action or recovery for any injuries caused by any exposure to asbestos dust that occurred in a federal enclave. The Plaintiff also disclaims any cause of action or recovery for any injuries resulting from any exposure to asbestos dust caused by any acts or omissions of a party committed at the direction of an officer of the United States Government.

#### **IV. FACTUAL BACKGROUND**

22. Armstrong World Industries, Inc. was founded when Thomas Armstrong collaborated with John D. Glass in 1860. The company was officially incorporated in 1891 in Pittsburg[h], PA as Armstrong Cork & Supply Company. In 1909, the company introduced linoleum flooring to the world and has subsequently become the global leader in the design and manufacturing of floors, ceilings, and cabinets.<sup>1</sup>

23. Plaintiff Robert Baird worked as a Laborer for Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, at its Beaver Falls, PA facilities from approximately 1951 to 1963.

24. During the course of his employment, Plaintiff Robert Baird was exposed to large, intense amounts of friable, respirable asbestos fibers in the dust and ambient air at Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos

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<sup>1</sup> <https://www.armstrongworldasbestostrust.com/resources/tutorial/history-of-wrg-asbestos-pi-trust/> retrieved 12/17/2019

Personal Injury Trust, at its Beaver Falls, PA facilities from numerous sources, including but limited to the pipecovering, cement, mortar, mud, block, board, paper, gaskets, packing, raw asbestos fibers and insulation in, on and around ceiling tile ovens used to bake ceiling tiles at high temperature.

25. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, admits that Plaintiff Robert Baird was exposed to asbestos from various manufacturers of asbestos containing products including but not limited to Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, during his employment for the same.

26. Plaintiff Robert Baird left the employ of Defendant Armstrong World Industries, Inc. now known as Armstrong World Industries Asbestos Personal Injury Trust in approximately 1963.

27. On June 19, 1985, Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, along with 33 other former asbestos products producers and 16 insurers, entered into "The Agreement Concerning Asbestos-Related Claims," generally known as "the Wellington Agreement." Under the terms of the Wellington Agreement, the Asbestos Claims Facility ("ACF") was established to evaluate, defend, and settle all asbestos-related bodily injury claims presented to it by its subscribing producers, and to pay settlements, judgments, and legal expenses incurred in the handling of claims against subscribing

producers. *Stonewall Ins. Co. v. Asbestos Claims Management Corp.*, 73 F.3d 1178, 1188 (2nd Cir. 1995)

28. The original members of the ACF were AC&S, Inc., Aetna Life & Casualty Co. American Universal Insurance Group, **[Defendant] *Armstrong World Industries, Inc.*, [now known as Armstrong World Industries Asbestos Personal Injury Trust]**, Bituminous Casualty Corp., Carey Canada, Inc., The Celotex Corporation, CertainTeed Corp., C.E. Thurston & Sons, Inc., CIGNA Property and Casualty Insurance Cos., Continental Corp. Crum & Forster, Dana Corp., Eagle-Picher Industries, Inc., Employers Insurance of Wausau, Fibreboard Corporation, Fireman's Fund, Inc., First State Insurance Co., Flexitallic Gasket Co., Inc., The Flintkote Co., Genstar Corp., Harbor Insurance Co., Hartford Insurance Group, H.K. Porter Company, Inc. Hopeman Brothers, Inc. Keene Corp., Liberty Mutual Insurance Co., Lloyd's of London, Maremont Corp., National Gypsum Co., Nosroc Corp., Nuclear & Environmental Protection, Inc., Nulturn Corp., Owens-Corning Fiberglas, Owens-Illinois, Inc., Pittsburgh-Corning Corp., Reliance Insurance Co., Rock Wool Manufacturing Co., Royal Insurance Co., Shook & Fletcher Insulation Co., Thorpe Insulations, Turner & Newall PLC, and Unijax.<sup>2</sup> (Emphasis added)

29. Costs incurred by the ACF were allocated to participating producers pursuant to a [confidential] formula incorporated into the Wellington Agreement. [Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos

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<sup>2</sup> *Asbestos Claims Facility: An Unprecedented, Private Alternative for Dispute Resolution*, Anthony Zaccagnini, University of Baltimore Law Forum, Volume 16, Number 2 Winter, 1986, Article 3, Page 5

Personal Injury Trust]'s share of such costs was borne by those of its insurers that were also subscribers to the Wellington Agreement, to the extent of the insurance coverage afforded to [Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust] under its policies and pursuant to the terms of the Wellington Agreement. The Wellington Agreement resolved insurance coverage disputes with respect to asbestos-related bodily injury claims between [Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust] and those of its insurers that had signed the agreement. The ACF handled all those bodily injury claims against [Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust] from October 1, 1985, until October 1, 1988. The ACF was dissolved on October 3, 1988. *Id.*, *Stonewall Ins. Co. v. Asbestos Claims Management Corp.*, p1188

30. Contemporaneously, with the dissolution of the ACF, twenty-one companies announced the creation of the Center for Claims Resolution (hereinafter CCR). While the twenty-one founders of the new claims-handling organization are all former members of the ACF.<sup>3</sup>

31. The twenty-one companies that [were] members of the CCR are: A.P. Green Industries, Inc.; **[Defendant] Armstrong World Industries, Inc., [now known as Armstrong World Industries Asbestos Personal Injury Trust]**; CertainTeed

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<sup>3</sup> *Center For Claims Resolution*, Lawrence Fitzpatrick, 53 Law and Contemporary Problems, No. 4, Page 13, 17: Autumn 1990

Corporation; C.E. Thurston & Sons, Inc.; Dana Corporation; Flexitallic, Inc.; GAF Corporation; IU North America, Inc.; Keene Corporation; Maremont Corporation; National Gypsum Company; NOSROC, Inc.; Nuturn Corporation; Pfizer Inc.; Quigley Company, Inc.; T & N; United States Gypsum Company; and four confidential members.<sup>4</sup> (Emphasis added)

32. First, the CCR has a much more flexible confidential sharing formula for liability payments and expenses, which determines producer shares across four different time periods and a dozen occupational categories.<sup>5</sup>

33. Next, the CCR confidentially weights members' votes according to each members' share of liability and expenses.<sup>6</sup>

34. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, then sought relief in Bankruptcy reorganization under Chapter 11 of The United States Bankruptcy Code § 524(g) on December 6, 2000.<sup>7</sup>

**Bankruptcy of Defendant Armstrong World Industries, Inc., now known as  
Armstrong World Industries Asbestos Personal Injury Trust**

35. The interplay of the FOURTH AMENDED PLAN OF REORGANIZATION OF ARMSTRONG WORLD INDUSTRIES, INC., AS MODIFIED (hereinafter the Plan); the ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST AGREEMENT (hereinafter the Agreement); The Order of Judge

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<sup>4</sup> *Center For Claims Resolution, id at Footnote 7.*

<sup>5</sup> *Center For Claims Resolution, id at 17*

<sup>6</sup> *Center For Claims Resolution, id at 17*

<sup>7</sup> [https://en.wikipedia.org/wiki/Armstrong\\_World\\_Industries](https://en.wikipedia.org/wiki/Armstrong_World_Industries) retrieved 12/18/2019

Eduardo Robreno (hereinafter the Order); and The SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION PROCEDURES (hereinafter the TDP) control Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, operation processing personal injury claims such as that of Plaintiff Robert Baird related to the Defendant's asbestos injury liability.

36. The Plaintiff herein does not challenge the validity, application, construction, or modification of the bankruptcy injunction issued under 11 U.S. Code § 524 (g) (1) & (2) to Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust.

**a. The Plan**

37. The Bankruptcy Trust is described in filings by the Defendant:

Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust is a Qualified Settlement Fund (QSF) within the meaning of Treasury Department regulations issued pursuant to Section 468B of the Internal Revenue Code (the Code). The Trust was created on October 2, 2006, in connection with confirmation of the Fourth Amended Plan of Reorganization of Armstrong World Industries, Inc. (the Plan). [(Attached as Exhibit 2)] The Plan was confirmed by an order (the Order) [(Attached as Exhibit 3)] entered on August 18, 2006<sup>8</sup>, by the United States District Court for the Eastern District of Pennsylvania. [*In re Armstrong World Industries*, 348 B.R. 223 (D. Del. 2006)].

*Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust's Notice of Filing of Annual Report for the Year Ended December 31, 2018*, Exhibit 1.A Audited Financial Statements, Note 1 - Description of the Trust, p. 6 (Attached hereto as Exhibit 4)

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<sup>8</sup> Judge Eduardo Robreno's Order of Aug 18, 2006 approving THE FOURTH AMENDED PLAN OF REORGANIZATION OF ARMSTRONG WORLD INDUSTRIES, INC., AS MODIFIED.

38. The note to the Audited Financial Statements states the purpose of the

Defendant:

The purpose of the Trust is to assume the liabilities of Armstrong World Industries, Inc. (AWI), its predecessors and successors in interest, for all Asbestos Personal Injury Claims (as defined in the Plan), and to use the Trust's assets and income to pay the holders of all Asbestos Personal Injury Claims in accordance with the Trust Agreement (hereinafter the Agreement) [(Attached as Exhibit 5)] and the Trust Distribution Procedures (hereinafter TDP) [(Attached as Exhibit 6)] in such a way that such holders of Asbestos Personal Injury Claims are treated fairly, equitably, and reasonably in light of the limited assets available to satisfy such claims, and to otherwise comply in all respects with the requirements of a trust set forth in section 524(g)(2)(B) of the Bankruptcy Code.

*ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST Special-Purpose Financial Statements and Supplemental Information with Reports of Independent Auditors Years Ended December 31, 2018 and 2017, Exhibit 1.A Audited Financial Statements, Note 1 - Description of the Trust, p. 6 (Exhibit 4)*

#### **b. The Agreement**

39. The next governing document is the Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust Agreement (the Agreement) (Exhibit 5) establishes that the Trustees, Members of the Trust Advisory Committee (hereinafter the TAC) and Future Claimant's Representative owe a Fiduciary Duty to all past, present and future Claimants, including Plaintiff Robert Baird, as a once future, and now present holder of a claim against the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust.

**Trustees of Defendant Armstrong World Industries, Inc., now known as  
Armstrong World Industries Asbestos Personal Injury Trust  
are Fiduciaries  
Obligated to Fairness towards the Claim of Plaintiff Robert Baird**



40. The Agreement states that the Trustees of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust at § 2 POWERS AND TRUST ADMINISTRATION:

(a) The Trustees are and shall act as the *fiduciaries* to the PI Trust in accordance with the provisions of this PI Trust Agreement and the Plan. The Trustees shall, at all times, administer the PI Trust and the PI Trust Assets in accordance with the purposes set forth in § 1.2 above...

Where § 1.2 states:

1.2 PURPOSE. The purpose of the PI Trust is to assume the liabilities of AWI, its predecessors and successors in interest, for all Asbestos Personal Injury Claims (as defined in the Plan), and to use the PI Trust's assets and income to pay the holders of all Asbestos Personal Injury Claims in accordance with this PI Trust Agreement and the TDP in such a way that such ***holders of Asbestos Personal Injury Claims are treated fairly, equitably and reasonably*** ....<sup>9</sup> (Emphasis Added)

#### **The TAC Members and FCR are Fiduciaries with Lifetime Appointments**

41. According to the ASBESTOS PERSONAL INJURY SETTLEMENT TRUST AGREEMENT (the Agreement), and pursuant to § 5.2, "The members of the TAC shall serve in a fiduciary capacity representing **all holders of present Asbestos Personal Injury Claims.**" (Emphasis added)

42. The Agreement additionally empowers each member of the TAC with a lifetime appointment to the TAC under ARMSTRONG WORLD INDUSTRIES, INC.

