

# Exhibit 16



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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

19 In re  
20 THORPE INSULATION COMPANY,<sup>1</sup>  
21 Debtor.

Case No.: 2:07-19271-BB  
Chapter 11  
(Jointly Administered with Case No. 2:07-20016-BB)  
**FIRST AMENDED DISCLOSURE STATEMENT  
CONCERNING THE FIRST AMENDED JOINT  
PLAN OF REORGANIZATION OF THORPE  
INSULATION COMPANY AND PACIFIC  
INSULATION COMPANY UNDER CHAPTER 11 OF  
THE BANKRUPTCY CODE**  
Date: July 23, 2008  
Time: 2:00 p.m.  
Place: United States Bankruptcy Court  
255 East Temple Street, Ctrm 1475  
Los Angeles, California

<sup>1</sup> The Debtors are Thorpe Insulation Company, a California corporation, 5608 Bayshore Walk, Long Beach, CA 90803, Fed. Tax I.D. No. 95-1559386 (Main Debtor) and Pacific Insulation Company, a California corporation, 2741 South Yates Ave., Los Angeles, CA. 90040, Fed. Tax I.D. No. 95-4812741.

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**THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION WITHIN THE MEANING OF SECTION 1125(a) OF THE BANKRUPTCY CODE. THE INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT.**

**I. INTRODUCTION**

This First Amended Disclosure Statement (the “Disclosure Statement”) has been prepared by Thorpe Insulation Company, a California corporation (“Thorpe”), and Pacific Insulation Company (“Pacific”), a California corporation (together, the “Debtors”). The purpose of this Disclosure Statement is to provide the holders of Claims against and Equity Interests in the Debtors with adequate information to make an informed judgment about the *First Amended Joint Plan of Reorganization of Thorpe Insulation Company and Pacific Insulation Company Under Chapter 11 of the Bankruptcy Code*, dated July 24, 2008 (the “Plan”), before determining whether to object to the Plan and before exercising their right to vote for acceptance or rejection of the Plan. The Debtors, the Official Committees of Unsecured Creditors of the Debtors, and the Future Claims Representative of each of the Debtors are the Proponents of the Plan.

An acceptance or rejection of the Plan must be in writing and may only be made by completing the Ballot that accompanies the Plan and mailing it to:

Beth Dassa  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., Ste. 1100  
Los Angeles, California 90067-4100

In order for your vote to be counted, it must be **received** no later than 5:00 p.m. on October 14, 2008, unless extended by the Debtors (the “Voting Deadline”).

This Disclosure Statement includes (among other things) a brief history of the Debtors, a summary of their Chapter 11 cases, a description of the Claims against and Equity Interests in the Debtors, a summary of the Plan, a discussion of the Plan’s feasibility and a liquidation analysis setting forth what the holders of a Claim against or Equity Interest in the Debtors would recover if the Debtors were liquidated immediately under Chapter 7 of the Bankruptcy Code. The Disclosure Statement also describes the treatment of the Debtors’ principal outstanding liabilities – potential damages for alleged injuries caused by exposure to asbestos or asbestos-containing products – and the anticipated sources, amounts and timing of compensation on account of such liabilities. As

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1 explained in greater detail below, all asbestos personal injury liabilities will be shifted to a Trust and  
2 will be paid solely from the assets of such Trust, at the times and in the amounts specified by the  
3 Trust.

4 **Upon Bankruptcy Court approval of the Plan, the Plan will be binding upon all holders**  
5 **of Claims against, and holders of Equity Interests in, the Debtors (including, without**  
6 **limitation, those holders of Claims or Equity Interests who do not submit ballots to accept or**  
7 **reject the Plan or who are not entitled to vote on the Plan). Therefore, it is important that**  
8 **creditors and shareholders read and carefully consider this Disclosure Statement, the Plan and**  
9 **the transactions contemplated thereby. The confirmation and effectiveness of the Plan are**  
10 **subject to material conditions precedent. There is no assurance that these conditions will be**  
11 **satisfied or waived.**

12 The Proponents request that you vote promptly for the Plan upon reviewing the  
13 accompanying materials. The Proponents believe that the restructuring contemplated by the Plan  
14 will yield a recovery to Creditors greater than the return that could be achieved through other  
15 restructuring alternatives or a liquidation under Chapter 7 of the Bankruptcy Code.

16 If you have any questions concerning the procedures for voting, or any questions concerning  
17 your treatment under the Plan, please contact:

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27  
28 The Proponents reserve the right to amend, modify, or supplement the Plan at any time

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1 before the confirmation of the Plan, provided that, such amendments or modifications do not  
2 materially alter the treatment of, or distributions to, Creditors and holders of Equity Interests under  
3 the Plan.

4 **THE PLAN IS THE GOVERNING DOCUMENT. IF ANY INCONSISTENCY**  
5 **EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF**  
6 **THE PLAN CONTROL.**

7 **THE FINANCIAL PROJECTIONS CONTAINED IN THIS DISCLOSURE**  
8 **STATEMENT REPRESENT THE PROPONENTS' ESTIMATES OF FUTURE EVENTS**  
9 **BASED ON CERTAIN ASSUMPTIONS MORE FULLY DESCRIBED BELOW, SOME OR**  
10 **ALL OF WHICH MAY NOT BE REALIZED. NONE OF THE FINANCIAL ANALYSES**  
11 **CONTAINED IN THIS DISCLOSURE STATEMENT IS CONSIDERED TO BE A**  
12 **"FORECAST" OR "PROJECTION" AS TECHNICALLY DEFINED BY THE AMERICAN**  
13 **INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. THE USE OF THE WORDS**  
14 **"FORECAST," "PROJECT," OR "PROJECTION" WITHIN THIS DISCLOSURE**  
15 **STATEMENT RELATES TO THE BROAD EXPECTATIONS OF FUTURE EVENTS OR**  
16 **MARKET CONDITIONS AND QUANTIFICATIONS OF THE POTENTIAL RESULTS OF**  
17 **OPERATIONS UNDER THOSE CONDITIONS.**

18 **ALL FINANCIAL INFORMATION PRESENTED IN THIS DISCLOSURE**  
19 **STATEMENT WAS PREPARED BY THE PROPONENTS WITH THE ASSISTANCE OF**  
20 **THEIR PROFESSIONAL ADVISORS. EACH CREDITOR AND EQUITY INTEREST**  
21 **HOLDER IS URGED TO REVIEW THE PLAN IN FULL BEFORE VOTING ON THE**  
22 **PLAN TO ENSURE A COMPLETE UNDERSTANDING OF THE PLAN AND THIS**  
23 **DISCLOSURE STATEMENT.**

24 **THIS DISCLOSURE STATEMENT IS INTENDED FOR THE SOLE USE OF**  
25 **CREDITORS AND OTHER PARTIES IN INTEREST AND FOR THE SOLE PURPOSE OF**  
26 **ASSISTING THEM IN MAKING AN INFORMED DECISION ABOUT THE PLAN. NO**  
27 **PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY**  
28 **REPRESENTATIONS IN CONJUNCTION WITH THE SOLICITATION OF VOTES TO**

1 ACCEPT OR REJECT THE PLAN OTHER THAN THE INFORMATION AND  
2 REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT OR IN THE  
3 BALLOTS. IF GIVEN OR MADE, ANY SUCH INFORMATION OR REPRESENTATIONS  
4 MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY DEBTOR.

5 THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE  
6 BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION TO PERMIT A  
7 CREDITOR TO VOTE ON THE PLAN. APPROVAL OF THE LEGAL ADEQUACY OF  
8 THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT IS NOT A  
9 CERTIFICATION BY THE BANKRUPTCY COURT AS TO THE TRUTH OR  
10 ACCURACY OF THE FACTUAL MATTERS THAT ARE CONTAINED IN THIS  
11 DISCLOSURE STATEMENT.

12 ***IMPORTANT NOTICE:***

13 **The Plan provides, among other matters, for the issuance of injunctions under Section**  
14 **524(g) of the Bankruptcy Code that will result in the channeling of certain asbestos-related**  
15 **liabilities of the Debtors and other protected parties (except, among other exclusions, any**  
16 **liabilities for workers' compensation claims) to a Trust, as more fully described herein.**  
17 **Pursuant to Section 524(g), all distributions under the Plan to the holders of asbestos-**  
18 **related personal injury claims will be the sole responsibility of the Trust, and the Debtors**  
19 **and the Reorganized Debtor shall have no further liability therefor. All other claims**  
20 **against the Debtors will be satisfied by the Reorganized Debtor pursuant to the Plan.**

21 **II. DEFINITIONS**

22 All capitalized terms used but not defined herein, but defined in the Plan, have the meaning  
23 given in the Plan. If a term is not defined herein or in the Plan, but is defined in the Bankruptcy  
24 Code, such term has the meaning given to that term in the Bankruptcy Code unless the context of the  
25 Disclosure Statement clearly requires otherwise. References to a code section are references to the  
26 Bankruptcy Code, except as otherwise stated.

27 **III. SUMMARY OF DISTRIBUTIONS UNDER THE PLAN**

28 This Disclosure Statement is being transmitted by the Debtors, pursuant to Section 1126(b)  
of the Bankruptcy Code, for the purpose of soliciting votes to accept the Plan. The Plan divides all  
Claims and Equity Interests into seven (7) different Classes. Each holder of a Claim within a

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1 particular Class will receive the same treatment as all other members of the Class (unless the holder  
2 of such Claim has agreed to different treatment). Asbestos Related Claims (Class 5 under the Plan)  
3 will be channeled to the Trust, and will no longer constitute liabilities of the Debtors. Holders of  
4 Asbestos Related Claims are impaired and are entitled to vote to accept or reject the Plan. This  
5 Disclosure Statement sets forth information regarding the formation and operation of the Trust to  
6 enable the holders of Asbestos Related Claims to make an informed judgment to accept or reject the  
7 Plan under Section 524(g) of the Bankruptcy Code.

8 As described in more detail below, under the Plan:

- 9 • Administrative Claims Allowed under Section 503(b) of the Bankruptcy Code are to  
10 be paid in full;
- 11 • Priority Claims and Priority Tax Claims Allowed under Section 507(a) of the  
12 Bankruptcy Code are to be paid in full;
- 13 • Secured Claims and General Unsecured Claims (not including Asbestos Related  
14 Claims) are to be paid in full; and
- 15 • Asbestos Related Claims will be channeled to, and thereafter handled and paid by, the  
16 Trust that is formed pursuant to Article 5.1 of the Plan, as summarized in Article VII of this  
17 Disclosure Statement.

18 **The Plan is the product of extensive discussions and negotiations among the Debtors,**  
19 **the Committees, the Future Claims Representative and other constituencies. The Proponents**  
20 **believe that recoveries under the Plan will exceed recoveries in a possible Chapter 7 case, and**  
21 **urge all Creditors entitled to vote to accept the Plan.**

#### 22 **IV. BACKGROUND AND EVENTS PRECIPITATING THE CHAPTER 11 FILINGS**

##### 23 **A. History of the Debtors**

##### 24 **1. Thorpe**

25 Thorpe, formerly known as Plant Insulation Company, was incorporated in California  
26 on April 10, 1948. Robert W. Fults and Linda Fults own, respectively, 50.1% and 49.9% of the  
27 capital stock of Thorpe. Robert Fults is the President of Thorpe and Robert Fults and Linda Fults  
28 serve as its only directors. There are no other current officers or employees of Thorpe.

1 Thorpe was a union subcontractor whose primary business was to install and repair  
2 insulation on mechanical systems at commercial and industrial sites throughout the western United  
3 States. These sites included petrochemical plants, commercial office buildings, hotels, prisons,  
4 major public works projects, power generation plants, cryogenic and refrigeration plants and marine  
5 installations. At one time, Thorpe was the largest independent mechanical insulation contractor in  
6 the western United States. In addition to construction services, Thorpe provided insulation design  
7 and engineering assistance, budget estimating, proposal preparation and value engineering and  
8 scheduling services to its customers.

9 Between 1948 and 2000, Thorpe also was a distributor for insulation products.  
10 Between 1957 and 2000 Thorpe was the distributor for Johns-Manville products in Southern  
11 California. Before approximately 1972, some insulation material distributed and installed by Thorpe  
12 contained asbestos. After Thorpe ceased distributing and installing asbestos insulation products in  
13 1972, some of Thorpe's operations also involved asbestos and lead abatement, including “ripping  
14 out” or repairing insulation that contained asbestos at commercial and industrial sites.