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<sup>9</sup> ASBESTOS PERSONAL INJURY SETTLEMENT TRUST AGREEMENT (Form- 8-K, Received- 10-02-2006 15-52-13) retrieved 12/18/2019 [https://content.edgar-online.com/ExternalLink/EDGAR/0000909518-06-000912.html?hash=78147d5102921e72fd492ae92f457cd131b1e25f1ea8c2508526946a7af560d2&dest=MM10-0206\\_8KE102\\_TXT#MM10-0206\\_8KE102\\_TXT](https://content.edgar-online.com/ExternalLink/EDGAR/0000909518-06-000912.html?hash=78147d5102921e72fd492ae92f457cd131b1e25f1ea8c2508526946a7af560d2&dest=MM10-0206_8KE102_TXT#MM10-0206_8KE102_TXT)

ASBESTOS PERSONAL INJURY SETTLEMENT TRUST AGREEMENT § 5.3 TERM OF OFFICE, where “(a) Each member of the TAC shall serve until the earlier of (i) his or her death, (ii) his or her resignation pursuant to Section 5.3(b) below, (iii) his or her removal pursuant to Section 5.3(c) below, or (iv) the termination of the PI Trust pursuant to Section 7.2 below.”

43. THE FUTURE CLAIMANTS' REPRESENTATIVE (FCR) under the Agreement § 6.1 DUTIES:

The initial Future Claimants' Representative shall be ... Dean M. Trafelet, Esquire. He shall serve in a fiduciary capacity, representing the interests of the holders of future Asbestos Personal Injury Claims for the purpose of protecting the rights of such persons.

44. Upon information and belief, Mr. Trafelet remains Future Claimants' Representative in 2020. *Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust's Notice of Filing of Annual Report for the Year Ended December 31, 2018*, Exhibit 7, p. 3

45. Mirroring the TAC membership lifetime appointment, Mr. Trafelet, as FCR, has a lifetime appointment, under §6.2 of the Agreement, TERM OF OFFICE:

(a) The Future Claimants' Representative shall serve until the earlier of (i) his or her death, (ii) his or her resignation pursuant to Section 6.2(b) below, (iii) his or her removal pursuant to Section 6.2(c) below, or (iv) the termination of the PI Trust pursuant to Section 7.2 below.

46. The [Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust] is governed by a Trust Agreement (the Agreement) and Trust Distribution Procedures (TDP) that establish the framework and criteria for allowance and payment of asbestos-related claims by the Trust. The

[Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust] reviews and determines Asbestos Claims in accordance with the TDP. The TDP provides for processing, allowing or disallowing, liquidating and paying all Asbestos Claims as required by the Plan and the Trust Agreement. The Trust Agreement and TDP were approved by the United States District Court as part of the Plan. There are eight disease levels specified in the TDP. Each claimant who meets the medical and exposure requirements of the TDP for a particular disease level may apply for expedited review and a specified payment amount. Claimants also have an alternative, under the TDP, to submit additional documentation and request a more expansive review of their claim (TDP - 5.3 (b) Individual Review Process) in which case claims may be paid within a range of amounts. *Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust's Notice of Filing of Annual Report for the Year Ended December 31, 2018*, Exhibit 1.A Audited Financial Statements, Note 1 - Description of the Trust, p. 6 (Exhibit 4)

**c. The Order**

**The Trustees of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, are Anne M. Ferazzi, Harry Huge, and Richard E. Neville**

47. Judge Eduardo Robreno's Order of August 18, 2006 (Exhibit 3 hereto) at § *B4 Creation of the Asbestos PI Trust and Section 524(g) Injunction: ...*

3. The appointment of Paul Knutti, Anne Ferazzi, Thomas Tully, Lewis Sifford and Harry Huge as the initial Asbestos PI Trustees, be, and hereby is, approved. Effective as of the Effective Date, the initial Asbestos PI Trustees shall serve as Asbestos PI Trustees in accordance with the terms of the Asbestos PI Trust Agreement.

*In re Armstrong World Industries*, 348 B.R. 223, 224 (D. Del. 2006).

48. Upon information and belief, Defendants Anne M. Ferazzi and Harry Huge, have been and remained Trustees from 2006 to the present, 2020, Mr. Huge having been appointed to a new five (5) year term on September 26, 2018. Defendant Richard E. Neville has become a Trustee after the inception of the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust. *Armstrong World Industries, Inc. Asbestos Personal Injury Settlement ANNUAL REPORT FOR THE YEAR ENDED DECEMBER 31, 2018*. (Exhibit 7, pp.1,6)

**The Trust Advisory Committee (TAC) members are John D. Cooney, Russell W. Budd, Steven Kazan, Joseph F. Rice, and Perry Weitz**

49. Judge Eduardo Robreno's Order also confirms the appointment of the TAC:

The appointment of John D. Cooney, Russell W. Budd, Steven Kazan, Joseph F. Rice, and Perry Weitz as the five initial members of the Trust Advisory Committee (the "**TAC**") be, and hereby is, approved. Effective as of the Effective Date, the initial members of the TAC shall serve as members of the TAC in accordance with the terms of the Asbestos PI Trust Agreement."

*In re Armstrong World Industries*, 348 B.R. 223, 224 (D. Del. 2006).

50. Upon information and belief, fourteen (14) years later after appointment to the TAC, the same five, John D. Cooney, Russell W. Budd, Steven Kazan, Joseph F. Rice, and Perry Weitz, remain, in 2020, as the only members in the history of the TAC. *Armstrong World Industries, Inc. Asbestos Personal Injury Settlement ANNUAL REPORT FOR THE YEAR ENDED DECEMBER 31, 2018* (Exhibit 7, p. 4)

**d. The TDP**

51. The SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION

PROCEDURES (Hereinafter “TDP”), adopted September 26, 2017, (Exhibit 6) establishes the claim procedure that Plaintiff Robert Baird must follow to file a personal injury claim against Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust for his diagnosis and ultimately, his death from Mesothelioma against his former employer and a former an asbestos product manufacturer.

**Plaintiff Robert Baird’s Mesothelioma Claim with  
Defendant Armstrong World Industries, Inc., now known as  
Armstrong World Industries Asbestos Personal Injury Trust**

52. The Plaintiff Robert Baird’s Mesothelioma was diagnosed on April 26, 2016. Plaintiff was unaware of and could not discover the nature and cause of said Mesothelioma before April 26, 2016.

53. The only known cause of Mesothelioma is exposure to friable respirable asbestos fibers.

54. Plaintiff Robert Baird suffered, underwent chemotherapy treatment for, and died of Mesothelioma on October 25, 2016.

**ADMINISTRATIVE PROCEDURES**

55. While alive, Plaintiff Robert Baird timely filed a Proof of Claim Form with Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, on June 7, 2016, alleging significant, substantial exposure to asbestos containing products during his employment at Armstrong World Industries, Inc.’s Beaver Falls, PA facilities from approximately 1951 to 1963. Plaintiff Robert Baird chose Individual Review for his claim, as is Plaintiff’s option.

56. Plaintiff Robert Baird had a long and significant history of exposure to asbestos for which Defendant Armstrong World Industries, Inc., now known As Armstrong World Industries Asbestos Personal Injury Trust, is responsible, under distinct legal theories, as employer, using asbestos containing products in its facilities, and separately as an asbestos product supplier and manufacturer for materials used where Plaintiff Robert Baird worked as a laborer, primarily as truck driver, and later as a line leader on the forming line manufacturing ceiling tiles at Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, at its Beaver Falls, PA facilities.

57. There are two options available to Plaintiff Robert Baird under the Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION PROCEDURES (TDP) for claimants exposed to asbestos for which Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, is responsible:

Expedited Review under SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION PROCEDURES:

§ 5.3(a)(1) Expedited Review:

In General. The PI Trust's Expedited Review Process is designed primarily to provide an expeditious, efficient, and inexpensive method for liquidating all PI Trust Claims ... where the claim can easily be verified by the PI Trust as meeting the presumptive Medical/Exposure Criteria for the relevant Disease Level. Expedited Review thus provides claimants with a substantially less burdensome process for pursuing PI Trust Claims than does the Individual Review Process described in Section 5.3(b) below. Expedited Review is also intended to provide qualifying claimants a fixed and certain claims payment.

Or

Individual Review under SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION PROCEDURES:

§ 5.3(b)(1) Individual Review:

In General. Subject to the provisions set forth below, an AWI claimant may elect to have his or her PI Trust Claim reviewed under the Individual Review Process for purposes of determining . . . alternatively, an AWI claimant may elect to have a claim undergo the Individual Review Process for purposes of determining whether the liquidated value of the claim exceeds the Scheduled Value for the relevant Disease Level also set forth in Section 5.3(a)(3) above.

(Exhibit 6, pp.10, 13)

58. Defendant Armstrong World Industries, Inc., now known As Armstrong World Industries Asbestos Personal Injury Trust, after completing the Individual Review process and by issuing an Offer, admits that Plaintiff Robert Baird demonstrated meaningful and credible exposure, which occurred prior to December 5, 1980, to asbestos or asbestos-containing products manufactured, produced, distributed, sold, fabricated, installed, released, maintained, repaired, replaced, removed, or handled by AWI and/or any entity, including an AWI contracting entity, for which AWI is responsible (“AWI Products/Operations”). *SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION PROCEDURES §5.7 (b)(3)* (Exhibit 6, p. 19)

59. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, communicated that Plaintiff Robert Baird satisfied the medical criteria to be classified as Disease Level VIII (Mesothelioma) pursuant to the *SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC.*

*ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION*

*PROCEDURES §5 .7(a)(1)*. (Exhibit 6, p. 18)

60. Once Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, communicated that Plaintiff Robert Baird satisfied the medical criteria to be classified as Disease Level VIII (Mesothelioma) pursuant to the *SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC.*

*ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION*

*PROCEDURES §5 .7(a)(1)*, (TDP), the Defendant admitted that the exposure to asbestos during the Plaintiff's employment at Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's facilities was a significant contributing factor causing the Mesothelioma and ultimately the death of Plaintiff Robert Baird.

61. After Defendant Armstrong World Industries, Inc. now known as Armstrong World Industries Asbestos Personal Injury Trust, communicated that Plaintiff Robert Baird had a valid claim as an asbestos product manufacturer, as well as, an admission of employer liability exposing Plaintiff Robert Baird to asbestos containing products manufactured by or the responsibility of the Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, issued a "Secret" Individual Review Offer.<sup>10</sup>

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<sup>10</sup> Pursuant to V. GENERAL ADR PROCEDURES GOVERNING PRO BONO EVALUATION, MEDIATION, NON-BINDING ARBITRATION, AND BINDING ARBITRATION (Exhibit 8) §M, Plaintiff is not disclosing the amount of any offer by Defendant. Under (1.) All ADR and arbitration proceedings and information relating to the proceeding will be confidential. Neither party shall disclose the information obtained during the proceedings, nor the valuation placed on the case by an arbitrator or pro bono evaluator to anyone or use such information or valuation in any further proceeding... (Section 2 on following Page)



62. Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, contacted Plaintiff Robert Baird's Counsel via email on January 9, 2019, by and through its agent, Mary Ellen Nickel, Director of Claimant Relations, Delaware Claims Processing Facility.

63. In the January 9, 2019 email to Plaintiff Robert Baird's Counsel, without disclosing the liquidated value of the Individual Review "Secret" Offer, Mary Ellen Nickel made an offer to settle the matter for Expedited Review Value if Plaintiff Robert Baird's counsel "can have the claim switched to ER so that an offer can be generated at the ER value."

64. Plaintiff Robert Baird's counsel could not properly, and should never be coerced to evaluate, any "Secret" Individual Review Offer.

65. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, unjustly, unfairly coerced Plaintiff Robert Baird to reject an Expedited Review in order to receive the requested "Secret" Individual Review Offer.

66. Under the Agreement:

§2.2 (i) Periodically, but not less often than once a year, the Trustees shall make available to claimants and other interested parties the number of claims by disease levels that have been resolved both by individual review and by arbitration, as well as by trial, indicating the amounts of the awards and the averages of the awards by jurisdiction pursuant to § 7.10 of the TDP.

Where §7.10 of the TDP states:

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(2) Footnote 10. Continued: (Section 1 on preceding page 23.) (2) All ADR and arbitration proceedings shall be deemed a settlement conference pursuant to Rule 408 of the Federal Rules of Evidence. Except by agreement of the parties, the parties will not introduce into evidence in any other proceedings the fact that there was an arbitration, the nature or amount of the award, and written submissions may not be used for purposes of showing accord and satisfaction or res judicata.

7.10 PI Trust Disclosure of Information. Periodically, but not less often than once a year, the PI Trust shall make available to claimants and other interested parties, the number of claims by disease levels that have been resolved both by the Individual Review Process and by arbitration, as well as by litigation in the tort system, indicating the amounts of the awards and the averages of the awards by jurisdiction.

67. Plaintiff Robert Baird's counsel, as claimant's counsel, nor any Individual Review claimant, has been provided, upon information and belief, the essential information required to evaluate any Plaintiff's Individual Review claim. Plaintiff Robert Baird's counsel has never been provided the information required under §2.2 (i) of the Agreement and §7.10 of the TDP, specifically, information regarding claims resolved both by the Individual Review Process and by arbitration, as well as, by litigation in the tort system, indicating the amounts of the awards and the averages of the awards by jurisdiction. Nor, upon information and belief, is the information "Available"<sup>11</sup>.

68. Finally, Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, disclosed an offer under Individual Review, after coercing Plaintiff Robert Baird's rejection of an Expedited Review Offer on January 31, 2019.

69. As required under the terms of the TDP, Plaintiff Faith Craig, Executrix of the Estate of Robert Baird agrees with the admission of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, that Plaintiff Robert Baird suffered from and ultimately died of Mesothelioma.

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<sup>11</sup> Available. Suitable, useable, accessible, obtainable, present for immediate use. Having sufficient force or efficacy; effectual; valid. *Black's Law Dictionary*, 6<sup>th</sup> Ed., West Publishing, 1990.

70. As required under the terms of the TDP, Plaintiff Faith Craig, Executrix of the Estate of Robert Baird agrees with the admission of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, that Plaintiff Robert Baird was exposed to friable, respirable asbestos while employed by Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, at its Beaver Falls, PA facilities from approximately 1951 to 1963.

71. As required under the terms of the TDP, Plaintiff Faith Craig, Executrix of the Estate of Robert Baird, agrees with the admission of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, that it is liable to Plaintiff Robert Baird because Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, knowingly, willfully, wantonly and recklessly exposed Plaintiff Robert Baird to friable, respirable asbestos while working at Defendant's Beaver Falls, PA facilities from 1951 to 1963.

72. As required under the terms of the TDP, Plaintiff Faith Craig, Executrix of the Estate Robert Baird, specifically disagrees with the liquidated value assigned in Individual Review to Plaintiff Robert Baird's Mesothelioma claim by the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust.

73. Plaintiff Robert Baird's age, exposure to Defendant's asbestos products and death by Mesothelioma are some of the factors used in a valuation algorithm, shrouded in secrecy, to evaluate claims under the TDP. The complete factors and values assigned are available to the Defendant Armstrong World Industries, Inc., now known as Armstrong World

Industries Asbestos Personal Injury Trust, Defendant Trustees, Defendant TAC members and Defendant FCR, but not Plaintiff Robert Baird and his counsel.

74. The lack of transparency, and absence of required information disclosed according to the Agreement and TDP, does not assure that the Individual Review Claim of Robert Baird, nor any holder of a valid Individual Review claim, has been evaluated fairly as required by the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust.

75. Pursuant to the TDP, Plaintiff Faith Craig, Executrix of the Estate Robert Baird, timely rejected the Individual Review offer and requested the matter be resolved per the AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY TRUST ALTERNATIVE DISPUTE RESOLUTION PROCEDURES<sup>12</sup> of the SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION PROCEDURES.

76. After completing AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY TRUST ALTERNATIVE DISPUTE RESOLUTION PROCEDURES, Plaintiff Faith Craig, Executrix of the Estate Robert Baird timely requested a “Right to Sue” letter (Exhibit 1) as is her right under the SECOND AMENDED AND

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<sup>12</sup> AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY TRUST ALTERNATIVE DISPUTE RESOLUTION PROCEDURES, <http://www.armstrongworldasbestostrust.com/wp-content/uploads/2015/07/AWI-Trust-Amended-and-Restated-ADRP-as-of-July-31-2015.pdf> retrieved 12/18/2019

RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL  
INJURY SETTLEMENT TRUST DISTRIBUTION PROCEDURES.

**COUNT I**

**NEGLIGENCE**

**Plaintiff Robert Baird**

**V**

**Defendant Armstrong World Industries, Inc., Now Known As Armstrong World  
Industries Asbestos Personal Injury Trust**

77. Plaintiff realleges paragraphs 1 through 76 and incorporates them by reference as paragraphs 1 through 76 of Count I of this Complaint.

78. The condition of the Plaintiff Robert Baird is a direct and proximate result of the negligence of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, in that it produced, supplied, and/or sold, and/or used, and/or specified, and/or removed products containing asbestos and other dangerous ingredients including silica, which products Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, knew, or in the exercise of reasonable care, should have known, were inherently, excessively, and ultra-hazardously dangerous to the Plaintiff Robert Baird.

79. The Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, mined and/or milled and/or manufactured and/or fabricated and/or supplied, and/or sold, and/or used, and/or specified, and/or removed products which Defendant knew were defective and/or unreasonably dangerous to the user or consumer, such as Plaintiff Robert Baird, and acted in such a manner which was willful, wanton, gross and in total disregard for the health and safety of the user or consumer or employee, i.e., the Plaintiff Robert Baird.

80. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, individually, together and/or as part of multiple groups, have possessed since 1929, medical and scientific data which indicated that asbestos-containing insulation and other materials were hazardous to health. Prompted by pecuniary motives, the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, individually, together and/or as a group, willfully and wantonly ignored and/or failed to act upon said medical and scientific data. Rather, Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, conspired together with other asbestos manufacturing companies to deceive the public and their employees in several aspects: by controlling industry-supported research in a manner inconsistent with the health and safety interest of users and consumers, by successfully tainting reports of medical and scientific data appearing in industry and medical literature, by suppressing the dissemination of certain medical and scientific information relating to the harmful effects of exposure to said products, and by prohibiting the publication of certain scientific and medical articles. Such conspiratorial activities deprived the users, employees, mechanics, laborers and installers of defendants said products of the opportunity to determine whether or not they would expose themselves to the unreasonably dangerous asbestos products of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust. As a direct and proximate result of the aforesaid actions, the Plaintiff Robert Baird was exposed as alleged and contracted the Mesothelioma that caused his death set forth herein.

81. As a direct and proximate result of the actions of the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, as aforesaid, and inhalation of asbestos fibers from defendant's products, the Plaintiff Robert Baird has suffered severe and serious injuries. Plaintiff Robert Baird

suffered from Mesothelioma, an asbestos-exposure induced disease, severe pain, intense discomfort and death.

82. For Plaintiff Robert Baird's injuries sustained as a direct and proximate result of exposure to the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust's defective products as aforesaid, the Plaintiff Robert Baird demands the following relief:

- a. Compensation for great pain, suffering and inconvenience;
- b. Compensation for plaintiff's limitation and preclusion from performing normal activities;
- c. Compensation for great emotional distress;
- d. Compensation for plaintiff's loss of his general health, strength and vitality;
- e. Compensation for medicine, medical care, nursing, hospital and surgical attention, medical appliances and household care;
- f. Punitive and exemplary damages;
- g. Any further relief found just and appropriate by the Court.

WHEREFORE, Plaintiff Robert Baird has been damaged and claims damages of the defendants, jointly and severally, in an amount in excess of Thirty-Five Thousand (\$35,000.00) Dollars, which is in excess of the arbitration jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania.

## **COUNT II**

## **STRICT PRODUCTS LIABILITY**

**Plaintiff Robert Baird**

**V**

**Defendant Armstrong World Industries, Inc., Now Known As Armstrong World Industries Asbestos Personal Injury Trust**

83. Plaintiff realleges paragraphs 1 through 82 and incorporates them by reference as paragraphs 1 through 82 of Count II of this Complaint.

84. The Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, or their predecessors in interest, at all times relevant, engaged in one or more of the following activities involving asbestos and/or silica and other ingredients in their materials: the mining, milling, manufacturing, distributing, supplying, selling and/or using and/or recommending, and/or specifying and/or installing and/or removing asbestos materials and other dangerous ingredients and products.

85. At all times pertinent hereto, Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust acted through their duly authorized agents, servants and employees, who were then and there acting in the course and scope of their employment and in furtherance of the business of said Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust.

86. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust was engaged in the manufacture, distribution, supply, sale, contracting, installation, removal and/or specification of asbestos-containing products to which the Plaintiff Robert Baird was exposed.



87. As a direct and proximate result of the inhalation of the fibers and dusts contained in the products of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and/or their predecessors-in-interest, the Plaintiff Robert Baird contracted Mesothelioma set forth herein.

88. The condition of the Plaintiff Robert Baird is a direct and proximate result of the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, manufacture, and/or production, and/or distribution, and/or use, and/or specification, and/or installation, and/or removal, and/or failure to maintain, and/or supply, and/or sale of products containing asbestos and/or lacked elements necessary to make them safe for their intended uses and other dangerous ingredients which were inherently, excessively, and ultra-hazardously dangerous to Plaintiff Robert Baird.

89. Plaintiff Robert Baird's Mesothelioma, as set forth herein, with associated complications, was directly and proximately caused by the acts of the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, acting through their agents, servants and employees and the Defendant Armstrong World Industries, Inc., now Known as Armstrong World Industries Asbestos Personal Injury Trust, is liable, therefore, to the Plaintiff Robert Baird for their breach of duty imposed by § 402A of the Restatement (Second) of Torts.