15 On or about June 30, 1998, Thorpe established a revolving line of credit with Mellon  
16 First Business Bank (“Mellon Bank”) and granted Mellon Bank a security interest in substantially all  
17 of its assets as collateral for the line of credit. In order to pay off its indebtedness to Mellon Bank,  
18 on or about November 4, 2004, Thorpe obtained a loan from Pacific Funding Group, LLC (“PFG”),  
19 a Seattle financial institution, in the sum of \$2,026,693.99. Concurrently therewith, Thorpe executed  
20 a promissory note (the “PFG Note”) and a security agreement in favor of PFG, granting a security  
21 interest to PFG in substantially all of Thorpe’s assets.

22 On December 4, 2004, Thorpe failed to make a required payment on the PFG Note.  
23 On or about December 14, 2004, PFG commenced foreclosure proceedings against Thorpe’s assets.  
24 At or about the same time, PFG and Thorpe entered into an “Agreement To Surrender Designated  
25 Collateral Between Thorpe Insulation Company And Pacific Funding Group, LLC,” pursuant to  
26 which Thorpe agreed to surrender to PFG the collateral pledged as security for the PFG Note.

27 On or about December 17, 2004, PFG sold its collateral at a foreclosure sale under  
28 the Uniform Commercial Code to Farwest Insulation, Inc. (“Farwest”). (Farwest is a party to many

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1 of the asbestos personal injury lawsuits as well as to the insurance coverage litigation, both as  
2 discussed below.) Farwest is owned by Eric Fults and David Fults (sons of Robert and Linda Fults)  
3 and various minority shareholders who are employees of Farwest. Following the foreclosure sale,  
4 Thorpe ceased its insulation contracting business.

5 At present, Thorpe has no ongoing operations (aside from managing the ongoing  
6 asbestos litigation asserted against it) and no material liabilities except for liabilities to parties  
7 seeking damages for exposure to asbestos. Thorpe's assets consist principally of cash derived from  
8 settlements with certain insurers whose policies cover Asbestos Related Claims and claims against  
9 insurers.

## 10 2. Pacific

11 Pacific was incorporated in California by Thorpe on May 23, 2000, to be a wholly  
12 owned subsidiary of Thorpe. On October 1, 2000, Thorpe transferred to Pacific the assets associated  
13 with its materials division (the "Materials Division") and Pacific agreed to assume Thorpe's  
14 accounts payable in relation to the Materials Division in exchange for Pacific transferring to Thorpe  
15 100% of its issued and outstanding shares of stock. Subsequently, Thorpe distributed the Pacific  
16 shares of stock to Thorpe's sole shareholders, Robert W. Fults and Linda Fults in proportion to their  
17 interests in Thorpe. As a result, Robert W. Fults owns 50.1% of the shares of Pacific and Linda  
18 Fults owns the remaining 49.9%.

19 Pacific is the southwest's leading commercial and industrial insulation  
20 distributor/fabricator with locations in Southern California, Northern California, Arizona and  
21 Nevada. It provides quality pipe, air handling, fire barrier, board and blanket insulation as well as  
22 insulation adhesives, mastics and sealants. Pacific has never installed or sold any materials  
23 containing asbestos. It is headquartered in Los Angeles, California and has approximately fifty-five  
24 full time employees. Apart from any liability that Pacific may have to parties claiming injuries  
25 related to asbestos exposure (discussed below), Pacific's business operations have always been, and  
26 continue to be, profitable.

## 27 3. Unrelated Thorpe Entities

28 Thorpe was formed in 1948 and was formerly known as Plant Insulation Company.

1 There are several other companies and entities that also used the name “Thorpe” which are wholly  
2 unrelated to Thorpe.

3 In particular, Thorpe is not related to the family of companies known as J.T. Thorpe,  
4 Inc. (formerly known as Thorpe Constructors, Inc.), J.T. Thorpe, Inc., a dissolved California  
5 corporation (“Dissolved Thorpe”), Thorpe Technologies, Inc. (formerly known as Thermal Process,  
6 Inc.), and Thorpe Holding Company, Inc. At the turn of the century, the Debtors are informed that  
7 an individual named J.T. Thorpe had a business installing brick and other furnace linings in San  
8 Francisco. His business, J.T. Thorpe & Sons, was sold in the early 1920's to other individuals who  
9 the Debtors believe continue to operate the business. In 1932, Dissolved Thorpe was formed to  
10 acquire part of the business of J.T. Thorpe & Sons in the Southern California and Pacific Southwest  
11 area, although Dissolved Thorpe also performed services in other states. It had some of the same  
12 shareholders as J.T. Thorpe & Sons, but was not a subsidiary. Dissolved Thorpe subsequently sold  
13 its assets to J.T. Thorpe, Inc. (formerly known as Thorpe Constructors, Inc.) and was dissolved on  
14 December 30, 1986. J.T. Thorpe, Inc., Thorpe Technologies, Inc., Thorpe Holding Co., Inc, and  
15 Dissolved Thorpe are referred to collectively as the “J.T. Thorpe Entities.”

16 The J.T. Thorpe Entities were principally engaged in the business of refractory  
17 contracting from the 1930s until 1992 throughout the western United States. Refractory contracting  
18 generally involves the installation and maintenance of refractory linings to contain heat, abrasion and  
19 corrosion. Common projects undertaken by the J.T. Thorpe Entities involved the design and  
20 installation of linings for furnaces, boilers and kilns used by the chemical, cement and glass  
21 industries. The J.T. Thorpe Entities were also subjected to numerous asbestos claims and, as a  
22 result, also filed cases under chapter 11 of the Bankruptcy Code in 2002 and 2004. These cases were  
23 administered by the same Bankruptcy Court that is now exercising jurisdiction over Thorpe’s and  
24 Pacific’s bankruptcy cases. In 2005, a joint plan of reorganization was confirmed for the four J.T.  
25 Thorpe Entities under which a trust was created to handle all asbestos-related claims against the J.T.  
26 Thorpe Entities.

27 In the 1950s, some of the shareholders of Dissolved Thorpe formed a company in  
28 Texas that was also named J.T. Thorpe Corporation (“Thorpe Corp.”). Thorpe Corp. has also filed a

1 Chapter 11 bankruptcy case in Texas.

2 The Debtors are also informed and believe that there is a company known as Thorpe  
3 Insulation operating in Texas ("Thorpe Insulation Texas") and a Thorpe USA, Inc. operating in San  
4 Francisco, California.

5 The J.T. Thorpe Entities, Thorpe Corp., Thorpe Insulation Texas and Thorpe USA,  
6 Inc. are **completely unrelated** to the Debtors, and persons with claims against such entities should  
7 not file claims against the Debtors premised upon their claims against these unrelated entities.

8 **B. Asbestos Claims**

9 For the past thirty years, Thorpe has been embroiled in asbestos related litigation. To date it  
10 has been subjected to approximately 12,000 claims and lawsuits for personal injuries or wrongful  
11 death alleged to have been caused in whole or in part by exposure to asbestos-containing materials  
12 installed or supplied by Thorpe (collectively, the "Asbestos Cases"). Approximately 2,000 Asbestos  
13 Cases were pending against Thorpe on the date that it commenced its chapter 11 case. Thorpe  
14 anticipates that numerous additional Asbestos Related Claims will be asserted against it for many  
15 years to come. The potential liabilities represented by present and anticipated future Asbestos  
16 Related Claims against Thorpe far exceed the value of Thorpe's undisputed assets, which include  
17 distributions it receives from an asbestos trust that was established by Johns-Manville. Thorpe,  
18 however, believes that its historical comprehensive general insurance assets provide coverage for  
19 many of these present and future liabilities (although, as discussed in further detail below, Thorpe's  
20 insurers dispute that such coverage exists).

21 Although Pacific has never distributed, installed, repaired or removed any asbestos products,  
22 it has also been named as a defendant in many of the Asbestos Cases on the theory that it is a  
23 successor in interest to Thorpe. Pacific also anticipates that it will continue to be named as a  
24 defendant in lawsuits filed against Thorpe. Pacific denies it is responsible for any liabilities asserted  
25 in the lawsuits and has previously made written demand to Thorpe and its insurers that they  
26 indemnify it for all claims asserted against it arising from the Asbestos Related Claims. In order to  
27 control the costs of defending the numerous lawsuits filed against it, Pacific negotiated a "Stand  
28 Still" Agreement with several law firms representing plaintiffs in the asbestos lawsuits that provides

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1 that those lawsuits would be stayed pending the determination of the scope of Thorpe’s existing  
2 insurance coverage and that any applicable statutes of limitation with respect to claims that had not  
3 been filed be tolled.

4 **C. Insurance Coverage Litigation**

5 **1. Insurance Policies**

6 Thorpe purchased comprehensive general liability insurance from various insurers for  
7 the period May 1948 to October 1984. The policies provide “occurrence” based coverage that is  
8 triggered when injury happens during the policy period, regardless of when a claim is made. In  
9 California, these policies covered asbestos bodily injury lawsuits on a “continuous trigger” basis –  
10 *i.e.*, each policy in effect from first exposure to asbestos through manifestation of disease or death  
11 are responsive to a particular claim.

12 These standard policies provide two basic forms of coverage for the asbestos personal  
13 injury lawsuits: (i) bodily injury claims caused by asbestos exposure after a product is relinquished  
14 or an operation is completed (“Product Claims”) and (ii) bodily injury claims caused by asbestos  
15 exposure before a product is relinquished or an operation is completed (“Operations Claims”).  
16 Product Claims are subject to aggregate limits. Operations Claims are not subject to aggregate  
17 limits.

18 In tendering the asbestos suits to its insurers, Thorpe requested that its insurers  
19 provide defense and indemnity coverage, as provided in the applicable insurance policies. From  
20 1978, Thorpe’s insurers have handled the asbestos suits through their appointed counsel and  
21 controlled the defense and settlement of the asbestos suits.

22 **2. Coverage Disputes**

23 Following its receipt of a notice from certain of its insurers that, in their view,  
24 coverage for the ongoing asbestos litigation was exhausted or approaching exhaustion, Thorpe filed  
25 an action in November 2005 seeking to determine its coverage rights and obligations for present and  
26 future asbestos claims in the California Superior Court for the County of San Francisco, captioned  
27 *Thorpe Insulation Company v. Allstate Insurance Company, et al.* (No. CGC-05-446 682) (“Thorpe  
28 Suit”).



1           At the same time, certain insurers commenced similar actions in the Los Angeles  
2 Superior Court to seek an adjudication of their rights and duties under their policies with Thorpe  
3 (and their obligations, if any, to defend and indemnify Pacific and Farwest under such policies based  
4 upon Thorpe’s distribution and installation of asbestos insulation materials). The first such action,  
5 filed in November 2005, is entitled *Chicago Insurance Company, et al. v. Allstate Insurance*  
6 *Company, et al.* (No. BC343014) (“First Chicago Suit”). The second action, filed in January 2006,  
7 is entitled *Chicago Insurance Company v. Pacific Insulation Company, et al.* (No. BC346667)  
8 (“Second Chicago Suit”).

9           On March 6, 2006, pursuant to court order, the Thorpe Suit, the First Chicago Suit  
10 and the Second Chicago Suit (including all related cross-actions) were transferred to, and  
11 coordinated before, the Superior Court of the State of California for the County of Los Angeles in  
12 the coordinated proceeding entitled *In re: Thorpe Insulation Asbestos Coverage Cases*, Judicial  
13 Counsel Coordination Proceeding No. 4458 (the “Coordinated Proceeding”).

14           The currently operative pleading seeking relief on behalf of Thorpe in the  
15 Coordinated Proceeding is Thorpe’s *First Amended Complaint*, filed on February 16, 2007 in the  
16 Thorpe Suit. The Thorpe Suit states eight causes of action, for: (a) declaratory relief as to Thorpe’s  
17 rights under the insurance policies issued to it by Defendants, (b) damages as a result of certain of  
18 the Defendants having breached their obligations under the insurance policies that those Defendants  
19 issued to Thorpe, (c) damages as a result of the tortious breach of the implied covenant of good faith  
20 and fair dealing by certain of the Defendants and (d) unjust enrichment. The Thorpe Suit also asserts  
21 that certain of the Defendants have acted inequitably toward Thorpe in certain respects, thereby  
22 affecting Thorpe’s rights under the policies issued to it by such Defendants.

23           On October 16, 2007, immediately after the commencement of Thorpe’s chapter 11  
24 case, Thorpe removed each of the Thorpe Suit, the First Chicago Suit, the Second Chicago Suit and  
25 the Coordinated Proceeding (collectively hereinafter, the “Coverage Litigation”) to the Bankruptcy  
26 Court. Shortly thereafter, on October 23, 2007, certain insurer defendants sought to remand the  
27 Coverage Litigation to state court. Thorpe opposed remand and filed an adversary complaint  
28 requesting a Preliminary Injunction against prosecution of the Coverage Litigation. At the same

1 time, certain of Thorpe's insurers sought relief from the automatic stay to pursue their claims against  
2 Thorpe in the Coverage Litigation. At a hearing on November 7, 2007, the Bankruptcy Court  
3 declined to immediately remand the Coverage Litigation but indicated that it would consider remand  
4 following further proceedings. As described below, the Bankruptcy Court subsequently remanded  
5 the actions comprising the Coverage Litigation, but denied the insurers' request to modify the  
6 automatic stay to allow the Coverage Litigation to proceed and issued a Preliminary Injunction  
7 staying their prosecution except for limited purposes.