90. For Plaintiff Robert Baird's injuries sustained as a direct and proximate result of exposure to the Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, defective products as aforesaid, the Plaintiff Robert Baird demands the following relief:

- a. Compensation for great pain, suffering and inconvenience;

- b. Compensation for plaintiff's limitation and preclusion from performing normal activities;
- c. Compensation for great emotional distress;
- d. Compensation for plaintiff's loss of his general health, strength and vitality;
- e. Compensation for medicine, medical care, nursing, hospital and surgical attention, medical appliances and household care;
- f. Punitive and exemplary damages;
- g. Any further relief found just and appropriate by the Court.

WHEREFORE, Plaintiff Robert Baird has been damaged and claims damages of the defendants, jointly and severally, in an amount in excess of Thirty-Five Thousand (\$35,000.00) Dollars, which is in excess of the arbitration jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania.

**COUNT III**

**PLAINTIFF'S COUNT AGAINST FORMER EMPLOYER**

**PLAINTIFF ROBERT BAIRD**

**V**

**Defendant Armstrong World Industries, Inc. Now Known as Armstrong  
World Industries Asbestos Personal Injury Trust**

**And**

**Defendant Reorganized AWI**

91. Plaintiff Robert Baird realleges paragraphs 1 through 90 and incorporates them by reference as paragraphs 1 through 90 of Count III of this Complaint.

92. The injuries and damages suffered by Plaintiff Robert Baird, were caused by Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI were the direct and proximate result of failure to protect Plaintiff Robert Baird and create a safe work environment for him and other employees.

93. Pennsylvania common law provides for the claims for the occupational disease of an employee and the actions of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust and Defendant Reorganized AWI entitle Plaintiff Robert Baird to a cause of action pursuant to *Tooley v. AK Steel Corp.*, 623 Pa. 60 (2013).

94. Throughout his work career at Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, and Defendant Reorganized AWI's facilities in Beaver Falls, PA, Plaintiff Robert Baird, was exposed to unsafe working conditions in his workplace which presented a high degree of risk and a strong probability of serious injury and/or death. Defendant Reorganized AWI, upon information and belief, retained and operated the Beaver Falls, PA facilities subsequent to the

Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's Bankruptcy Petition in 2000.

95. Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, and Defendant Reorganized AWI's, facilities in Beaver Falls, PA, by and through its employees, and agents knowingly permitted Plaintiff Robert Baird to become exposed to airborne asbestos fibers and to inhale said fibers throughout his career with Armstrong World Industries, Inc.'s facilities in Beaver Falls, PA, when Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI had actual knowledge that the inhalation of airborne asbestos fibers could cause an asbestos related disease and therefore the behavior of aforementioned employers was wanton, willful and reckless.

96. The Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI had actual and subjective realization and appreciation of the existence of the aforementioned unsafe working conditions and also had actual and subjective realization and appreciation that there was a high degree of risk and strong probability that serious injury or death could occur as a result of such specific unsafe working conditions.

97. Such specific unsafe working conditions, as alleged, were in violation

of Pennsylvania safety statutes, rules, regulations and commonly accepted and well-known safety standards. Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, and Defendant Reorganized AWI 's facilities in Beaver Falls, PA, exposed their employee, Plaintiff Robert Baird, to the aforementioned unsafe working conditions intentionally and in a willful, wanton and reckless disregard for his safety.

98. As owner and possessor, Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI facilities in Beaver Falls, PA, owed Plaintiff Robert Baird a duty to make inspections and remediate all unsafe working conditions at work sites where they employed Plaintiff Robert Baird, in Pennsylvania.

99. Plaintiff Robert Baird suffered severe personal injury, Mesothelioma, and death as a direct and proximate result of the intentional, willful, wanton and reckless conduct of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust and Defendant Reorganized AWI.

100. Plaintiff Robert Baird claims compensatory and exemplary damages of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust and Defendant Reorganized AWI.

WHEREFORE, Plaintiff Robert Baird has been damaged and claim damages of the defendants, jointly and severally, in an amount in excess of Thirty-Five

Thousand (\$35,000.00) Dollars, which is in excess of the arbitration jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania.

**COUNT IV**

**BREACH OF DUTY OF CARE TO BUSINESS INVITEE**

**Plaintiff Robert Baird**

**vs.**

**Defendant ARMSTRONG WORLD INDUSTRIES, INC. NOW KNOWN AS  
ARMSTRONG WORLD INDUSTRIES ASBESTOS PERSONAL INJURY TRUST**

**And**

**Defendant Reorganized AWI**

101. Plaintiff realleges paragraphs 1 through 100 and incorporates them by reference as paragraphs 1 through 100 of Count IV of this Complaint.

102. Pennsylvania law recognizes a cause of action for Breach of Duty of Care to Business Invitee. *Summers v. Giant Food Stores, Inc.*, 743 A.2d 498, 506 (Pa. Super. Ct. 1999)

103. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI were the possessor of the properties in Beaver Falls, PA, where Plaintiff Robert Baird was employed by Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Reorganized AWI during the relevant time period.

104. Defendant Armstrong World Industries, Inc., now known as, Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI are subject to environmental liability for the physical harm caused to business invitees.

105. Plaintiff Robert Baird was a business invitee, lawfully on the properties, as a laborer to perform truck driver duties and to work as a manufacturing employee on the ceiling tile production line.

106. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI knew or should have known, through the exercise of reasonable care, that Plaintiff Robert Baird was exposed to significant amounts of visible, friable, respirable asbestos containing dust used in, on and around the equipment and facilities owned and operated by Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI.

107. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI should have expected that the Plaintiff Robert Baird would not discover or realize the danger and will fail to protect himself against it.

108. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI failed to exercise reasonable care to protect Plaintiff Robert Baird against the exposure to deadly friable, visible asbestos dust during Plaintiff Robert Baird's employment by Defendant

Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Reorganized AWI.

109. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI failed to exercise reasonable care to protect Plaintiff Robert Baird against the danger.

110. As a result of Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, conduct, Plaintiff Robert Baird suffered exposure and offensive physical contact to his person by friable, respirable deadly asbestos fibers during his employment at Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI's facilities in Beaver Falls, PA.

111. The exposure to friable, respirable deadly asbestos fibers during his employment at Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, and Defendant Reorganized AWI's facilities in Beaver Falls, PA was a significant contributing factor in causing Plaintiff Robert Baird's Mesothelioma and death.

112. Because Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI's treatment of Plaintiff Robert Baird was willful and/or in reckless disregard of Plaintiff Robert Baird's common law rights, Plaintiff Robert Baird is entitled to an award of punitive damages against Defendants.



WHEREFORE, Plaintiff Robert Baird has been damaged and claims damages of the defendants, jointly and severally, in an amount in excess of Thirty-Five Thousand (\$35,000.00) Dollars, which is in excess of the arbitration jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania.

**COUNT V**

**BATTERY**

**Plaintiff Robert Baird**

**vs.**

**Defendant ARMSTRONG WORLD INDUSTRIES, INC. NOW KNOWN AS  
ARMSTRONG WORLD INDUSTRIES ASBESTOS PERSONAL INJURY TRUST**

**And**

**Defendant Reorganized AWI**

113. Plaintiff Robert Baird realleges paragraphs 1 through 112 and incorporates them by reference as paragraphs 1 through 112 of Count V of this Complaint.

114. Pennsylvania common law recognizes a cause of action for battery which consists of the intentional physical contact upon a party without that party's consent: 'a harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff or a third person to suffer such a contact, or apprehension that such a contact is imminent.' Prosser & Keeton, Law of Torts, at 39 (5th ed. 1984)." *Levenson v. Souser*, 384 Pa. Super. 132, 146, 557 A.2d 1081, 1088 (1989).

115. The Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, and Defendant Reorganized AWI's

intentional actions described hereinbefore without the consent of Plaintiff Robert Baird caused Plaintiff Robert Baird to suffer physical assault by inhaling asbestos fibers in violation of State law.

116. Because of Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, and Defendant Reorganized AWI's knowledge of the hazards associated with exposure to asbestos, Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI could have reasonably anticipated and could have prevented such battery.

117. As a result of Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust, and Defendant Reorganized AWI's conduct, Plaintiff Robert Baird suffered such offensive physical contact inhaling asbestos fibers without his consent.

118. Because Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's, and Defendant Reorganized AWI's treatment of Plaintiff Robert Baird was willful and/or in reckless disregard of Plaintiff Robert Baird's common law rights, Plaintiff Robert Baird is entitled to an award of punitive damages against Defendants.

WHEREFORE, Plaintiff Robert Baird has been damaged and claims damages of the defendants, jointly and severally, in an amount in excess of Thirty-Five Thousand (\$35,000.00) Dollars, which is in excess of the arbitration jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania.

**COUNT VI**

**BREACH OF FIDUCIARY DUTY**

**Plaintiff Robert Baird**

**V**

**Defendant Armstrong World Industries, now known as Armstrong World Industries Asbestos Personal Injury Trust and Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually**

119. Plaintiff Robert Baird realleges paragraphs 1 through 118 and incorporates them by reference as paragraphs 1 through 118 of Count VI of this Complaint.

120. Pennsylvania law recognizes that a fiduciary has a duty to “act with scrupulous fairness and good faith in his dealings with the other and refrain from using his position to the other’s detriment and his own advantage.” *Young v. Kaye*, 279 A.2d 759, 763, 443 Pa. 335 (Pa. 1971).

121. To establish a breach of fiduciary duty, Plaintiff Robert Baird must prove, that a fiduciary relationship exists, that the fiduciary has breached the duty of loyalty and that the misconduct caused the beneficiary to suffer damages.

122. A fiduciary duty exists as a matter of law, e.g., principal and agent or attorney and client. *Yenchi v. Ameriprise Fin., Inc.*, 161 A.3d. 811, 820 (Pa. 2017) (*McCown v. Fraser*, 192 A. 674 (Pa. 1937)

123. A fiduciary relationship exists under Pennsylvania law where “one person has reposed a special confidence in another to the extent that the parties do not deal with each other on equal terms, either because of an overmastering dominance on one side

or weakness, dependence or justifiable trust, on the other." *Becker v. Chicago Title Ins. Co.*, No. 03-2292, 2004 U.S. Dist. LEXIS 1988 at 23, 2004 WL 228672 (E.D. Pa. 2004) (quoting *PennDOT v. E-Z Parks Inc.*, 620 A.2d 712, 717 (Pa. Commw. Ct. 1993)). By virtue of the respective strength and weakness of the parties in such a relationship, one has the power to take advantage of or exercise undue influence over the other. *Etoll, Inc. v. Elias/Savion Adver.*, 811 A.2d 10, 22 (Pa. Super. Ct. 2002) (quoting *Valley Forge Convention & Visitors Bureau v. Visitor's Servs., Inc.*, 28 F. Supp. 2d 947, 952-53 (E.D. Pa. 1998)).

124. Under Pennsylvania law, attorneys owe a fiduciary duty to their clients, as do majority shareholders to minority shareholders, and joint venturers to their associates. *Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz*, 602 A.2d 1277, 1283 (Pa. 1990) (attorneys); *Ferber v. Am. Lamp Corp.*, 469 A.2d 1046, 1050 (Pa. 1983) (shareholders); *Snellbaker v. Herrmann*, 462 A.2d 713, 718 (Pa. Super. Ct. 1983) (joint venturers). However, a fiduciary relationship can arise in a wide array of individual circumstances, and the possibility of such a relationship cannot be excluded by a concrete rule.