8 Certain of the insurers disagree with the foregoing disclosures and have supplied alternative  
9 and/or additional disclosures that are contained in Appendix A. The information in Appendix A has  
10 not been approved or disapproved by any of the Proponents, does not necessarily reflect the views of  
11 any of the Proponents, and shall not constitute or be construed as an admission of any fact or  
12 liability, stipulation or waiver on behalf of any of the Proponents, but rather as a statement of  
13 position made by certain insurers.

### 14 3. Wellington Settlement Breach Claims

15 Among the insurance policies obtained by Thorpe were seventeen (17) primary  
16 comprehensive general liability (CGL) policies issued by Fireman's Fund Insurance Company  
17 ("Fireman's Fund") covering the years 1952-1971, and four similar policies issued by Harbor  
18 Insurance Company covering the years 1971-1979. (Continental Insurance Company has since  
19 succeeded to the rights and obligations of Harbor Insurance Company under the foregoing policies,  
20 and is referred to hereinafter as "Continental.") During the period from approximately 1978 through  
21 1998, Thorpe tendered various asbestos personal injury claims to Fireman's Fund and Continental  
22 for defense and indemnity. According to Fireman's Fund and Continental, these claims were  
23 tendered by Thorpe and treated by the insurers as Product Claims subject to the applicable aggregate  
24 limits of liability under the policies. As noted above, Product Claims are based on claims for  
25 injuries arising *after* work has been completed or a product has been sent to market (unlike  
26 Operations Claims which are based upon injuries arising while operations are in progress). These  
27 limits of liability were apparently exhausted in April 1998 for the Continental policies and in  
28 September 1998 for the Fireman's Fund policies.

1 Previously, in June 1985, Thorpe, Fireman’s Fund and Continental had entered into  
2 the so-called *Wellington Agreement*, an insurance coverage and claims handling protocol among  
3 approximately 35 asbestos product manufacturers and distributors and certain of their respective  
4 insurers. Among other provisions, the *Wellington Agreement* provides that any disputes arising  
5 under the agreement shall be resolved by binding arbitration.

6 Following the exhaustion of the Product Claims coverage under the Fireman’s Fund  
7 and Continental CGL policies, Thorpe tendered additional asbestos injury claims for defense and  
8 indemnity under the Operations Claims coverage afforded by such policies, which is not subject to  
9 aggregate limits of liability. Fireman’s Fund and Continental disputed Thorpe’s right to such  
10 additional coverage and, in 1999, commenced arbitration proceedings under the *Wellington*  
11 *Agreement* to obtain a declaration that Thorpe’s insurance coverage under their policies had been  
12 fully exhausted. In 2002, the arbitrator determined that, under the terms of the *Wellington*  
13 *Agreement*, Thorpe was not entitled to assert additional Operations Claims coverage for asbestos  
14 injury claims and that Thorpe had no remaining coverage rights under the Fireman’s Fund and  
15 Continental policies. The arbitrator also awarded attorneys’ fees to Fireman’s Fund and Continental.  
16 Thorpe appealed the arbitrator’s ruling.

17 In April 2003, while Thorpe’s appeal was pending, Thorpe, Fireman’s Fund and  
18 Continental entered into a *Settlement Agreement and Release* (the “Wellington Settlement”), under  
19 which, among other provisions, (a) Thorpe released any further rights to “coverage of any kind  
20 under or related to” the Fireman’s Fund and Continental policies,<sup>2</sup> and (b) Fireman’s Fund and  
21 Continental paid Thorpe approximately \$500,000 and released their claims for attorneys’ fees  
22 incurred in the arbitration proceeding. Pursuant to the Wellington Settlement, Thorpe warranted that  
23 it had not, and would not (i) assign any of the claims released in the Wellington Settlement to any  
24 third party, or (ii) “voluntarily assist any other person or entity in the establishment of any claim”  
25 against Fireman’s Fund or Continental “arising out of, resulting from or in any way relating to the  
26

27 <sup>2</sup> The Coverage Litigation referred to, *supra*, seeks a determination regarding, among other things, the  
28 ongoing availability of coverage for Operations Claims from insurers other than Fireman’s Fund and Continental.  
Fireman’s Fund and Continental are not parties to the Coverage Litigation.

1 matters released” in the Wellington Settlement. The Wellington Settlement also provides for the  
2 payment of attorneys’ fees arising from the breach of any warranty made under the agreement. Last,  
3 the Wellington Settlement reserves the continuing jurisdiction of the arbitrator appointed under the  
4 *Wellington Agreement* to enforce the Wellington Settlement (but does not require mandatory  
5 arbitration of disputes under the Wellington Settlement).<sup>3</sup>

6 In February 2008, following the commencement of the Chapter 11 cases, Fireman’s  
7 Fund and Continental each filed a contingent proof of claim for damages based on an alleged breach  
8 by Thorpe of its warranties under the Wellington Settlement (together, the “Wellington Settlement  
9 Claims”). At present, the liquidated amount of each claim is approximately \$35,000, on account of  
10 attorneys’ fees allegedly incurred by each insurer as a result of Thorpe’s alleged breach of the  
11 Wellington Settlement (and the renewal by Fireman’s Fund and Continental of arbitration  
12 proceedings related to such alleged breach). Fireman’s Fund and Continental assert, however, that  
13 the full amount of their claims may potentially total “many millions of dollars.”

14 The basis for the Wellington Settlement Claims is the assertion by the insurers that  
15 Thorpe, in violation of its warranties, (a) allegedly colluded with, encouraged and assisted asbestos  
16 claimants to bring direct suits against Fireman’s Fund and Continental under the Thorpe CGL  
17 policies and (b) obtained the assignment of contribution rights held by certain Settling Asbestos  
18 Insurers against Fireman’s Fund and Continental.

19 Thorpe disputes any breach of its obligations under the Wellington Settlement and  
20 contends that there is no basis to allow any portion of the Wellington Settlement Claims. Thorpe  
21 asserts that its warranties under the Wellington Settlement apply solely to claims that it held and  
22 released and could not, by definition, apply to (a) a third party insurer’s rights of contribution against  
23 Fireman’s Fund and Continental that Thorpe might acquire under settlement agreements, or (b) a  
24 third party asbestos claimant’s direct action rights against Fireman’s Fund and Continental. Such  
25

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26 <sup>3</sup> Fireman’s Fund and Continental did, in fact, initiate further arbitration proceedings in September 2007 to  
27 address the matters asserted in the Wellington Settlement Claims, discussed *infra*, and an initial hearing had been  
28 scheduled for October 16, 2007. Thorpe commenced its Chapter 11 Case on October 15, 2007, and the hearing was  
consequently stayed. Fireman’s Fund and Continental have since requested relief from the automatic stay in order to  
resume the arbitration and to liquidate the matters raised in the Wellington Settlement Claims. The Bankruptcy Court  
has denied the motion for stay relief without prejudice to renewal of the motion at a later date.

1 rights were not held by Thorpe and, as a result, were wholly beyond Thorpe's capacity to release.

2 Thorpe anticipates filing prompt objections to the allowance of the Wellington  
3 Settlement Claims. In order to develop a thorough evidentiary basis for such objections, Thorpe  
4 sought an order of the Bankruptcy Court authorizing an examination under Bankruptcy Rule 2004 of  
5 each of Fireman's Fund and Continental. Fireman's Fund and Continental opposed the request for a  
6 Rule 2004 examination and sought a protective order to limit the duration and scope of any such  
7 examination. In April 2008, the Bankruptcy Court authorized the Rule 2004 examinations and  
8 overruled the objections of Fireman's Fund and Continental.

9 The Plan provides, at Section 4.4, for the payment in full by the Reorganized Debtor  
10 of all Allowed Unsecured Claims against Thorpe. If Allowed, the Wellington Settlement Claims  
11 would be classified and treated under Section 4.4 of the Plan. As noted above, however, Thorpe  
12 disputes the allowance of the Wellington Settlement Claims and intends to file an objection to the  
13 claims shortly.

14 One condition to confirmation of the Plan is the determination of the Bankruptcy  
15 Court, by a Final Order, to deny in full the allowance of the Wellington Settlement Claims. This  
16 determination is referred to in the Plan as the "Wellington Settlement Claims Favorable  
17 Determination." As noted above, the Debtors are taking active steps now to obtain such a  
18 determination and anticipate that it will be rendered before the Confirmation Hearing. Nevertheless,  
19 in order to avoid any possible delays in the Confirmation of the Plan, the Debtors have agreed that  
20 the Committee and the Futures Representative may override the pre-Confirmation requirement of a  
21 Wellington Settlement Claims Favorable Determination by providing an indemnity from the Trust to  
22 the Reorganized Debtor for any amounts that might, if any portion of either of the Wellington  
23 Settlement Claims is Allowed, be payable by the Reorganized Debtor under the Plan on account of  
24 such claims. The terms and conditions of this indemnification are set forth in Section 7.4 and  
25 Exhibit H of the Plan.

26 Certain of the insurers disagree with the foregoing disclosures and have supplied alternative  
27 and/or additional disclosures that are contained in Appendix B. The information in Appendix B has  
28 not been approved or disapproved by any of the Proponents, does not necessarily reflect the views of

1 any of the Proponents, and shall not constitute or be construed as an admission of any fact or  
2 liability, stipulation or waiver on behalf of any of the Proponents, but rather as a statement of  
3 position made by certain insurers.

4 **D. Need for Chapter 11 Relief**

5 Thorpe filed its chapter 11 case to ensure that the proceeds of its insurance were distributed  
6 equitably to all of its asbestos creditors, including those whose asbestos disease had not yet  
7 manifested itself, and to maximize the settlements that it could achieve with its insurers that elected  
8 to settle their disputes with Thorpe by affording those insurers with the protections provided for in  
9 Bankruptcy Code section 524(g). Pacific filed its Chapter 11 case shortly thereafter due to its  
10 alleged asbestos liability and the failure of Thorpe's insurers to pay asbestos claims asserted against  
11 Pacific.

12 The goal of Thorpe and Pacific in these chapter 11 cases is to obtain confirmation of the  
13 Plan, which provides for a channeling injunction pursuant to which all current and future asbestos-  
14 related personal injury and wrongful death claims will be channeled to a trust for liquidation and  
15 payment pursuant to section 524(g) of the Bankruptcy Code. The Plan also offers protection under  
16 Bankruptcy Code section 524(g) to various non-debtor parties, including insurers who elect to  
17 resolve the coverage litigation prior to the confirmation of that plan. **The Proponents support the**  
18 **Plan and urge those creditors entitled to vote to accept the Plan.**

19 **V. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASES**

20 **A. Commencement of Chapter 11 Cases**

21 On October 15, 2007, Thorpe filed a voluntary petition for relief under Chapter 11 of the  
22 Bankruptcy Code. On October 31, 2007, Pacific also filed a voluntary petition for relief under  
23 Chapter 11 of the Bankruptcy Code. The Chapter 11 Cases were assigned to the Honorable Sheri  
24 Bluebond, United States Bankruptcy Judge for the Central District of California (Los Angeles  
25 Division). Pursuant to an order of the Bankruptcy Court entered on November 6, 2007, the Chapter  
26 11 cases are being jointly administered under Federal Rule of Bankruptcy Procedure 1015(b). Since  
27 their respective petition dates, the Debtors have continued to operate their businesses and manage  
28 their properties as debtors-in-possession under Sections 1107(a) and 1108 of the Bankruptcy Code.

1 No trustee or examiner has been appointed in either of Thorpe's or Pacific's chapter 11 cases.

2 **B. Retention of Debtors' Professionals**

3 On January 15, 2008, the Bankruptcy Court entered an order authorizing Thorpe to retain  
4 Pachulski Stang Ziehl & Jones LLP as general bankruptcy and reorganization counsel. On  
5 December 20, 2007, the Bankruptcy Court authorized Pacific to retain Clark & Trevithick as general  
6 bankruptcy and reorganization counsel. Certain insurers objected to the retention of both law firms,  
7 and have filed appeals from both of these orders. The appeal to the first order (authorizing retention  
8 of Pachulski Stang Ziehl & Jones LLP) has been dismissed by the appellants; the appeal of the  
9 second order (authorizing retention of Clark & Trevithick) has been dismissed by the District Court  
10 on the basis that the employment order is interlocutory and not yet subject to appeal.