*Basile v. H & R Block, Inc.*, 777 A.2d 95, 103 (Pa. Super. Ct. 2001).

125. Plaintiff Robert Baird is, and has been since his diagnosis with Mesothelioma in April 2016, a "holder", by admission of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, of a present Asbestos Personal Injury Claim.

126. Plaintiff Robert Baird, as a holder of a present Asbestos Personal Injury Claim, timely filed an Asbestos Personal Injury Claim for Mesothelioma as required by

SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC.  
ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION  
PROCEDURES (2017). (The TDP)

127. Plaintiff Robert Baird, and all past, present or future, Expedited Review Claimants or Individual Review Claimants with Defendant Armstrong World Industries, Inc., now known as, Armstrong World Industries Asbestos Personal Injury Trust are wholly weak, dependent and inferior to the knowledge, information and influence of its Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually because of a disparity in the superior position giving rise to an abuse of power.

128. The Agreement states that the Defendant Trustees of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, at § 2 POWERS AND TRUST ADMINISTRATION:

(a) The Trustees are and shall act as the *fiduciaries* to the PI Trust in accordance with the provisions of this PI Trust Agreement and the Plan. The Trustees shall, at all times, administer the PI Trust and the PI Trust Assets in accordance with the purposes set forth in § 1.2 above...

Where § 1.2 states:

1.2 PURPOSE. The purpose of the PI Trust is to assume the liabilities of AWI, its predecessors and successors in interest, for all Asbestos Personal Injury Claims (as defined in the Plan), and to use the PI Trust's assets and income to pay the holders of all Asbestos Personal Injury Claims in accordance with this PI Trust Agreement and the TDP in such a way that such ***holders of Asbestos Personal Injury Claims are treated fairly, equitably and reasonably*** ....<sup>13</sup> (Emphasis Added)

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<sup>13</sup> ASBESTOS PERSONAL INJURY SETTLEMENT TRUST AGREEMENT (Form- 8-K, Received- 10-02-2006 15-52-13) retrieved 12/18/2019 <https://content.edgar-online.com/ExternalLink/EDGAR/0000909518-06->

**Defendant Armstrong World Industries, Inc. Now Known as  
Armstrong World Industries Asbestos Personal Injury Trust  
and Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard  
E. Neville, individually  
have Breached their Fiduciary Duty by not acting fairly, equitably and  
reasonably and have not properly applied valuation factors to Plaintiff Robert  
Baird's, nor any Individual Review Claim of the Trust**

129. Under the SECOND AMENDED AND RESTATED ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION PROCEDURES §5.3(b)(2) Valuation Factors to be Considered in Individual Review:

The PI Trust shall liquidate the value of each PI Trust Claim that undergoes Individual Review based on the historic liquidated values of other similarly situated claims in the applicable tort system for the same Disease Level.

130. Rather than treat all Individual Review Claimants, such as Plaintiff Robert Baird, fairly, reasonably and equitably, Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, relies on improper valuation factors based on the Defendant's purposeful obfuscation of its past historic liquidated values in several ways and not the true historic liquidated values of other similarly situated claims in the applicable tort system for the same Disease Level as required.

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000912.html?hash=78147d5102921e72fd492ae92f457cd131b1e25f1ea8c2508526946a7af560d2&dest=MM10-0206\_8KE102\_TXT#MM10-0206\_8KE102\_TXT

131. First, since 1985, Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, with the Trustees complete knowledge, has only settled litigation of past “historic liquidated values of other similarly situated claims in the applicable tort system” as a member of a consortium of asbestos manufacturers and insurers by a secret algorithm determining liability in groups of, not individual actions.

132. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, as part of the ACF and CCR had confidential formulas within the particular settlement group, ACF or CCR, to assess payment in a particular case.

133. Never as part of the ACF, nor the CCR, did Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, disclose, upon information and belief, its share of any individual liquidated value to any Plaintiff in the tort system. These internal valuations by the ACF, and later the CCR, do not accurately reflect any “settlements in the tort system.”

134. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and the Trustees, individually, have actual knowledge that Individual Review claims have, since the inception of the TDP and Individual Review process, if based on past settlements under the ACF or the CCR are not accurately reflected “settlements in the tort system” as required, and reflect payments into a settlement consortium, but not an actual “settlement in the tort system” between Defendant

Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and any particular Plaintiff.

135. Second, additional improper factors remain included in the valuation algorithm since almost two (2) decades have passed since the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust filed its Bankruptcy Petition. Improper, and not fairly, nor equitably nor reasonable factors, such as particular law firms bringing the claim, do not accurately reflect any fairness to Claimants or the current legal landscape of Asbestos, Mesothelioma or Tort actions.

136. There has been no way to directly litigate with Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, since its inclusion in the ACF and, later the CCR. Under the ACF and later the CCR, cases were settled in a group, not litigated to achieve an actual value, by “a meeting of the minds” in settlement of lawsuits against Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust.

137. Since the inception of the TDP, Individual Review has improperly assigned liquidated values to claimants, such as Plaintiff Robert Baird, for liability to an Employee’s valid

Mesothelioma claim:

Where the claimant’s law firm submits clear and convincing evidence to the PI Trust, and the Trustees determine, in their sole discretion, that the claimant’s law firm, prior to the Petition Date, played a substantial role in the prosecution, trial, and resolution of asbestos personal injury claims against the AWI in the Claimant’s Jurisdiction, such as actively participating in court appearances, discovery, and trial of the subject cases (evidence will be required of all three phases: prosecution, trial, and resolution for each law firm involved; necessary evidence will include evidence of active participation in the cases; and the mere referral of a case, without further involvement, will not be viewed as having played a substantial role in the prosecution and



resolution of a case), irrespective of whether a second law firm also was involved, the PI Trust shall include such cases in the settlement and verdict histories for the claimant's law firm in the Claimant's Jurisdiction. If this occurs, the claimant's law firm shall certify, as required by the PI Trust, that it has provided all settlement and verdict history information for asbestos cases against the AWI in which claimant's law firm, prior to the Petition Date, played a substantial role in the prosecution, trial and resolution of the asbestos personal injury claims against the AWI in the Claimant's Jurisdiction, as described above.

*§5.3(b)(2) TDP of Defendant Armstrong World Industries, Inc.  
Now Known as Armstrong World Industries Asbestos  
Personal Injury Trust*

138. With an insurmountable and unattainable standard, there are few, if any, members of the Bar or employees of any law firms, actively litigating asbestos lawsuits, that would be able to fulfill §5.3(b)(2) of the TDP since the ACF was formed in 1985. Any difference between any law firm valuation more than thirty-five (35) years after the formation of the ACF and active and direct personal injury litigation against Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, is a complete fiction and does not treat past, present and future holder's, including Plaintiff Robert Baird's, Asbestos Personal Injury Claims fairly, equitably and reasonably and breaches the Trustees' fiduciary duty to all Individual Review Claimants with the Defendant, past, present and future by violating the Purpose of the Trust according to §1.2 of the Agreement.

139. In addition, any settlement that occurred under the previous settlement consortiums, and any payment thereof by Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and inclusions of those settlements in any present settlement valuation algorithm are improper because there is no guarantee under the consortium's confidential formularies (ACF or CCR) of any actual

direct liability, in any particular claim or case, to Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust.

140. Neither the ACF nor the CCR settlement valuation algorithm require exposure to each and every member's products of asbestos liability. There is no guarantee that in any particular settlement as part of the ACF, and later the CCR, reflects direct liability for Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, in an individual action, while the present Trust claim system, under the TDP, requires a minimum nexus to Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's asbestos personal injury liability.

**Trustees are In Breach of Their Duties Enumerated under The Agreement and TDP to disclose Financial and Claim Information to Claimants**

141. § 2.2 of the Agreement states that the Trustees shall prepare an Annual Report:

...

(c) The Trustees shall timely account to the Bankruptcy Court as follows:

(i)... The Trustees shall provide a copy of such report to the TAC, the Future Claimants' Representative, and Reorganized AWI when such reports are filed with the Bankruptcy Court.

(ii) Simultaneously with delivery of each set of financial statements referred to in Article 2.2(c)(i) above, the Trustees shall cause to be prepared and filed with the Bankruptcy Court a report containing a summary regarding the number and type of claims disposed of during the period covered by the financial statements. The Trustees shall provide a copy of such report to the

TAC, the Future Claimants' Representatives, and Reorganized AWI when such report is filed.

(iii) All materials required to be filed with the Bankruptcy Court by this Section 2.2(c) shall be available for inspection by the public in accordance with procedures established by the Bankruptcy Court and shall be filed with the Office of the United States Trustee for the District of Delaware.

...

(i) Periodically, but not less often than once a year, the Trustees shall make available to claimants and other interested parties the number of claims by disease levels that have been resolved both by individual review and by arbitration, as well as by trial, indicating the amounts of the awards and the averages of the awards by jurisdiction pursuant to § 7.10 of the TDP.

Where §7.10 of the TDP states the same:

§7.10 PI Trust Disclosure of Information. Periodically, but not less often than once a year, the PI Trust shall make available to claimants and other interested parties, the number of claims by disease levels that have been resolved both by the Individual Review Process and by arbitration, as well as by litigation in the tort system, indicating the amounts of the awards and the averages of the awards by jurisdiction.

142. While in the possession of claim evaluation information as required under the Agreement and TDP, the Defendant Trustees, individually, by their ultra vires conduct, i.e., that the trustee was acting outside the scope of his or her assigned responsibilities, and have not made past Individual Review claim statistical information “Available” in a

way “that such holders of Asbestos Personal Injury Claims are treated fairly equitably and reasonably...” according to the Agreement, §1.2.

143. Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, does not make up to date, “Available” copies of the Annual Reports as is required by the Agreement. Only copies of the 2013 and 2014, upon information and belief, Annual Reports of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, are available on the Defendant’s website (Retrieved 1/29/2020). Though the previous and subsequent Annual Reports are to be made “Available” according to the Agreement, they are not available to claimants or the public on the Bankruptcy Court’s PACER system. Other than Annual Reports for 2013 and 2014, the Annual Reports are only “Available” at great expense from the Bankruptcy Court, to any claimants such as Plaintiff Robert Baird.

144. The Plaintiff Robert Baird has been damaged by the conduct of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, and its Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually. No Individual Review or Exigent Review claimant past, present or future, upon information and belief, including Plaintiff Robert Baird, has been provided the crucial information, nor has it been made “Available” to claimants and other interested parties in breach of the Defendant Trustees’ Fiduciary Duty under §2.2 of the Agreement and §7.10 of the TDP.

145. The information under §2.2 of the Agreement and §7.10 of the TDP, including, the number of claims by disease levels that have been resolved both by the Individual Review Process and by arbitration, as well as by litigation in the tort system, indicating the amounts of the awards and the averages of the awards by jurisdiction is being knowingly and wrongfully withheld by the Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually.

146. The required information is not contained in the Annual Reports and remains shrouded in secrecy, contrary to the Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually, fiduciary obligations for Claims to be treated fairly, equitably and reasonably under the Agreement and TDP.