11 The Debtors have also retained Snyder Miller & Orton LLP ("SMO"), as special litigation  
12 counsel, and Morgan Lewis & Bockius LLP ("MLB"), as special insurance counsel. Orders  
13 authorizing the employment of both law firms were entered by the Bankruptcy Court on January 9,  
14 2007. Certain insurers objected to the retention of both law firms, and have filed appeals from both  
15 of these orders, which appeals are pending.

16 On January 31, 2008, the Debtors filed an application to employ Klee, Tuchin, Bogdanoff &  
17 Stern LLP as special counsel to represent the Debtors in the appeals from various Bankruptcy Court  
18 orders including, without limitation, the foregoing employment orders, that have been filed by  
19 various insurers. The application was approved by order entered February 20, 2008.

20 On March 28, 2008, the Debtors filed an application to employ Moore Stephens Wurth  
21 Frazer and Torbet, LLP as tax accountants.

22 Other than MLB and SMO all of the Debtors' professionals have been retained on an hourly  
23 basis. Each of SMO and MLB have been retained on a contingency fee basis, with the compensation  
24 to be received by those firms contingent upon net recoveries from the Debtors' insurers. In the  
25 aggregate, SMO and MLB are entitled to compensation as follows: (a) 25% of the first \$25 million  
26 in net recoveries, (b) 20% of net recoveries between \$25 million and \$50 million, (c) 15% of net  
27 recoveries between \$50 million and \$150 million, (d) 9.5% of net recoveries between \$150 million  
28 and \$500 million and (e) 7% of net recoveries in excess of \$500 million. In addition MLB and SMO

1 are entitled to be reimbursed for any expenses that they incur in connection with their representation  
2 of Thorpe. The foregoing is intended to be a summary of the terms and conditions of SMO's and  
3 MLB's engagement and is qualified in its entirety by the terms and conditions of the Bankruptcy  
4 Court's orders approving their employment, which include, as exhibits, the detailed fee agreements  
5 between Thorpe and the firms. Creditors desiring a more detailed description of the terms and  
6 conditions of SMO's and MLB's employment are encouraged to review that order, a copy of which  
7 may be obtained, upon request, from the Proponents or from Bankruptcy Court.

8 **C. Official Unsecured Creditors' Committees**

9 An official committee of unsecured creditors was appointed on October 26, 2007, in the  
10 Chapter 11 case of Thorpe (the "Thorpe Committee"). An identical official committee of unsecured  
11 creditors was appointed on November 16, 2007, in the chapter 11 case of Pacific (the "Pacific  
12 Committee"). Collectively, the Thorpe Committee and the Pacific Committee are referred to  
13 hereinafter as the "Committee." The Committee filed applications to retain Heller Ehrman LLP and  
14 Caplin & Drysdale, Chartered, as co-counsel to the Committee in both chapter 11 cases. These  
15 applications were approved on December 13, 2007 in the Thorpe case, and on January 15, 2008 in  
16 the Pacific case. On January 25, 2008, the Committee filed an application to employ Legal Analysis  
17 Systems Inc. as Asbestos Injury Consultants.

18 **D. Appointment of Representative for Future Claimants**

19 On October 31, 2007, Thorpe filed an application, pursuant to Section 524(g)(4)(B)(i) of the  
20 Bankruptcy Code, for the appointment of the Honorable Charles B. Renfrew (Ret.), as the legal  
21 representative on behalf of persons holding potential future claims on account of damages allegedly  
22 caused by exposure to asbestos (the "Futures Representative"). Pacific also filed an application, on  
23 November 12, 2007, to appoint Mr. Renfrew as the Futures Representative in its chapter 11 case.  
24 The qualifications and experience of Mr. Renfrew to serve as the Futures Representative are set forth  
25 more fully in Thorpe and Pacific's respective applications filed with the Bankruptcy Court. Orders  
26 approving the appointment of Mr. Renfrew were entered by the Bankruptcy Court in both cases on  
27 December 20, 2007. Certain insurers objected to the appointment of the Futures Representative and  
28 filed appeals from those orders on December 26, 2007. The Futures Representative filed an



1 application to employ Fergus, A Law Firm, as his counsel in the chapter 11 cases, which was  
2 granted on December 12, 2007. The Futures Representative also filed an application to retain  
3 Hamilton Rabinovitz & Associates as an expert consultant, which was granted on December 12,  
4 2007.

5 **E. Routine Matters in Chapter 11 Cases**

6 Thorpe has filed various motions seeking miscellaneous relief in its chapter 11 case, such as  
7 an order limiting the scope and manner of notice of proceedings in its case, and an order directing  
8 the joint administration of the Thorpe and Pacific chapter 11 cases. On November 6, 2007, the  
9 Bankruptcy Court ordered that the chapter 11 cases be jointly administered. On November 16,  
10 2007, Thorpe and Pacific filed a motion to implement an interim compensation procedure for  
11 professionals employed in the chapter 11 cases, which was granted on December 13, 2007.

12 On November 30, 2007, the Debtors filed a motion to establish a bar date for the filing of  
13 proofs of claim. On January 10, 2008, the Bankruptcy Court entered its order establishing March 7,  
14 2008 as the general bar date, for filing claims other than asbestos-related personal injury claims and  
15 inter-company claims.

16 Unlike Thorpe, which has ceased ongoing operations, Pacific continues to operate its  
17 insulation distribution business. Hence, Pacific has sought administrative relief in the Bankruptcy  
18 Court that is routine and customary for operating debtors. In particular, Pacific has filed, among  
19 other motions, (i) a motion for an order determining that it has supplied adequate assurance of  
20 payment for post-petition utility services, which was granted on December 11, 2007, (ii) a motion  
21 for an order authorizing it to honor and pay costs associated with its pre-petition employee benefit  
22 programs, which was granted on December 13, 2007, (iii) a motion to approve a settlement of Johns  
23 Manville's reclamation claim, which was granted on December 26, 2007, (iv) a motion to assume  
24 certain executory contracts and unexpired leases, which was granted on March 12, 2008, (v) a  
25 motion for authority to assume executory contracts re: (1) Johns Manville and (2) Employees' Profit  
26 Sharing Plan, which was filed on April 29, 2008 and granted, and (vi) a motion for a final order  
27 authorizing post-petition financing from California Bank & Trust in the amount of two million  
28 dollars, authorizing post-petition financing, granting senior security interests and superpriority

1 administrative expense status, and authorizing use of cash collateral and modifying the automatic  
2 stay, which is scheduled for hearing on June 18, 2008.

3 **F. Intra-District Transfer**

4 In November 2007, certain insurers filed a motion with the Bankruptcy Court to transfer the  
5 chapter 11 cases from the Los Angeles division of the Bankruptcy Court to its Santa Ana division  
6 (*i.e.*, the cases would remain venued in the Central District of California, albeit in a different division  
7 of the district). Thorpe opposed the transfer of its case on various grounds, principally because its  
8 offices, officers and assets were all located within the territory of the court's Los Angeles division.  
9 Moreover, inasmuch as Thorpe's chapter 11 case is closely related to Pacific's case (and there is no  
10 dispute regarding the venue of its case), the continued venue of the Thorpe case in the court's Los  
11 Angeles division would be appropriate. The Bankruptcy Court considered the motion to transfer  
12 venue at a hearing conducted on December 4, 2007, and denied the motion by order entered on  
13 December 11, 2007.

14 **G. Remand of Coverage Litigation**

15 As noted above, shortly after the commencement of Thorpe's Chapter 11 case, Thorpe filed  
16 notices to remove each of the four actions subsumed within the Coverage Litigation from the State  
17 courts to the Bankruptcy Court. Subsequently, certain of the defendant insurers filed motions  
18 seeking to remand the Coverage Litigation back to the State court.

19 The Bankruptcy Court initially considered the remand motion at a hearing on November 7,  
20 2007 and issued a tentative ruling in favor of the remand of the Coverage Litigation. The court,  
21 however, continued a final decision on remand pending the filing of, and the Court's consideration  
22 of: (a) a proceeding by the Debtors seeking to stay the Coverage Litigation and (b) a motion by  
23 certain of the insurers seeking relief from the automatic stay to prosecute their claims in the  
24 Coverage Litigation.

25 On December 4, 2007, the Bankruptcy Court conducted a further hearing and determined to  
26 remand the four actions to state court. Remand orders were entered in one action on December 5,  
27 2007 and in the remaining three actions on December 28, 2007. As set forth below, although the  
28 Bankruptcy Court remanded these actions to the State court, it did not grant relief from the automatic

1 stay to prosecute them, and enjoined the prosecution of the Coverage Litigation, except in limited  
2 respects.

3 **H. Resumption of Coverage Litigation – Complaint for Injunction & Relief from**  
4 **Automatic Stay**

5 In anticipation of the possible remand of the Coverage Litigation to the state court, the  
6 Debtors and the Committee commenced an adversary proceeding in the Bankruptcy Court by filing  
7 their *Complaint for Injunctive Relief* (the “Complaint”), on November 16, 2007 (Adversary  
8 Proceeding No. AD 07-01850-BB). The Complaint seeks an injunction that, in effect, stays the  
9 Coverage Litigation pending the formulation and confirmation of the Plan. Concurrently with the  
10 Debtors’ filing of the Complaint, certain of the Debtors’ insurers filed motions seeking orders  
11 modifying the automatic stay so as to allow those insurers to proceed to litigate their claims against  
12 the Debtors in the event that the Bankruptcy Court determined to remand the Coverage Litigation to  
13 the State Court.

14 On December 28, 2007, the Bankruptcy Court entered an order granting a Preliminary  
15 Injunction and staying prosecution of the Coverage Litigation in the state court until March 18,  
16 2008, except as to two matters then pending California Court of Appeal. Various insurers filed an  
17 appeal from this ruling on December 31, 2007. On April 15, 2008, the District Court having  
18 jurisdiction of the insurers’ appeal dismissed that appeal as moot, the injunction appealed from  
19 having expired by its terms on March 18, 2008.

20 On March 18, 2008, the Bankruptcy Court conducted a further hearing, and ordered that the  
21 Preliminary Injunction be extended until June 18, 2008. Certain insurers filed a notice of appeal  
22 from the Bankruptcy Court’s oral ruling extending the injunction. On April 4, 2008, the Bankruptcy  
23 Court implemented its oral ruling and entered a preliminary injunction staying the Coverage  
24 Litigation until June 18, 2008 and scheduling a hearing on that date to consider whether or not the  
25 injunction should be further extended. At the June 18 hearing, the Bankruptcy Court extended the  
26 preliminary injunction staying the Coverage Litigation until October 2, 2008.

27 **I. Motion to Appoint Chapter 11 Trustee**

28 On November 16, 2007, certain insurers filed a motion to appoint a Chapter 11 trustee for

1 Thorpe. The motion was based on allegations that Thorpe's management and professionals held  
2 interests adverse to the Estate in Thorpe's Chapter 11 case and were also acting contrary to Thorpe's  
3 alleged duty to cooperate with its insurers under its insurance policies. The Bankruptcy Court  
4 initially considered the motion to appoint a Chapter 11 trustee at a hearing conducted on December  
5 12, 2007, and limited discovery requested by the moving insurers pending a further hearing on  
6 January 14, 2008. After the January 14, 2008 hearing, the Bankruptcy Court denied the motion to  
7 appoint a Chapter 11 trustee, and entered an order on January 16, 2008. Certain insurers filed an  
8 appeal from the Bankruptcy Court's order denying their motion on the same date, January 16, 2008.  
9 By order entered June 16, 2008, the District Court affirmed the Bankruptcy Court's order denying  
10 the motion to appoint a chapter 11 trustee.

11 **J. Selected Insurer Settlements**

12 To date, the Debtors have successfully negotiated settlements with five of Thorpe's insurers,  
13 Pacific Indemnity Company, Great American Insurance Company, Republic Indemnity Company of  
14 North America, Associated International Insurance Company and American Centennial Insurance  
15 Company. Under these settlements, the Debtor has received, or will receive, in the aggregate, a  
16 minimum of \$47.5 million. In addition, should Thorpe successfully confirm a plan of reorganization  
17 in its bankruptcy case providing protection to two of the settling insurers pursuant to Bankruptcy  
18 Code section 524(g), Thorpe will receive additional payments from those insurers of at least \$20  
19 million and, depending upon the amounts, if any, recovered from Thorpe's other insurers, potentially  
20 as much as an additional \$45 million, which would result in total recoveries from the foregoing  
21 insurers of as much as \$92.5 million.

22 Certain of the insurer settlements referred to above were conditioned upon the entry of orders  
23 of the Bankruptcy Court approving and implementing those agreements. On January 24, 2008, the  
24 Bankruptcy Court entered an order approving notice procedures, including notice by publication, of  
25 the settlement with Great American and Republic. On February 1, 2008, the Debtors filed motions  
26 seeking Bankruptcy Court approval of each of the settlements, and asking the Bankruptcy Court to  
27 assume jurisdiction over a Qualified Settlement Fund that had been established prior to the petition  
28 date with funds from the settlement with Pacific Indemnity Company. The Debtors later withdrew

1 the motion to approve the prepetition settlement with Associated International, for which immediate  
2 approval was not required. On March 12, 2008, the Bankruptcy Court conducted a hearing and  
3 approved each of the other settlements. Orders approving the settlements were entered on May 20,  
4 2008. Certain insurers have appealed entry of these orders to the District Court and said appeals are  
5 currently pending. The Bankruptcy Court also assumed jurisdiction over the Qualified Settlement  
6 Fund, by order entered on March 14, 2008.

7 The foregoing discussion of the terms and conditions of the settlements with the above  
8 named insurers is qualified in its entirety by the terms and conditions of the settlement agreements  
9 with those insurers. Copies of those settlement agreements may be obtained from the Proponents  
10 upon request, and were filed with the Bankruptcy Court as exhibits to the motions seeking  
11 Bankruptcy Court approval of the settlements.

12 The Debtors continue to have settlement discussion with certain of Thorpe's insurers. In the  
13 event that the Debtors are successful in compromising their claims against other insurers prior to the  
14 conclusion of the confirmation hearing on the Plan, the Debtors will provide notice of such  
15 settlements to all parties in interest.

## 16 VI. THE PLAN

17 A copy of the Plan accompanies this Disclosure Statement as Exhibit A. The following  
18 summary of the material provisions of the Plan is qualified in its entirety by the specific provisions  
19 of the Plan, including the Plan's definitions of certain terms used below. The following is intended  
20 only to provide a general description of the Plan. For more specific information concerning the Plan,  
21 the Plan should be referenced. **In the event of any inconsistency between the terms of the Plan  
22 and the description of those terms in this Disclosure Statement, the terms and conditions of the  
23 Plan are controlling.**

### 24 A. Overview of the Plan

25 The Plan is the product of extensive, post-petition negotiations among the Debtors, the  
26 Committee, the Futures Representative and their respective bankruptcy counsel and advisors. The  
27 Plan is based primarily upon a compromise and agreement reached among these parties concerning:  
28 (a) the establishment and terms of the Trust, (b) the funding of the Trust, (c) the terms of discharges

1 and releases, (d) the issuance of injunctions under Section 524(g) of the Bankruptcy Code that will  
2 result in the channeling into the Trust of **all** present and future Asbestos Related Claims against the  
3 Debtors and certain other parties, and the conditions upon which such other parties may become  
4 entitled to the benefit of such injunctive relief and (e) the resolution of inter-company claims among  
5 Thorpe, Pacific and Farwest. These agreements are discussed below.

6 The Debtors have thoroughly evaluated, and discussed with the Committee and Futures  
7 Representative, the complexity, expense, inconvenience and delay involved in any alternative plan,  
8 and the interests of creditors. For the reasons set forth below, the Proponents believe that the terms  
9 and conditions of the Plan are fair, reasonable, in the best interests of creditors and otherwise meet  
10 the applicable requirements under the Bankruptcy Code for confirmation.

11 If the Debtors' current estimates regarding the amount of allowed Claims are accurate, the  
12 Proponents believe that, if the Plan is confirmed, all of the Debtors' creditors (other than creditors  
13 holding Asbestos Related Claims, will receive payment in full. Given the uncertainties inherent in  
14 predicting the quantity and amount of Asbestos Related Claims that may be filed and the outcome of  
15 the Coverage Litigation, it is difficult to predict the dividend that might be received by the holders of  
16 Asbestos Related Claims. Nevertheless, the Proponents believe that the holders of Asbestos Related  
17 Claims will receive treatment under the Plan that is significantly better than the distributions  
18 Creditors would achieve in a chapter 7 case

19 **1. Establishment of Trust**

20 Confirmation of the Plan will result in the establishment and (initial) funding of the  
21 Trust. The Trust will qualify as a "qualified settlement fund" under applicable regulations  
22 promulgated pursuant to Section 468B of the Internal Revenue Code (*e.g.*, 26 C.F.R. §1.486B-1(c)).  
23 The Trust will assume the liabilities, obligations, costs and expenses associated with the verification,  
24 liquidation, allowance and payment of all Asbestos-Related Claims.

25 The procedures for the determination and payment of Asbestos-Related Claims are  
26 set forth in that certain *Asbestos Personal Injury Settlement Trust Distribution Procedures* appended  
27 to the Plan as Exhibit I (the "TDP"). The TDP to be established and adopted by the Trust pursuant  
28 to the Trust Agreement will be used to assign a value to all Asbestos Related Claims that are timely

1 filed with the Trust and not rejected or denied and to determine the timing and amount of payments  
2 to be made in satisfaction of Asbestos Related Claims. In addition to resolving promptly Asbestos  
3 Related Claims, the TDP will significantly reduce operating expenses, which expenses would  
4 otherwise reduce Trust Assets available for distribution to holders of Asbestos Related Claims. All  
5 holders of Allowed Asbestos Related Claims will benefit from such cost savings, by maximizing the  
6 assets that are to be used for the payment of Asbestos Related Claims

7 The Trust will be funded with the Trust Assets, which include, among other things,  
8 the following assets to be delivered to the Trust pursuant to the Plan or otherwise: (a) the Asbestos  
9 Insurance Rights, (b) cash as of the Effective Date (including qualified settlement funds) constituting  
10 the proceeds of Asbestos Insurance Settlements, less amounts deposited in the Professional Fee  
11 Reserve, (c) the Reorganized Debtor Notes, (d) the Farwest Contribution, (e) the Debtors' rights of  
12 contribution, reimbursement, indemnity or subrogation on account of the payment by or on behalf of  
13 the Debtors prior to the Petition Dates of all or any part of any Asbestos Related Claim, other than  
14 rights against the Protected Parties, (f) all Business Losses, subject to the Business Loss Allocation  
15 payable to the Reorganized Debtor, and any income, profits and proceeds derived from the  
16 foregoing, and (g) all rights to future payments from the Manville Personal Injury Settlement Trust.

17 The Trust will be administered by the Trustees pursuant to the TDP, in consultation  
18 with, and with the consent as to certain matters of, the Futures Representative and the Trust  
19 Advisory Committee ("TAC"). The mechanisms of the Trust have been designed, as a result of  
20 extensive discussion, to provide reasonable assurance that the Trust will value, and will be in a  
21 financial position to pay, similar present and future Asbestos Related Claims in substantially the  
22 same manner.

## 23 2. Discharge and Injunctions

24 Upon confirmation of the Plan, the Debtors will each receive a discharge of all  
25 Claims. In addition, as noted, the Plan contemplates the issuance of Injunctions under Section  
26 524(g) of the Bankruptcy Code that will result in the channeling into the Trust of **all** present and  
27 future Asbestos Related Claims against the Protected Parties who include, among others, the  
28 Debtors, Farwest, the principals of the Debtors and Farwest, Bayshore Partners, LLC and the

1 Settling Insurers. These Injunctions are the Channeling Injunction (Exhibit A to the Plan), the  
2 Settling Asbestos Insurer Injunction (Exhibit B to the Plan) and the Asbestos Insurer Injunction  
3 (Exhibit C to the Plan).

4 **a. Channeling Injunction**

5 The Channeling Injunction provides that pursuant to Bankruptcy Code Sections  
6 524(g) and 105(a), certain Asbestos Related Claims shall be channeled to, and paid solely from, the  
7 Trust. Upon the Effective Date, all entities (except as expressly allowed below) which have held or  
8 asserted, which hold or assert, or which may in the future hold or assert any Asbestos Related Claim  
9 shall be permanently stayed, restrained and enjoined from taking any legal action for the purpose of  
10 directly or indirectly collecting, recovering or receiving payment or recovery with respect to any  
11 such claim from or against any Protected Party, including, but not limited to:

12 (i) commencing, conducting or continuing in any manner any action or other  
13 proceeding of any kind (including a judicial arbitration or other proceeding) against any  
14 Protected Party, or against the property of any Protected Party, with respect to any Asbestos  
15 Related Claim;

16 (ii) enforcing, attaching, levying, collecting or recovering, by any manner or  
17 means, any judgment, award, decree, or other order against any Protected Party, or against  
18 the property of any Protected Party, with respect to any Asbestos Related Claim;

19 (iii) creating, perfecting, or enforcing in any manner any Lien of any kind against  
20 any Protected Party, or against the property of any Protected Party, with respect to any  
21 Asbestos Related Claim;

22 (iv) asserting or accomplishing any setoff, right of subrogation, indemnity,  
23 contribution or recoupment of any kind, directly or indirectly, against any obligation due any  
24 Protected Party, or against the property of any Protected Party, with respect to any Asbestos  
25 Related Claim; and

26 (v) taking any act, in any manner, in any place whatsoever, that does not conform  
27 to, or comply with, the provisions of the Plan relating to any Asbestos Related Claim.

28 The provisions of the Channeling Injunction shall not shall bar (i) any action pursuant to



1 Section 5.1.6 of the Plan against the Reorganized Debtor that strictly conforms to the pleading  
2 requirements of Section 5.1.6 of the Plan, and/or (ii) any action against any Asbestos Insurer that is  
3 neither a Settling Asbestos Insurer nor an Asbestos Insurer protected, at the time such action is  
4 brought, by the Asbestos Insurance Injunction.

5 **b. Settling Asbestos Insurer Injunction**

6 The Settling Asbestos Insurer Injunction provides that pursuant to Sections 524(g) and 105(a)  
7 of the Bankruptcy Code, upon the Effective Date, all entities which have held or asserted, which  
8 hold or assert, or which may in the future hold or assert any Asbestos Insurance Policy Claim shall  
9 be permanently stayed, restrained and enjoined from taking any legal action for the purpose of  
10 directly or indirectly collecting, recovering or receiving payment or recovery with respect to any  
11 such claim from or against any Settling Asbestos Insurer, only to the extent that such Settling  
12 Asbestos Insurer has been released from any claim under one or more Asbestos Insurance Policies  
13 pursuant to one or more Asbestos Insurance Settlements, including, but not limited to:

14 (i) commencing, conducting or continuing in any manner any action or other  
15 proceeding of any kind (including a judicial arbitration or other proceeding) against any  
16 Settling Asbestos Insurer, or against the property of any Settling Asbestos Insurer, with  
17 respect to any Asbestos Insurance Policy Claim;

18 (ii) enforcing, attaching, levying, collecting or recovering, by any manner or  
19 means, any judgment, award, decree, or other order against any Settling Asbestos Insurer, or  
20 against the property of any Settling Asbestos Insurer, with respect to any Asbestos Insurance  
21 Policy Claim;

22 (iii) creating, perfecting, or enforcing in any manner any Lien of any kind against  
23 any Settling Insurer, or against the property of any Settling Asbestos Insurer, with respect to  
24 any Asbestos Insurance Policy Claim;

25 (iv) asserting or accomplishing any setoff, right of subrogation, indemnity,  
26 contribution or recoupment of any kind, directly or indirectly, against any obligation due any  
27 Settling Asbestos Insurer, or against the property of any Settling Asbestos Insurer, with  
28 respect to any Asbestos Insurance Policy Claim; and

1 (v) taking any act, in any manner, in any place whatsoever, that does not conform  
2 to, or comply with, the provisions of the Plan relating to any Asbestos Insurance Policy  
3 Claim.

4 **c. Asbestos Insurer Injunction**

5 The Asbestos Insurer Injunction provides that pursuant to Section 105(a) of the Bankruptcy  
6 Code, to carry out the provisions of Section 524(g) of the Bankruptcy Code, upon the Effective Date,  
7 all entities (except as expressly allowed below), which have held or asserted, which hold or assert, or  
8 which may in the future hold or assert any Asbestos Related Claim shall be permanently stayed,  
9 restrained and enjoined from taking any legal action for the purpose of directly or indirectly  
10 collecting, recovering or receiving payment or recovery with respect to any such claim from or  
11 against any Asbestos Insurer (except Fireman's Fund or Continental), including, but not limited to:

12 (i) commencing, conducting or continuing in any manner any action or other  
13 proceeding of any kind (including a judicial arbitration or other proceeding) against any  
14 Asbestos Insurer, or against the property of any Asbestos Insurer (except Fireman's Fund or  
15 Continental), with respect to any Asbestos Related Claim;

16 (ii) enforcing, attaching, levying, collecting or recovering, by any manner or  
17 means, any judgment, award, decree, or other order against any Asbestos Insurer (except  
18 Fireman's Fund or Continental), or against the property of any Asbestos Insurer (except  
19 Fireman's Fund or Continental), with respect to any Asbestos Related Claim;

20 (iii) creating, perfecting, or enforcing in any manner any Lien of any kind against  
21 any Asbestos Insurer (except Fireman's Fund or Continental), or against the property of any  
22 Asbestos Insurer (except Fireman's Fund or Continental), with respect to any Asbestos  
23 Related Claim;

24 (iv) asserting or accomplishing any setoff, right of subrogation, indemnity,  
25 contribution or recoupment of any kind, directly or indirectly, against any obligation due any  
26 Asbestos Insurer (except Fireman's Fund or Continental), or against the property of any  
27 Asbestos Insurer (except Fireman's Fund or Continental), with respect to any Asbestos  
28 Related Claim; and

1 (v) taking any act, in any manner, in any place whatsoever, that does not conform  
2 to, or comply with, the provisions of the Plan relating to any Asbestos Related Claim.