**Relief Sought for Breach of Fiduciary Duty by Armstrong World Industries Asbestos Personal Injury Trust by Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually**

- i. Request for a Preliminary, and subsequent, Permanent Injunction, Ordering the Proper Valuation of Claims and Disclosure of Information Required to Be Disclosed by Defendant Armstrong World Industries Asbestos Personal Injury Trust and Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually According to the Agreement and the TDP**

147. According to the *Restatement 2d of Torts* §874 Violation of Fiduciary Duty One standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.

*Restatement 2d of Torts, § 874*

148. Under Restatement Trusts 2d §197, Claimants, including Plaintiff Robert Baird have Equitable Remedies, as Beneficiaries of Defendant Armstrong World Industries,

Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust. The beneficiary of a trust can maintain a suit

- (a) to compel the trustee to perform his duties as trustee;
- (b) to enjoin the trustee from committing a breach of trust;
- (c) to compel the trustee to redress a breach of trust;

*Restatement Trusts 2d §197*

149. Plaintiff Robert Baird, as a beneficiary and Claimant of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, may bring a claim to enjoin this action by the Defendant and its Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually, Restatement 2d Trusts, §214, when there are Several Beneficiaries, as in this case,

- (1) If there are several beneficiaries of a trust, any beneficiary can maintain a suit against the trustee to enforce the duties of the trustee to him or to enjoin or obtain redress for a breach of the trustee's duties to him.

*Restatement 2d Trusts, §214(1)*

150. The six essential prerequisites that a moving party must demonstrate to obtain a preliminary injunction are as follows: (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and, (6) the

preliminary injunction will not adversely affect the public interest. *Warehime v.*

*Warehime*, 860 A.2d 41, 46-47 (Pa. 2004) (citing *Summit Towne Centre, Inc.*, 828 A.2d at 1001)).

151. A preliminary injunction is therefore required to enjoin payment of All claims, Expedited Review or Individual Review, with Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, pending the adjudication of this cause.

152. All Individual Review claimants, including Plaintiff Robert Baird, suffer and continue to suffer irreparable harm, continued delay and increased expense without proper, fair and equitable Individual Review valuation to claims and without claimants being provided the essential information to properly evaluate his or her claim required under §2.2 of the Agreement and §7.10 of the TDP. This harm cannot be compensated with money damages.

153. Plaintiff Robert Baird, nor any claimant past or present, has not been provided, upon information and belief, information due him or her, and a greater injury would result from refusing the injunction and not ordering the release of the required information under §2.2 of the Agreement and §7.10 of the TDP than from granting it. In addition, release of the required information prevents harm to future Claimants with the Defendant Armstrong World Industries, Inc., now Known as Armstrong World Industries Asbestos Personal Injury Trust. At present, and in the past, Individual Review Claimants are unable to properly evaluate and ascertain comparable values of claims, by disease and jurisdiction, without release of this information as legally required of the

Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually under §7.10 of the TDP and §2.2 of the Agreement. No harm will befall any other interested parties, such as other Individual Review claimants, by forcing the disclosure of previously overdue information.

154. Plaintiff Robert Baird, as will all Individual Review claimants, will be restored to an informed, knowledgeable claimant position relative to the Defendant Armstrong World Industries, Inc., now Known as Armstrong World Industries Asbestos Personal Injury Trust. Then, if properly restored and informed and provided all information past due, all Individual Review and Expedited Review claimants including Plaintiff Robert Baird and Defendant ARMSTRONG WORLD INDUSTRIES, INC. NOW KNOWN AS ARMSTRONG WORLD INDUSTRIES ASBESTOS PERSONAL INJURY TRUST, will have their relative status as it existed immediately prior to the alleged improper withholding of critical claim evaluation information and in conformity with the TDP and the Agreement.

155. The Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually, are required to make available and disclose information to Plaintiff Robert Baird, and similarly situated Individual Review and Expedited Review claimants with Defendant Armstrong World Industries, Inc., now Known as Armstrong World Industries Asbestos Personal Injury Trust, as Plaintiff Robert Baird and all claimants have an unequivocal right for the information to be made “Available” according §7.10 of the TDP and §2.2 of the Agreement.



156. Disclosure of the information, and thus transparency of valuation factors concerning when “settlement tort system”, previously obligated to be disclosed under the TDP and the Agreement, and to be “made available” is reasonably suited to abate the offending withholding of claim information due all Defendant Armstrong World Industries, Inc., now Known as Armstrong World Industries Asbestos Personal Injury Trust, claimants.

157. The public interest is promoted, rather than adversely affected in any manner, by Trustees abiding by their sworn and ordered Fiduciary duty as Trustees given specific information disclosure instructions within the Agreement and TDP.

- ii. **Plaintiff Robert Baird is entitled to recover at Law for the Tort harm done to his legally protected interests by the wrongful conduct of the fiduciary Armstrong World Industries Asbestos Personal Injury Trust and Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville individually. Plaintiff Robert Baird is entitled to profits that result to the fiduciary from his breach of duty and to be the beneficiary of a constructive trust in the profits.**

158. The Restatement 2d Torts, §874 Violation of Fiduciary Duty states, “One standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.” The damages, in addition to or in substitution for these damages the beneficiary may be entitled to restitutionary recovery, since not only is he entitled to recover for any harm done to his legally protected interests by the wrongful conduct of the fiduciary, but ordinarily he is entitled to profits that result to the fiduciary from his breach of duty and to be the beneficiary of a constructive trust in the profits made by the Defendant Trustees, Anne M. Ferazzi,

individually, Harry Huge, individually, and Richard E. Neville individually since 2006 as Trustees.

*The Restatement 2d Torts, §874 Violation of Fiduciary Duty Comment b.*

159. "[I]f the trustee commits a breach of trust, he is chargeable with (a) any loss or depreciation in value of the trust estate resulting from the breach of trust; or (b) **any profit made by him through the breach of trust**; or (c) any profit which would have accrued to the trust estate if there had been no breach of trust." Restatement (Second) of Trusts § 205. Citing *Dentler Family Trust*, 873 A.2d 738 (Pa. Super. 2005) (emphasis added)

*In re Paxson Trust I*, 893 A.2d 99 (Pa. Super. Ct. 2006)

160. Each Defendant Trustee, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually, are liable under Restatement (Second) of Trusts § 224 because either individually or collectively, the Trustees (a) participated in a breach of trust committed by his co-trustee; or (b) improperly delegates the administration of the trust to his co-trustee; or (c) approves or acquiesces in or conceals a breach of trust committed by his co-trustee; or (d) by his failure to exercise reasonable care in the administration of the trust has enabled his co-trustee to commit a breach of trust; or (e) neglects to take proper steps to compel his co-trustee to redress a breach of trust.

161. Each Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually, are liable according to the Restatement of Restitution §138, Violation of a Fiduciary Duty where a fiduciary who has acquired a benefit by breach of his duty as fiduciary is under a duty of restitution to the beneficiary.

WHEREFORE, Plaintiff Robert Baird has been damaged, and in addition to the claim for a Preliminary and Permanent Injunctions, claims damages of the Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's and Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually, jointly and severally, Plaintiff Robert Baird claims Attorney Fees and Costs of prosecution of the instant action for a Temporary and Permanent Injunction as damages, and any other damages the Court deems just in an amount in excess of Thirty-Five Thousand (\$35,000.00) Dollars, which is in excess of the arbitration jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania.

### **Count VII**

#### **BREACH OF FIDUCIARY DUTY**

**Plaintiff Robert Baird**

**V**

**Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust**

**And**

**Defendant Armstrong World Industries Asbestos Personal Injury Trust's Trust Advisory Committee and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually**

162. Plaintiff realleges paragraphs 1 through 161 and incorporates them by reference as paragraphs 1 through 161 of Count VII of this Complaint.

163. Pennsylvania law recognizes a cause of action for Breach of Fiduciary Duty.

164. A fiduciary duty exists as a matter of law, e.g., principal and agent or attorney and client. *Yenchi v. Ameriprise Fin., Inc.*, 161 A.3d. 811, 820 (Pa. 2017) (McCown v. Fraser, 192 A. 674 (Pa. 1937))

165. The ASBESTOS PERSONAL INJURY SETTLEMENT TRUST AGREEMENT (the Agreement), establishes, pursuant to § 5.2, that “The members of the TAC shall serve in a **fiduciary capacity representing all holders of present Asbestos Personal Injury Claims.**” (Emphasis added)

166. The Restatement 2d Torts, §874 Violation of Fiduciary Duty states “One standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.” §874 at comment (b) states that the damages, “in addition to or in substitution for these damages the beneficiary may be entitled to restitutionary recovery, since not only is he entitled to recover for any harm done to his legally protected interests by the wrongful conduct of the fiduciary, but ordinarily he is entitled to profits that result to the fiduciary from his breach of duty and to be the beneficiary of a constructive trust in the profits.”

167. Plaintiff Robert Baird and all past, present or future, Expedited Review or Individual Review Claimants with Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, are wholly weak, dependent and inferior to the knowledge, information and influence of the TAC and its Defendant members, John D. Cooney, Russell W. Budd, Steven Kazan, Joseph F. Rice, and Perry Weitz because of a disparity in the superior position giving rise to an abuse of power.

168. Plaintiff Robert Baird could not discover this breach of fiduciary duty and the cause of action for Breach of Fiduciary Duty did not accrue until Plaintiff Robert Baird received his “*Secret*” Individual Review Offer on January 31, 2019.

169. A fiduciary has a duty to “act with scrupulous fairness and good faith in his dealings with the other and refrain from using his position to the other’s detriment and his own advantage.” *Young v. Kaye*, 279 A.2d 759, 763, 443 Pa. 335 (Pa. 1971)

170. Upon information and belief, Defendants John D. Cooney, Russell W. Budd, Steven Kazan, Joseph F. Rice, and Perry Weitz, all represent additional holders of present Asbestos Personal Injury Claims in their leadership roles at their respective law firms.

171. The TAC, Defendants John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually, are provided superior information that includes the Annual Reports (The Agreement § 2.2 (c)) only made “Available” through the Bankruptcy Court at great expense to claimants.

172. The TAC, Defendants John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually, are provided superior access to the administration of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, with quarterly meetings solely among the Trustees, TAC and FCR. (The Agreement § 2.2 (g))

173. Because the TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually are privy to budget and cash flow projections under §2.2 (d) of the Agreement of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, each possesses superior knowledge to that of any individual claimant not represented by one of TAC Member's law firms.

174. Under § 3.2 Consent and Consultation Procedures of the TDP, the Trustees are powerless until consulting, and receiving the consent of the TAC members and FCR (described below) regarding any significant changes to the administration of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust.

175. The TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually, are obligated as fiduciaries to all present claimants to ensure that the Trustees disclose all information required by making it "Available" to claimants, including all information required to be disclosed under §7.10 of the TDP and §2.2 of the Agreement.

176. Presumably, the TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually, have been provided by the Trustees, the information required to be disclosed under §7.10 of the TDP and §2.2 of the Agreement

177. The TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually, are obligated, as fiduciaries, to all present claimants to ensure that the valuation algorithm is applied fairly, reasonably and equitably and does not favor one claimant represented by one law firm over another claimant represented by a different law firm.