3 The provisions of the Asbestos Insurer Injunction shall not preclude the Trust from pursuing  
4 any claim that may exist under any Asbestos Insurance Policy against any Asbestos Insurer. The  
5 provisions of the Asbestos Insurer Injunction shall not apply to protect either of Fireman's Fund or  
6 Continental. The provisions of the Asbestos Insurer Injunction shall not impair or affect (i) any  
7 Asbestos Insurance Litigation brought by the Trust or the Reorganized Debtor against any Asbestos  
8 Insurer, or (ii) any Asbestos Insurance Rights held by the Trust or on behalf of the Reorganized  
9 Debtor. The provisions of the Asbestos Insurer Injunction are not issued for the benefit of any  
10 Asbestos Insurer and no such insurer is a third-party beneficiary of the Asbestos Insurer Injunction.  
11 The Trust shall have the sole and exclusive authority at any time, upon written notice to any affected  
12 Asbestos Insurer, to terminate, or reduce or limit the scope of the Asbestos Insurer Injunction with  
13 respect to any Asbestos Insurer.

14 **3. Reorganized Debtor**

15 Following the Effective Date of the Plan, other than with respect to those assets to be  
16 contributed to the Trust, each of Thorpe and Pacific will be revested with all of the assets of their  
17 respective bankruptcy estates, free and clear of any interests, and Pacific shall be merged into  
18 Thorpe, which will continue to operate the business theretofore operated by Pacific and use, acquire,  
19 and dispose of its property free of any restrictions of the Bankruptcy Code. As a result of the Merger  
20 Agreement, all of the equity interests in Pacific will be exchanged for equity interests in Thorpe and  
21 Pacific shall cease to exist as an independent entity.

22 **4. Agreements and Settlements with Debtors and Related Parties**

23 As noted, the Plan is the product of numerous compromises and agreements negotiated  
24 among and between the Debtors, the Committee, the Futures Representative and related parties  
25 concerning the establishment and terms of the Trust, the funding of the Trust, the terms of discharges  
26 and releases, and the contributions and/or other conditions upon which parties may become entitled  
27 to the benefit of injunctive relief under Section 524(g) of the Bankruptcy Code.

28 The settlements embodied in the Plan relate to two major subjects. The first concerns the

1 Trust, its structure and funding, and the amount and form of the “substantial contribution” to be  
2 made by the Debtors, and by or on behalf of affiliated entities and individuals, to meet the  
3 requirements and entitle them to the benefits and protections of §524(g). The second involves the  
4 resolution of a number of rights, claims, and purported entitlements asserted between Thorpe and its  
5 estate, on the one hand (including rights that Thorpe, as debtor in possession, is authorized to assert  
6 under the Bankruptcy Code), and Pacific, Farwest, their respective equity holders, and various other  
7 related entities and individuals, on the other hand. Although individual elements of the settlements  
8 are logically related to one or another of these two major subjects, it is important to recognize that  
9 the settlements reflected in the Plan between and among the Debtors, their affiliates, the Committee  
10 and the Futures Representative comprise a single “global” integrated compromise, and that no  
11 individual element is independent of or severable from the other elements or from the compromise  
12 agreement taken as a whole.

13 Section 524(g) Requirements: As described above in Article VI.A.2, Section 524(g) of the  
14 Bankruptcy Code authorizes the issuance of an injunction that “channels” all asbestos personal  
15 injury claims – including future claims that arise after the bankruptcy case – to a trust (thus  
16 expanding the protection of the bankruptcy discharge given to the debtor, which otherwise would not  
17 affect future claims), and that protects non-debtor parties against liability on asbestos personal injury  
18 claims – both present and future – asserted against the debtor (protection that otherwise would not be  
19 available at all since a bankruptcy discharge otherwise protects only the debtor and not third parties).  
20 There are complex requirements established by the statute for a debtor and for non-debtor third  
21 parties to obtain this protection against present and future asbestos personal injury claims. One of  
22 those requirements, applicable to both debtors and non-debtor third parties, is the requirement to  
23 make a substantial contribution to the trust to which the present and future claims are channeled.

24 Disputed Rights, Claims and Entitlements: The disputes resolved by the plan settlements  
25 include primarily the following:

26 • Avoidance claims against or involving Pacific and Farwest. The Committee and the  
27 Futures Representative have asserted that the transactions in which Pacific was organized and spun  
28 off to the shareholders of Thorpe in 2000, and Farwest acquired the remaining operating assets and

1 business of Thorpe in 2004, may have constituted transfers that are avoidable (*i.e.*, could be  
2 reversed) by creditors of Thorpe and on behalf of Thorpe’s bankruptcy estate, principally on the  
3 basis that they were “fraudulent transfers” under applicable state and bankruptcy law. Pacific and  
4 Farwest and their respective shareholders dispute this assertion on a variety of grounds, including  
5 that the transactions at issue were undertaken for legitimate business reasons, that any asset transfers  
6 were made for fair value, and (in the case of Pacific) that the statute of limitations bars any action to  
7 challenge the transaction.

- 8 • Pre-petition loan from Thorpe to Pacific. In October 2007, Thorpe loaned Pacific  
9 \$1,850,000. The Thorpe estate therefore asserts a claim against Pacific for repayment of that  
10 amount.
- 11 • Claims asserted by Pacific, Farwest and their respective shareholders against Thorpe  
12 for indemnification, reimbursement and/or damages arising from the assertion against Pacific and  
13 Farwest of asbestos personal injury claims based on the asbestos-related activities of Thorpe.
- 14 • Assertion by Pacific, Farwest, and their respective shareholders of an entitlement to  
15 or interest in claims against Thorpe’s insurers for extra-contractual damages, based principally on  
16 the theory that some of the insurers tortiously breached obligations owed to their policyholders, and  
17 that, because of the relationship of these other entities to Thorpe, and the nature of the injuries  
18 incurred by these affiliated entities, the affiliated entities also have claims against the insurers or a  
19 right to share in recoveries on Thorpe’s claims.

20 To address and resolve the foregoing matters, the parties have agreed on the following plan  
21 provisions:

22 Reorganized Debtor Promissory Note. The Reorganized Debtor will deliver a promissory  
23 note to the Trust (to be filed as Exhibit K to the Plan, at least ten days prior to the hearing to consider  
24 approval of the disclosure statement) (the “Promissory Note”), with the following economic terms:  
25 (i) principal amount of \$750,000, (ii) interest fixed at a rate per annum equal to the “discount rate”  
26 established by the Federal Reserve Bank of San Francisco in effect on the Confirmation Date plus  
27 3%, (iii) term of five years, (iv) mandatory annual payments of principal of not less than \$150,000,  
28 but subject to voluntary prepayment without penalty in whole or in part, and (v) secured by 51% of

1 the stock in the Reorganized Debtor. Any entitlement of the Reorganized Debtor to payments from  
2 the Trust may be offset against any sums due under the Promissory Note.

3 Reorganized Debtor Earnout Note. The Reorganized Debtor shall also deliver a promissory  
4 note to the Trust (to be filed as Exhibit L to the Plan) (the “Earnout Note”), with the following  
5 economic terms: (i) principal amount of \$500,000, (ii) interest fixed at a rate per annum equal to the  
6 “discount rate” established by the Federal Reserve Bank of San Francisco in effect on the  
7 Confirmation Date plus 3%, payable annually in arrears, and (iii) all principal and interest due in 10  
8 years, with mandatory annual payments of principal equal to 50% of the annual profits of the  
9 Reorganized Debtor for the year just ended, not to exceed \$50,000 per year, subject to the right to  
10 prepay, in whole or in part, without penalty, at any time.

11 Farwest Contribution and Settlement. On the Effective Date, Farwest shall pay the Trust  
12 \$500,000 in cash, for itself and on behalf of the Identified Parties (identified in the Plan as Bayshore  
13 Partners, LLC, formerly known as Bayshore Group, which was formerly known as Fults  
14 Development Co.; Robert W. Fults; Debra Fults; Linda E. Fults; Eric W. Fults; Vicky Fults; David  
15 A. Fults; and Stacie Fults) as, inter alia, their contribution pursuant to Section 524(g) and in  
16 consideration for the Farwest Settlement. Under the Farwest Settlement (Exhibit G to the Plan) all  
17 Intercompany Claims among the Debtors, on the one hand, and Farwest, on the other hand, shall be  
18 deemed fully and finally settled and the parties shall exchange mutual general releases. In particular,  
19 but without limitation, Farwest shall be deemed to have waived and released any and all claims it  
20 has, or may have, to some or all of the Business Loss Allocation which is otherwise being fully  
21 allocated to the Reorganized Debtor pursuant to the Plan. Farwest reserves the right to file a request  
22 for payment of an Administrative Claim for a substantial contribution pursuant to Sections  
23 503(b)(3)(D) and (4) of the Bankruptcy Code for the fees and expenses incurred by its counsel in  
24 connection with these Chapter 11 Cases in an amount to be determined by the Bankruptcy Court.

25 Business Loss Allocation. The claims against insurers to be transferred to the Trust under the  
26 Plan include claims for damages for lost business opportunities, business interruption or other cost,  
27 loss or damage to the Debtors’ businesses, or impairment of Asbestos Insurance Coverage, based on,  
28 arising under or related to any Asbestos Insurance Litigation (“Business Losses”). As noted above,

1 Pacific and Farwest and their owners contend that such claims are valuable and that they are entitled  
2 to a portion of any net recoveries from insurers on account of such claims. In resolution of this  
3 dispute, the parties have agreed that: (a) the Reorganized Debtor shall not receive certain insurance  
4 settlement monies already received (although some of such funds are being and will continue to be  
5 used to pay the administrative expenses of the Thorpe bankruptcy case, including the professional  
6 fees of counsel to Thorpe, the Committee and the Futures Representative); and (b) with respect to  
7 other funds received by the Trust from settlements with, or judgments against, insurers (including  
8 future amounts received under the settlements with Great American and American Centennial) (“Net  
9 Recoveries”), the Reorganized Debtor would receive a specified percentage of such recoveries up to  
10 the maximum aggregate amount of \$5,250,000.

11 The portion of the aggregate Business Losses sustained by the Debtors that shall be paid by  
12 the Trust to the Reorganized Debtor will be determined as follows: The sum of (i) 2% of all Net  
13 Recoveries up to \$200 million, plus (ii) .75% of all Net Recoveries between \$200 million and \$300  
14 million, plus (iii) .25% of all Net Recoveries between \$300 million and \$500 million. The Trust  
15 shall not pay the Reorganized Debtor any amounts for Business Losses on account of any Net  
16 Recoveries in excess of \$500 million. The Business Loss Allocation shall not exceed, under any  
17 circumstances, \$5.25 million.

18 Pacific Merged Into Thorpe. The effect of this merger is to reverse the transaction in 2000  
19 by which Pacific was spun off from Thorpe, *i.e.*, the transaction which the Committee and the  
20 Futures Representative assert may be avoidable as a fraudulent transfer.

21 The Committee and the Futures Representative have agreed to these terms based upon an  
22 assessment of the legal and factual bases of the claims that could be asserted by or on behalf of the  
23 Thorpe Estate, and the claims, rights and entitlements asserted by Pacific, Farwest, and their  
24 affiliated entities and individuals against or with respect to the Thorpe Estate and its assets, including  
25 rights to recover under insurance policies, and defenses to such claims or asserted rights or  
26 entitlements. In addition, the Committee and the Futures Representative have taken into account a  
27 range of practical and pragmatic considerations, including the cost to the estate of litigating over  
28 these matters, the likely net recovery if the matters were to be litigated to conclusion, the desirability

1 of reaching a prompt resolution on these matters to enable the parties to proceed as expeditiously as  
 2 possible with confirmation of the Plan, the relative financial significance of these matters in relation  
 3 to the other assets currently available or anticipated to be available to the estate and the Trust  
 4 (primarily from recoveries from Thorpe’s insurers), and the desirability of providing an economic  
 5 incentive to the owners of the Debtor to assist in the efforts to recover on the Business Loss claims  
 6 against Thorpe’s insurers. In light of all of these considerations, the Committee and the Futures  
 7 Representative believe that the terms to which they have agreed, as reflected in the Plan and as  
 8 described in substantial part above, are fair and reasonable from the standpoint of, and hence are in  
 9 the best interest of, Thorpe’s creditors and future claimants.

10 **B. Summary of Classification and Treatment of Claims under the Plan**

11 The following describes the Plan’s classification of Claims against and Equity Interests in  
 12 Thorpe and Pacific and the treatment the holders of Allowed Claims and Allowed Equity Interests  
 13 would receive under the Plan. The treatment of Claims set forth below is consistent with the  
 14 requirements of Section 1129(a) of the Bankruptcy Code.

15 16 17 18	Class 1	Priority Employee Claims	Class 1 Claims are to be paid in full. The Debtors are not currently aware of any Class 1 claims. Class 1 is unimpaired and holders of Class 1 Claims are deemed to have accepted the Plan.
19 20 21	Class 2	Miscellaneous Secured Claims (each secured creditor in a separate class identified as class 2a, Class 2b, etc.)	Class 2 Claims are to be paid in full, or the collateral securing such claims will be surrendered. The Debtors are not currently aware of any Class 2 Claims. Class 2 is unimpaired and holders of Class 2 Claims are deemed to have accepted the Plan.
22 23 24	Class 3	Pacific Unsecured Claims	Class 3 Claims shall be paid in full, with interest at the Plan Interest Rate from the Petition Date through the date of Distribution. Class 3 is unimpaired and holders of Class 3 Claims are deemed to have accepted the Plan.
25 26 27 28	Class 4	Thorpe Unsecured Claims	Class 4 claims shall be paid in full, with interest at the plan interest rate from the petition date through the date of distribution. Holders of Class 4 claims are deemed to have accepted the Plan.

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Class 5	Asbestos Injury Claims	<p>Upon the Effective Date, the Trust shall assume responsibility for all Asbestos Injury Claims and Asbestos Indirect Claims. The amount that each holder of such a Claim shall be entitled to receive from the Trust shall be determined in accordance with the TDP, shall remain subject to the Asbestos Related Defenses and shall be paid at the times and in the manner set forth in the TDP. In no event shall the Trust's obligation to pay the holder of an Asbestos Injury Claim or Asbestos Indirect Claim the amount of such claim as determined in accordance with the TDP be satisfied other than by the payment in full of such amount.</p>
Class 6	Pacific Interests	<p>On the Effective Date, the Merger shall be consummated and all Pacific Equity Securities shall automatically be terminated and extinguished and Pacific shall be merged into Thorpe with Thorpe to be the Surviving Corporation. Pursuant to the Merger Agreement, each holder of a Pacific Interest shall receive, in exchange for such interest, the Reorganized Debtor New Common Stock identified in the Merger Agreement. Upon and following the occurrence of the Effective Date, the Reorganized Debtor New Common Stock shall be subject to the Reorganized Debtor Stock Pledge Agreement, which shall encumber 51% of the Reorganized Debtor New Common Stock held by each holder of such stock. Class 5 is impaired and holders of Class 5 Pacific Interests are entitled to vote.</p>

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Class 7 Thorpe Interests

On the Effective Date, the Merger shall be consummated and all Thorpe Equity Securities shall automatically be terminated and extinguished and Pacific shall be merged into Thorpe with Thorpe to be the Surviving Corporation. Pursuant to the Merger Agreement, each holder of a Thorpe Interest shall receive, in exchange for such interest, the Reorganized Debtor New Common Stock identified in the Merger Agreement. Upon and following the occurrence of the Effective Date, the Reorganized Debtor New Common Stock shall be subject to the Reorganized Debtor Stock Pledge Agreement, which shall encumber 51% of the Reorganized Debtor New Common Stock held by each holder of such stock. Class 6 is impaired and holders of Class 6 Thorpe Interests are entitled to vote.

**C. Means of Implementation of the Plan**

The following shall constitute the principal means for the implementation of the Plan, as set forth in Article 5 of the Plan.

**1. Establishment of the Trust**

On the Effective Date, the Trust shall be established in accordance with the Trust Documents, and all Trust Assets shall be paid, transferred to, vested in, and assumed by the Trust. On the Effective Date, (i) all Asbestos Related Claims shall be assumed by the Trust, subject in all respects to any Asbestos Related Defenses, (ii) except as provided in the Plan, Asbestos Related Claims shall thereafter automatically and perpetually be transferred and channeled to the Trust, and (iii) the Trust shall be solely responsible for any and all obligations of the Trust under the terms of the Asbestos Insurance Settlements and the Trust Agreement.

**THE FORMATION, FUNDING, MANAGEMENT, CLAIMS LIQUIDATION PROCEDURES, DISTRIBUTION PROCEDURES AND OTHER OPERATIONS AND PROVISIONS OF THE TRUST ARE SUMMARIZED IN ARTICLE VII OF THIS DISCLOSURE STATEMENT BELOW.**

**2. Approval and Implementation of Reorganized Debtor and Farwest Contributions to Trust.**

The Confirmation Order shall constitute the determination by the Bankruptcy Court that the

1 Farwest Settlement contained in Exhibit G to the Plan is approved. On the Effective Date, (a) the  
2 Farwest Contribution shall be paid to the Trust, and (b) the Reorganized Debtor Notes and the  
3 Reorganized Debtor Stock Pledge Agreement shall be delivered to the Trust. Any amounts due and  
4 outstanding by the Trust to the Reorganized Debtor on account of the Business Loss Allocation  
5 shall, as long as the Reorganized Debtor Promissory Note remains unpaid and outstanding, be  
6 retained by the Trust and offset against amounts due to the Trust by the Reorganized Debtor under  
7 the Reorganized Debtor Promissory Note (as such offset may be effectuated pursuant to the terms  
8 specified in the Reorganized Debtor Promissory Note).

9 **3. Issuance of Injunctions.**

10 On the Effective Date, the Injunctions described in Article VI.A.2 above shall be deemed  
11 issued, entered, valid and enforceable according to their terms. Except as permitted by their terms,  
12 the Injunctions shall be permanent and irrevocable and may only be modified by the District Court to  
13 the extent permitted under Section 524(g)(2)(A) of the Bankruptcy Code.

14 **4. Vesting of Asbestos Insurance Rights.**

15 *Transfer of Asbestos Insurance Rights to Trust.* Upon the Effective Date, pursuant to  
16 Sections 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code and without any further action of  
17 the Bankruptcy Court or further act or agreement of any entity, the Debtors shall automatically and  
18 irrevocably transfer to the Trust all of their Asbestos Insurance Rights, subject to any Asbestos  
19 Insurance Defenses. The foregoing transfer is made, and shall be effective, to the maximum extent  
20 permissible under applicable law and the terms of the Asbestos Insurance Policies, and shall not be  
21 construed (a) as an assignment of any Asbestos Insurance Policy, Asbestos Insurance Settlement, or  
22 other settlement agreement itself, or (b) to entitle any other person or entity to any Asbestos  
23 Insurance Coverage. The Trust shall assume responsibility for, and be bound by, all obligations of  
24 the Debtors under any Asbestos Insurance Settlement, any other settlement agreement with an  
25 Asbestos Insurer, and any Asbestos Insurance Policy, provided however, that the Trust's assumption  
26 of such responsibility shall not relieve the Debtors or the Reorganized Debtor from any obligation  
27 that the Debtors or the Reorganized Debtor may have under such agreements. In the event that the  
28 Reorganized Debtor incurs any out of pocket cost or expense in performing any obligation that the

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1 Debtors or Reorganized Debtor may have under any Asbestos Insurance Settlement, any other  
2 settlement agreement with an Asbestos Insurer, or any Asbestos Insurance Policy, the Trust shall  
3 reimburse the Reorganized Debtor for such cost or expense.

4 *Plan Is Insurance Neutral.* All Asbestos Insurance Defenses shall be adjudicated in the  
5 Asbestos Insurance Litigation. No provision of the Plan shall diminish or impair the right of any  
6 Asbestos Insurer, in any Asbestos Insurance Litigation or otherwise, to assert any Asbestos  
7 Insurance Defense, and all of such defenses shall be preserved in all respects. Any evidence  
8 adduced as part of the Confirmation Hearing with respect to the Asbestos Related Claims, and any  
9 findings of the court related to that evidence, shall be solely for the purpose of establishing the  
10 requirements of Sections 524(g) and 1129 of the Bankruptcy Code in connection with Confirmation  
11 and shall not (a) bind any Asbestos Insurer in any Asbestos Insurance Litigation, or (b) limit the  
12 right of any Asbestos Insurer to assert any Asbestos Insurance Defense. Neither the assumption by  
13 the Trust of the Asbestos Related Claims, nor the ensuing obligations of the Trust to liquidate,  
14 resolve, pay and satisfy all Asbestos Related Claims in accordance with the TDP, shall be construed  
15 in any way to diminish any obligation of any Asbestos Insurer under any Asbestos Insurance Policy  
16 to any of the Debtors or the Trust, subject to any applicable Asbestos Insurance Settlement or  
17 Asbestos Insurance Defense. The duties and obligations of each Asbestos Insurer under such  
18 insurer's Asbestos Insurance Policies shall not be impaired, altered, reduced or diminished by the:  
19 (1) discharge of all obligations and liabilities of the Debtors under the Plan, (2) assumption of  
20 responsibility and liability for all Asbestos Related Claims by the Trust, or (3) protections granted to  
21 Protected Parties under the Plan. Notwithstanding the foregoing, this Section 5.4.2 shall not affect  
22 or limit, or be construed as affecting or limiting, (i) the binding effect of the Plan and Confirmation  
23 Order and the Injunctions on the Debtors, the Reorganized Debtor, the Trust or the beneficiaries of  
24 the Trust; (ii) the protections afforded to entities addressed by the Injunctions, or (iii) the binding  
25 effect of any finding in the Confirmation Order that the vesting of the Asbestos Insurance Rights in  
26 and for the benefit of the Trust pursuant to Section 5.4.1 of the Plan is valid and enforceable and  
27 otherwise does not breach the terms of any Asbestos Insurance Policy, Asbestos Insurance  
28 Settlement, or any other agreement with any Asbestos Insurer.

1                   **5. Merger of Thorpe and Pacific.**

2           Upon the Effective Date, Pacific shall be merged into Thorpe, the separate existence of  
3 Pacific shall thereupon cease (i.e., Pacific shall be the “disappearing corporation” under the Merger),  
4 and Thorpe, as the Surviving Corporation in the Merger, shall continue its corporate existence under  
5 the laws of the State of California. Upon the completion of the Merger, Thorpe shall be the  
6 Reorganized Debtor for purposes of consummating the transactions required in connection with the  
7 Plan. The name of the Surviving Corporation shall be “Pacific Insulation Company.”

8           *Intercompany Claims Extinguished.* Upon the Effective Date, pursuant to the Merger, all  
9 Intercompany Claims between Thorpe and Pacific shall be deemed extinguished.

10           *Pacific Officers and Pacific Directors.* Upon the Effective Date, and without any further  
11 action by the shareholders or directors of Pacific, the Pacific Officers and the Pacific Directors shall  
12 be deemed to have fulfilled their respective duties and shall be released and discharged from all  
13 further responsibilities with respect to the management, business and affairs of Pacific, as the  
14 “disappearing corporation” under the Merger, provided that, all outstanding amounts that may be  
15 due the Pacific Officers and the Pacific Directors shall remain payable according to the terms, and  
16 subject to the conditions of, such service.

17           *No Liability.* The Reorganized Debtor shall, pursuant to Section 524(g)(3)(A)(ii) of the  
18 Bankruptcy Code, have no liability for any Asbestos Related Claims against Pacific.

19                   **6. Resumption of Coverage Litigation.**

20           *Continuation in State Court.* Upon the Effective Date, (a) any injunction that stays the  
21 prosecution of the Coverage Litigation shall be deemed dissolved, without any further action of the  
22 Bankruptcy Court, (b) the Injunction Action shall be dismissed without prejudice, and Proponents  
23 shall lodge an order of dismissal without prejudice, which the Court shall sign, and (c) the parties to  
24 the Coverage Litigation shall resume the prosecution and defense of such litigation in the State  
25 Court, at such times and according to the procedures that may be established by such court.

26           *Trust As Representative of Debtors.* The Trust is appointed as the representative of the  
27 Debtors under Section 1123(b)(3)(B) of the Bankruptcy Code to enforce, manage, settle, transfer or  
28 otherwise dispose of all Asbestos Insurance Litigation including, without limitation, the Coverage

1 Litigation, at its sole direction and expense. The Trust shall be permitted, if necessary or  
2 appropriate, to substitute as the real party in interest for the Debtors in the Coverage Litigation. All  
3 Proceeds of any Asbestos Insurance Litigation shall be paid to the Trust or to the Reorganized  
4 Debtor for remittance to the Trust consistent with the Plan. The Reorganized Debtor shall assist and  
5 cooperate with the Trust in the prosecution of the Asbestos Insurance Litigation.