178. The TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually, are obligated, as fiduciaries, to all present claimants to ensure that the correct data is accurately applied in each claim in the valuation algorithm.

179. The TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually, should not accrue a windfall of fees because of early involvement in asbestos litigation in the 1980's to guarantee a lifetime of Attorney Fees as a member of the TAC.

**Request for Preliminary, and subsequent Permanent Injunction, Ordering The TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually, by way of its authority under the TDP to disclose information as required to be Available and evaluate Claims fairly, equitably and reasonably**

180. The six essential prerequisites that a moving party must demonstrate to obtain a preliminary injunction are as follows: (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and,

concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and, (6) the preliminary injunction will not adversely affect the public interest. *Warehime v.*

*Warehime*, 860 A.2d 41, 46-47 (Pa. 2004) (citing *Summit Towne Centre, Inc.*, 828 A.2d at 1001)).

181. All Individual Review claimants, including Plaintiff Robert Baird, suffer and continue to suffer immediate and irreparable harm, delay and increased expense without proper, fair and equitable Individual Review valuation to claims and without claimants being provided the essential information to properly evaluate his or her claim required under §2.2 of the Agreement and §7.10 of the TDP. This harm cannot be compensated with money damages.

182. Plaintiff Robert Baird, nor any claimant past or present, has not been provided, upon information and belief, information due him or her, and a greater injury would result from refusing the injunction and not ordering the release of the required information under §2.2 of the Agreement and §7.10 of the TDP than from granting it. In addition, release of the required information prevents harm to future claimants with the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust. At present, and in the past, Individual Review Claimants are unable to properly evaluate and ascertain comparable values of claims,



by disease and jurisdiction, without release of this information as legally required under §7.10 of the TDP and §2.2 of the Agreement.

183. No harm will befall any other interested parties, such as other Individual Review claimants, by forcing The TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually, as fiduciaries of all present claimants, to disclose previously overdue information.

184. Plaintiff Robert Baird, as will all Individual Review claimants, will be restored to an informed, knowledgeable claimant position relative to the Trust. Then, if properly restored and informed and provided all information past due, all Individual Review and Expedited Review claimants including Plaintiff Robert Baird and Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, will have their relative status as it existed immediately prior to the alleged improper withholding of critical claim evaluation information and in conformity with the TDP and the Agreement.

185. The TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually are required to advocate for the Plaintiff to make “Available” and disclose information to Plaintiff Robert Baird, as with all similarly situated Individual Review claimants with Defendant Armstrong World Industries, Inc., now Known as Armstrong World Industries Asbestos Personal Injury Trust, as Plaintiff Robert Baird

and all claimants have an unequivocal right that the information be made “Available” according §7.10 of the TDP and §2.2 of the Agreement.

186. Disclosure of the information previously obligated to be disclosed under the TDP and the Agreement and to be “made available” is reasonably suited to abate the offending withholding of claim information due all Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, claimants.

187. The public interest is promoted, rather than adversely affected in any manner, by The TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually abiding by their sworn and ordered Fiduciary duty given specific information disclosure instructions within the Agreement and TDP.

**Plaintiff Robert Baird is entitled to Profits for the Breach of Fiduciary Care of The TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually**

188. The Restatement 2d Torts, §874 Violation of Fiduciary Duty states, “One standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.” The damages, in addition to or in substitution for these damages the beneficiary may be entitled to restitutionary recovery, since not only is he entitled to recover for any harm done to his legally protected interests by the wrongful conduct of the fiduciary, but ordinarily he is entitled to profits that result to the fiduciary from his breach of duty and to be the beneficiary of a

constructive trust in the profits made by the TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually since 2006 as members of the TAC.

*The Restatement 2d Torts, §874 Violation of Fiduciary Duty Comment b.*

WHEREFORE, Plaintiff Robert Baird has been damaged, and in addition to the claim for a Preliminary and Permanent Injunctions, claims damages of the Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's and the TAC and its Defendant members, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, jointly and severally, Plaintiff Robert Baird claims Attorney Fees and Costs of prosecution of the instant action for a Temporary and Permanent Injunction as damages, and any other damages the Court deems just in an amount in excess of Thirty-Five Thousand (\$35,000.00) Dollars, which is in excess of the arbitration jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania.

### **Count VIII**

#### **BREACH OF FIDUCIARY DUTY**

**Plaintiff Robert Baird**

**V**

**Defendant Armstrong World Industries, Inc.'s, now known as Armstrong World Industries Asbestos Personal Injury Trust's**

**And**

**Defendant Armstrong World Industries Asbestos Personal Injury Trust Future Claimants Representative and Defendant Dean Trafalet, individually**

189. Plaintiff realleges paragraphs 1 through 188 and incorporates them by reference as paragraphs 1 through 188 of Count VIII of this Complaint.

190. Pennsylvania law recognizes a cause of action for Breach of Fiduciary Duty.

191. A fiduciary duty exists as a matter of law, e.g., principal and agent or attorney and client. *Yenchi v. Ameriprise Fin., Inc.*, 161 A.3d. 811, 820 (Pa. 2017) (*McCown v. Fraser*, 192 A. 674 (Pa. 1937))

192. According to the ASBESTOS PERSONAL INJURY SETTLEMENT TRUST AGREEMENT (the Agreement) establishes, pursuant to THE FUTURE CLAIMANTS' REPRESENTATIVE (FCR) under the Agreement § 6.1 DUTIES: The initial Future Claimants' Representative shall be ... Dean M. Traftlet, Esquire. He shall serve in a ***fiduciary capacity***, representing the interests of the holders of future Asbestos Personal Injury Claims for the purpose of protecting the rights of such persons. (Emphasis added).

193. As of the 2018 Annual Report of Defendant Armstrong World Industries, Inc. Now Known as Armstrong World Industries Asbestos Personal Injury Trust, Mr. Traftlet continues to serve as Future Claimants Representative. (Exhibit 4)

194. The Restatement 2d Torts, §874 Violation of Fiduciary Duty states “One standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.” §874 at comment (b) states that the damages, “in addition to or in substitution for these damages the beneficiary may be entitled to restitutionary recovery, since not only is he entitled to recover for any harm done to his legally protected interests by the wrongful conduct of the fiduciary, but ordinarily he is entitled to profits that result to the fiduciary from his breach of duty and to be the beneficiary of a constructive trust in the profits.”

195. Plaintiff Robert Baird and all past, present or future, Expedited Review Claimants or Individual Review Claimants with Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, are wholly weak, dependent and inferior to the knowledge, information and influence of the FCR, Mr. Traftlet, because of a disparity in the superior position giving rise to an abuse of power.

196. Plaintiff Robert Baird could not discover this breach of fiduciary duty and the cause of action for Breach of Fiduciary Duty did not accrue until Plaintiff Robert Baird received his “*Secret*” Individual Review Offer on January 31, 2019.

197. A fiduciary has a duty to “act with scrupulous fairness and good faith in his dealings with the other and refrain from using his position to the other’s detriment and his own advantage.” *Young v. Kaye*, 279 A.2d 759, 763, 443 Pa. 335 (Pa. 1971)

198. The Defendant Armstrong World Industries, Inc.’s, now known as Armstrong World Industries Asbestos Personal Injury Trust’s FCR, Defendant Dean Traftlet, individually, is provided superior information that includes the Annual Reports (The Agreement § 2.2 (c)) not made “Available” through the Bankruptcy Court at great personal expense to Plaintiff Robert Baird and all other similarly situated claimants.

199. The FCR, Defendant Dean Traftlet, individually, is provided superior access to the administration of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, with quarterly meetings solely among the Trustees, TAC and FCR. (The Agreement § 2.2 (g))

200. The FCR, Defendant Dean Traftlet, individually, is obligated, as a fiduciary, to all future claimants to ensure that the valuation algorithm is applied fairly, reasonably and

equitably and does not favor one claimant represented by one law firm over another claimant represented by a different law firm.

201. Because the FCR, Defendant Dean Traftalet, individually is privy to budget and cash flow projections under §2.2 (d) of the Agreement of Defendant Armstrong World Industries, Inc. Now Known as Armstrong World Industries Asbestos Personal Injury Trust, he possesses superior knowledge to that of any individual claimant.

202. Under § 3.2 Consent and Consultation Procedures of the TDP, the Trustees are powerless until consulting, and receiving the consent of the TAC (described above) members and FCR regarding any significant changes to the administration of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust.

203. The FCR, Defendant Dean Traftalet, individually is obligated as a fiduciary to all future claimants to ensure that the Trustees disclose all information required by making it “Available” to future claimants, including all information required to be disclosed under §7.10 of the TDP and §2.2 of the Agreement.

204. Presumably, the FCR, Defendant Dean Traftalet, individually, has been provided by the Trustees the information required to be disclosed under §7.10 of the TDP and §2.2 of the Agreement.

205. The FCR, and Defendant Dean Traftalet, individually, is obligated as a fiduciary to all future claimants to ensure that the valuation algorithm is applied fairly, reasonably and equitably and not favoring one claimant with a law firm over a claimant with another law firm.

206. The FCR, and Defendant Dean Traftalet, individually, is obligated ,as a fiduciary, to all future claimants, to ensure that the correct data is accurately applied in each claim in the valuation algorithm.

207. The FCR and Defendant Dean Traftalet, individually, should not accrue a windfall of fees because of early involvement in asbestos litigation in the 1980's to guarantee a lifetime of Attorney Fees as a Future Claimants Representative (FCR).

**Request for Preliminary, and subsequent Permanent Injunction Ordering The FCR, Dean Traftalet with authority under the TDP to disclose information as required to be Available and evaluate all Claims with Defendant Armstrong World Industries, Inc. Now Known as Armstrong World Industries Asbestos Personal Injury Trust, fairly, equitably and reasonably**

208. The six essential prerequisites that a moving party must demonstrate to obtain a preliminary injunction are as follows: (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and, (6) the preliminary injunction will not adversely affect the public interest. *Warehime v.*

*Warehime*, 860 A.2d 41, 46-47 (Pa. 2004) (citing *Summit Towne Centre, Inc.*, 828 A.2d at 1001)).

209. All Individual Review claimants, including Plaintiff Robert Baird, suffer and continue to suffer immediate and irreparable harm, delay and increased expense without proper, fair and equitable Individual Review valuation to claims and without claimants being provided the essential information to properly evaluate his or her claim required under §2.2 of the Agreement and §7.10 of the TDP. This harm cannot be compensated with money damages.

210. Plaintiff Robert Baird, nor any claimant past or present, has not been provided, upon information and belief, information due him or her, and a greater injury would result from refusing the injunction and not ordering the release of the required information under §2.2 of the Agreement and §7.10 of the TDP than from granting it. In addition, release of the required information prevents harm to future claimants with the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust. At present, and in the past, Individual Review Claimants are unable to properly evaluate and ascertain comparable values of claims, by disease and jurisdiction, without release of this information as legally required under §7.10 of the TDP and §2.2 of the Agreement.

211. No harm will befall any other interested parties, such as other Individual Review claimants, by forcing FCR and Defendant Dean Trafalet, individually, as a fiduciary of all future claimants, to disclose previously overdue information.

212. Plaintiff Robert Baird, as will all Individual Review claimants, will be restored to an informed, knowledgeable claimant position relative to the Trust. Then, if properly restored and informed and provided all information past due, all Individual Review and



Expedited Review claimants including Plaintiff Robert Baird and Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, will have their relative status as it existed immediately prior to the alleged improper withholding of critical claim evaluation information and in conformity with the TDP and the Agreement.

213. The FCR, and Defendant Dean Traftalet, individually, is required to advocate for the Plaintiff, when he was a future claimant, to make “available” and disclose information to Plaintiff Robert Baird, as with all similarly situated Individual Review claimants with Defendant ARMSTRONG WORLD INDUSTRIES, INC. NOW KNOWN AS ARMSTRONG WORLD INDUSTRIES ASBESTOS PERSONAL INJURY TRUST, as Plaintiff Robert Baird and all claimants have an unequivocal right that the information be made “Available” according §7.10 of the TDP and §2.2 of the Agreement.

214. Disclosure of the information previously obligated to be disclosed under the TDP and the Agreement and to be “made available” is reasonably suited to abate the offending withholding of claim information due all Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, claimants.

215. The public interest is promoted, rather than adversely affected in any manner, by the FCR, and Defendant Dean Traftalet, individually abiding by his sworn and ordered Fiduciary duty given specific information disclosure instructions within the Agreement and TDP.

**Plaintiff Robert Baird is entitled to Profits for the Breach of Fiduciary Care of The FCR, Dean Traftalet**

216. The Restatement 2d Torts, §874 Violation of Fiduciary Duty states “One standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.” The damages, in addition to or in substitution for these damages the beneficiary may be entitled to restitutionary recovery, since not only is he entitled to recover for any harm done to his legally protected interests by the wrongful conduct of the fiduciary, but ordinarily he is entitled to profits that result to the fiduciary from his breach of duty and to be the beneficiary of a constructive trust in the profits made by The FCR, Defendant Dean Trafalet, individually since 2006 as the FCR.

*The Restatement 2d Torts, §874 Violation of Fiduciary Duty Comment b.*

WHEREFORE, Plaintiff Robert Baird has been damaged, and in addition to the claim for a Preliminary and Permanent Injunctions, claims damages of the Defendant Armstrong World Industries, Inc.’s, now known as Armstrong World Industries Asbestos Personal Injury Trust and FCR Defendant Dean Trafalet, jointly and severally, Plaintiff Robert Baird claims Attorney Fees and Costs of prosecution of the instant action for a Temporary and Permanent Injunction as damages, and any other damages the court deems just, in an amount in excess of Thirty-Five Thousand (\$35,000.00) Dollars, which is in excess of the arbitration jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania.

### **Count IX**

### **AIDING AND ABETTING BREACH OF FIDUCIARY DUTIES**

**Of TRUSTEES OF THE DEFENDANT ARMSTRONG WORLD INDUSTRIES, INC.  
NOW KNOWN AS ARMSTRONG WORLD INDUSTRIES ASBESTOS PERSONAL  
INJURY TRUST**

**Plaintiff Robert Baird**

**V**

**Defendant Armstrong World Industries, Inc. Now Known as Armstrong World  
Industries Asbestos Personal Injury Trust**

**And**

**The TAC, Defendants John D. Cooney, individually, Russell W. Budd, individually,  
Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz,  
individually, are provided**

**And**

**The Defendant FCR, Dean Traftlet**

**And**

**Defendant Delaware Claims Processing Facility**

**and**

**Defendant Mary Ellen Nickel, individually**

217. The elements for a claim for aiding and abetting breach of a fiduciary duty under Pennsylvania law would be: (1) a breach of a fiduciary duty owed to another; (2) knowledge of the breach by the aider and abettor; and (3) substantial assistance or encouragement by the aider and abettor in effecting that breach. *Id.* at 8 (citing, Restatement (Second) Torts § 876 (1979)).

*Koken v. Steinberg*, 825 A.2d 723, 732 (Pa. Commw. Ct. 2003)

218. Restatement of Restitution §138 (2) A third person who has colluded with fiduciary in committing a breach of duty, and obtained a benefit therefrom, is under a duty of restitution to the beneficiary.

219. In the instant matter, given the Defendant Trustees, Anne M. Ferazzi, individually, Harry Huge, individually, and Richard E. Neville, individually, of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal

Injury Trust, The Defendant TAC, John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually, and the Defendant FCR, Dean Trafalet, individually, have breached their duty by not evaluating claims in compliance with fairness, equity and reasonableness, nor have they disclosed information as required under the Agreement and the TDP, then the Delaware Claims Processing Facility and, Mary Ellen Nickel, individually, as processor of, and transmitter of communication, to Claimants with Defendant Armstrong World Industries, Inc. Now Known as Armstrong World Industries Asbestos Personal Injury Trust's, claims know of the failure to properly disclose information under terms of the TDP and the Agreement.

220. In addition, as the processor of claims for Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, Defendant Delaware Claims Processing Facility and, Mary Ellen Nickel, individually, provides substantial assistance by controlling Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust's, website where none of the information required is available though the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, under unequivocal obligation for the information be made "available" according §7.10 of the TDP and §2.2 of the Agreement.

Defendant Delaware Claims Processing Facility, through its agent and, Defendant Mary Ellen Nickel, individually, transmitted a "Secret" offer.

221. By concealment of Information and transmitting secret offers, Defendant Delaware Claims Processing Facility and, Defendant Mary Ellen Nickel, individually provided substantial assistance or encouragement by the aider and abettor in effecting that breach because Defendant Delaware Claims Processing Facility and, Defendant Mary Ellen Nickel, individually purport to analyze claims and disseminate information on behalf of Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust.

WHEREFORE, Plaintiff Robert Baird has been damaged, and in addition to the claim for a Preliminary and Permanent Injunctions, claims damages of the Defendant Armstrong World Industries, Inc. Now Known as Armstrong World Industries Asbestos Personal Injury Trust and The TAC, Defendants John D. Cooney, individually, Russell W. Budd, individually, Steven Kazan, individually, Joseph F. Rice, individually, and Perry Weitz, individually, and The Defendant FCR, Dean Traftlet and Defendant Delaware Claims Processing Facility and Defendant Mary Ellen Nickel, individually, jointly and severally, Plaintiff Robert Baird claims Attorney Fees and Costs of prosecution of the instant action for a Temporary and Permanent Injunction as damages, in an amount in excess of Thirty-Five Thousand (\$35,000.00) Dollars, which is in excess of the arbitration jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania.

**Count X**

**UNJUST ENRICHMENT**

**Plaintiff Robert Baird**

**v.**

**Defendant Armstrong World Industries, Inc. Now Known as Armstrong World Industries Asbestos Personal Injury Trust**

**And**  
**Defendant Reorganized AWI**

222. Plaintiff realleges paragraphs 1 through 221 and incorporates them by reference as paragraphs 1 through 221 of Count X of this Complaint.

223. The injuries and damages suffered by Plaintiff Robert Baird, were caused by Armstrong World Industries, Inc. (Reorganized AWI) and were the direct and proximate result of failure to protect Plaintiff Robert Baird and create a safe work environment for him and other employees.

224. Defendant Reorganized AWI received a benefit of not having to pay the full amount of any potential settlement to any consumer, user or employee victim of asbestos related disease. This benefit conferred on it by Plaintiff Robert Baird, allowed Defendant Reorganized AWI to escape liability unjustly without proper provisions for potential claims by employees in the future.

225. Pennsylvania common law provides for the claims for the unjust enrichment of Defendant Reorganized AWI entitle Plaintiff Robert Baird to a cause of action pursuant to *Styer v. Hugo*, 619 A.2d 347, 351-352, 422 Pa. Super. 262 (Pa. Super. Ct., 1993)

226. To state a claim for unjust enrichment, a Plaintiff must set forth the following elements: (1) benefits conferred on the defendant by the plaintiff; (2) appreciation of such benefits by the defendant; and (3) acceptance and retention of such benefits under circumstances under which it would be inequitable for the defendant to retain the benefit without payment of value. *Allegheny Gen. Hosp. v. Philip Morris, Inc.*, 228 F.3d 429, 447 (3d Cir. 2000). The most significant requirement is that the enrichment to the defendant be unjust. *Thompson v. Glenmede Trust Co.*, Civ. Act. No. 92-5233, 1996

U.S. Dist. LEXIS 16248, at \*29 (E.D.Pa. Oct. 31, 1996) (citing *Myers-Macomber Eng'rs v. M.L.W. Constr. Corp.*, 414 A.2d 357, 360 (Pa.Super. Ct. 1979))

*Stone Street Services v. Daniels*, CIVIL ACTION No. 00-1904 (E.D. Pa. 12292000) (E.D. Pa. 2000)

227. Defendant Reorganized AWI was conferred the benefit of not having to pay for claims previously barred by the Pennsylvania Workers Compensation Statute. After *Tooey* those claims formerly covered by, and anticipated under the Plan §1.8, are now the responsibility of Reorganized AWI and/or Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust.

228. Defendant Reorganized AWI, as well as the Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, are well aware of the former protection The Workers Compensation Statute afforded each to successfully avoid recovery by employees for the past tortious conduct by an organization directly producing, marketing and selling asbestos containing products with knowledge of the associated health hazards for many years.

229. Neither Defendant Reorganized AWI, nor Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, have disgorged the benefits of assets retained as the result of not paying for their prior tortious conduct to their employees including but not limited to, Plaintiff Robert Baird.

WHEREFORE, Plaintiff Robert Baird has been damaged, and in addition to the claim for a Preliminary and Permanent Injunctions, claims damages of the Defendant

Reorganized AWI and Defendant Armstrong World Industries, Inc., now known as Armstrong World Industries Asbestos Personal Injury Trust, jointly and severally, Plaintiff Robert Baird claims Attorney Fees and Costs of prosecution of the instant action for a Temporary and Permanent Injunction as damages, in an amount in excess of Thirty-Five Thousand (\$35,000.00) Dollars, which is in excess of the arbitration jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania.

**JURY DEMAND**

PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL ISSUES TRIABLE BY A JURY RAISED HEREIN.

Respectfully submitted,

/s/Faith Craig.  
Executrix of the Estate of Robert V. Baird,  
Plaintiff, By Counsel

Dated: January 31, 2020

Law Offices of Lee W Davis, Esquire, L.L.C.

BY: /s/Lee W. Davis



Lee W. Davis, Esquire (PA I.D. 77420)  
5239 Butler Street, STE 201  
Pittsburgh, PA 15201  
(412) 781-0525

ATTORNEY FOR PLAINTIFF



### VERIFICATION

I, Faith Craig, Executrix of the Estate of Robert V. Baird, hereby certify that the statements set forth in the foregoing Complaint are true and correct to the best of our knowledge, information and belief. The factual matters set forth therein are based upon information which has been furnished to counsel or which has been gathered by counsel as it pertains to this lawsuit; that the language contained in the foregoing is that of counsel and not the undersigned; and, that to the extent that the contents of same is that of counsel the undersigned has relied upon counsel in making this affidavit.

I understand that this Verification is made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn fabrication to authorities, which provides that if I knowingly make false averments, I may be subject to criminal penalties.



Faith Craig, Executrix of the Estate of Robert V. Baird

Date: 1-30-20