6 **7. Transfer and Retention of Property of the Estates.**

7 *Revesting of Pacific Assets.* Upon the Effective Date, with the exception of all Trust Assets  
8 that are transferred to the Trust pursuant to Section 5.4.1 of the Plan, Pacific shall be vested with all  
9 right, title and interest in the Pacific Assets (and all such property shall be deemed to vest  
10 concurrently with the Merger), and all such property shall become the property of the Reorganized  
11 Debtor pursuant to the Merger.

12 *Revesting of Thorpe Assets.* Upon the Effective Date, with the exception of all Trust Assets  
13 that are transferred to the Trust pursuant to Section 5.4.1 of the Plan, Thorpe shall be vested with all  
14 right, title and interest in the Thorpe Assets subject to the obligations to make (a) the Reorganized  
15 Debtor Contribution to the Trust, and (b) Distributions to the Creditors of the Debtors at the times, in  
16 the amounts and according to the treatment provisions of the Plan.

17 **8. Postconfirmation Operations.**

18 *Continued Business of Reorganized Debtor.* Following the Merger, the Reorganized Debtor  
19 shall continue to maintain its separate corporate existence for all purposes under the Plan with all the  
20 powers of a corporation under applicable law in the jurisdiction in which it is incorporated. The  
21 Reorganized Debtor shall continue to engage in business and may use, acquire and dispose of the  
22 Thorpe Assets (and all Pacific Assets acquired pursuant to the Merger), to the extent revested in the  
23 Reorganized Debtor pursuant to Section 5.7 of the Plan, without supervision by the Bankruptcy  
24 Court, free of any restrictions under the Bankruptcy Code or the Bankruptcy Rules.

25 *Payment of Reorganized Debtor Expenses.* All Reorganized Debtor Expenses shall be paid  
26 directly by the Trust (or, to the extent previously paid by the Reorganized Debtor, shall be  
27 reimbursed in full by the Trust from the Trust Assets, provided that, if such payments were made  
28 from funds contributed, or to be contributed, to the Trust as Trust Assets, no reimbursement shall be

1 made), in the ordinary course of business without further notice to Creditors or approval of the  
2 Bankruptcy Court. The fees and expenses incurred after the Effective Date by any Professionals that  
3 remain employed as a professional, following the Effective Date, by any of the Reorganized Debtor,  
4 the Disbursing Agent, the Committee or the Futures Representative shall constitute Reorganized  
5 Debtor Expenses payable according to Section 5.8.3 of the Plan.

6 *Creditors' Committee.* On the Effective Date, the Committee shall be dissolved and the  
7 members of the Committee shall be released and discharged from any further authority, duties,  
8 responsibilities, liabilities and obligations related to, or arising from, the Chapter 11 Cases, except  
9 that the Committee shall continue in existence and have standing and capacity to: (i) prosecute its  
10 pre-Effective Date intervention in any adversary proceedings; (ii) object to any proposed  
11 modification of the Plan; (iii) participate in any appeals of the Confirmation Order; (iv) participate as  
12 a party in interest in any proceeding involving Section 524(g) of the Bankruptcy Code; (v)  
13 participate as a party in interest in any applications for interim or final award of compensation and  
14 reimbursement of expenses to the members of the Committee and any Professional for services  
15 rendered prior to the Effective Date, and prepare and prosecute applications for the payment of fees  
16 and reimbursement of expenses; and (vi) participate as a party in interest in any proceeding relating  
17 to the Trust.

18 *Management of Reorganized Debtor.*

19 (a) *New Board of Directors.* Upon the Effective Date, the Thorpe Directors shall be  
20 deemed to have fulfilled their respective duties and shall be released and discharged from all further  
21 responsibilities with respect to the management, business and affairs of Thorpe, as the Surviving  
22 Corporation. Immediately thereafter, the management, control and operation of the Reorganized  
23 Debtor shall become the general responsibility of the board of directors of the Reorganized Debtor.  
24 The initial board of directors of the Reorganized Debtor shall be composed of the Reorganized  
25 Debtor Directors. Each of the members of such initial board of directors shall serve in accordance  
26 with applicable nonbankruptcy law and the Reorganized Debtor's Charter, as the same may be  
27 amended from time to time. From and after the Effective Date, the members of the board of  
28 directors of the Reorganized Debtor shall be selected and determined in accordance with the

1 provisions of applicable law and the Reorganized Debtor's Charter. Entry of the Confirmation  
2 Order shall ratify and approve all actions taken by the board of directors of Pacific and Thorpe from  
3 the Petition Date through and until the conclusion of the Confirmation Hearing.

4 (b) New Officers. Upon the Effective Date, the Thorpe Officer shall be deemed to have  
5 fulfilled his duties and shall be released and discharged from all further responsibilities with respect  
6 to the management, business and affairs of Thorpe, as the Surviving Corporation. Immediately  
7 thereafter, the Reorganized Debtor Officers shall be deemed appointed to serve as officers of the  
8 Reorganized Debtor without further action under applicable law, regulation, order or rule including,  
9 without limitation, any action by the stockholders or directors of the Reorganized Debtor. The  
10 Reorganized Debtor Officers shall serve in accordance with applicable nonbankruptcy law, any  
11 employment agreement with the Reorganized Debtor, and the Reorganized Debtor's Charter, as the  
12 same may be amended from time to time.

13 **9. Certain Claims and Defenses.**

14 **a. No Preclusive Effect.**

15 None of the Retained Claims or Defenses, the Asbestos Insurance Litigation or any Asbestos  
16 Related Defense shall be precluded, barred or subject to principles of res judicata or collateral  
17 estoppel because the Plan or the Disclosure Statement does not specifically identify any such claims  
18 or defenses or the Person against whom such claims or defenses may be asserted. Parties in interest,  
19 including Creditors, may not rely on the absence of a reference to a particular claim or defense in the  
20 Disclosure Statement or the Plan as any indication that the Debtors will not pursue any available  
21 claims and defenses against such parties.

22 **b. Retained Claims and Defenses.**

23 Following the Effective Date, the Reorganized Debtor may assert, compromise or dispose of  
24 the Retained Claims and Defenses without further notice to Creditors or authorization of the  
25 Bankruptcy Court.

26 **c. Avoidance Actions Deemed Waived.**

27 Upon the Effective Date, all Avoidance Actions of the Debtors shall be deemed waived and  
28 released, provided that, the waiver and releases of Avoidance Actions against Farwest shall be



1 subject to the Farwest Settlement.

2 **d. Appointment of Estate Representative for Pacific.**

3 The Reorganized Debtor is appointed as the representative of Pacific under Section  
4 1123(b)(3) of the Bankruptcy Code to carry out the Plan. The Reorganized Debtor shall be  
5 authorized to: (i) make all Distributions required to be made on or after the Effective Date to the  
6 holders of Allowed Claims against Pacific in the amounts, at the times and according to the  
7 treatment provisions of the Plan; (ii) settle, resolve and object to Disputed Claims against Pacific;  
8 (iii) pay all fees payable by Pacific under 28 U.S.C. § 1930; (iv) file any post-confirmation reports  
9 on behalf of Pacific required by the Bankruptcy Code or the Bankruptcy Court; and (vii) close  
10 Pacific's Chapter 11 Case.

11 **10. No Substantive Consolidation.**

12 Nothing in the Plan is intended to substantively consolidate the Estates of Thorpe and  
13 Pacific, and each such entity shall maintain its separate corporate existence and Assets (except that,  
14 upon the Merger, all right, title and interest in the Pacific Assets--with the exception of the Trust  
15 Assets transferred to the Trust--shall become the property of Thorpe by operation of law).

16 **11. Distributions.**

17 **a. Disputed Claims.**

18 The Reorganized Debtor shall file all objections to Disputed Claims on or before the 120th  
19 day following the Effective Date, unless the Bankruptcy Court, for cause shown, extends such  
20 deadline. The Reorganized Debtor shall be authorized to settle, or withdraw any objections to, any  
21 Disputed Claims following the Confirmation Date without further notice to Creditors or  
22 authorization of the Bankruptcy Court, in which event such Claim shall be deemed to be an Allowed  
23 Claim in the amount compromised for purposes of the Plan. No Distributions shall be made by the  
24 Disbursing Agent on account of (i) Disputed Claims, unless and to the extent such Claims become  
25 Allowed Claims, or (ii) Claims that may be or become Disputed by the Reorganized Debtor, unless  
26 and to the extent the deadline to object to such claims under Section 5.12.3 of the Plan has expired  
27 without an objection being filed and such Claims are otherwise Allowed Claims.  
28

**b. Unclaimed Distributions.**

1  
2 Any entity which fails to claim any Cash within ninety (90) days from the date upon which a  
3 Distribution is first made to such entity shall forfeit all rights to any Distribution under the Plan and  
4 the Disbursing Agent shall be authorized to cancel any Distribution that is not timely claimed,  
5 provided that, prior to and as a condition to such forfeiture, the Disbursing Agent shall file with the  
6 Bankruptcy Court and serve (by first-class mail, using addresses or forwarding instructions that are  
7 reasonably available to the Disbursing Agent), a notice of forfeiture specifying the amount and  
8 payee of each Distribution that is subject to forfeiture if it is not claimed within thirty (30) days of  
9 the date of service of the notice. Pursuant to Section 347(b) of the Bankruptcy Code, upon  
10 forfeiture, such Cash (including interest thereon, if any) shall revert to the Reorganized Debtor free  
11 of any restrictions under the Plan, the Bankruptcy Code or the Bankruptcy Rules. Upon forfeiture,  
12 the claim of any Creditor with respect to such funds shall be discharged and forever barred  
13 notwithstanding any federal or state escheat laws to the contrary, and such Creditors shall have no  
14 claim whatsoever against the Reorganized Debtor or any holder of an Allowed Claim to whom  
15 distributions are made by the Disbursing Agent.

**c. Setoff.**

16  
17 Nothing contained in the Plan shall constitute a waiver or release by the Debtors of any right  
18 of setoff or recoupment the Debtors may have against any Creditor. The Reorganized Debtor may,  
19 but is not required to, set off or recoup against any Claim or Interest and the payments or other  
20 distributions to be made under the Plan in respect of such Claim, claims of any nature whatsoever  
21 that arose before the Petition Date that the Debtors may have against the holder of such Claim or  
22 Interest.

**d. Taxes.**

23  
24 Pursuant to Section 346(f) of the Bankruptcy Code, the Disbursing Agent shall be entitled to  
25 deduct any federal, state or local withholding taxes from any Cash payments made with respect to  
26 Allowed Claims, as appropriate. The Reorganized Debtor shall be authorized to take all actions  
27 necessary to comply with applicable withholding and recording requirements. Notwithstanding any  
28 other provision of the Plan, each holder of an Allowed Claim that has received a distribution of Cash

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1 shall have sole and exclusive responsibility for the satisfaction or payment of any tax obligation  
2 imposed by any governmental unit, including income, withholding and other tax obligation, on  
3 account of such distribution. For tax purposes, distributions received in respect of Allowed Claims  
4 will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid  
5 accrued interest.

6 **D. Assumption and Rejection of Executory Contracts and Unexpired Leases**

7 **1. Assumption.**

8 On the Effective Date, pursuant to Section 1123(b)(2) of the Bankruptcy Code, Thorpe and  
9 Pacific will assume the executory contracts and unexpired leases of Thorpe and Pacific that (i) have  
10 been expressly identified for assumption on Exhibit E to the Plan (together with any additions,  
11 deletions, modifications or other revisions to such exhibit as may be made by the Proponents prior to  
12 the Confirmation Date) and (ii) are specified in Section 6.8 of the Plan. Each executory contract and  
13 unexpired lease listed in Exhibit E shall include any modifications, amendments and supplements to  
14 such agreement, whether or not listed in Exhibit E. Any agreement found by the Bankruptcy Court  
15 to be an executory contract of Thorpe which has not been expressly assumed by Thorpe shall be  
16 deemed rejected; any agreement which is found by the Bankruptcy Court to be an executory contract  
17 of Pacific which has not been expressly rejected by Pacific shall be deemed assumed.

18 Notwithstanding the foregoing, although the Proponents contend that prepetition insurance contracts  
19 or agreements to which Thorpe is a party are not executory contracts subject to assumption, to the  
20 extent the Bankruptcy Court determines otherwise, said prepetition insurance contracts and  
21 agreements shall be deemed assumed by the Reorganized Debtor pursuant to the Plan.

22 In the case of Thorpe, Exhibit E to the Plan identifies for assumption (to the extent necessary,  
23 if not otherwise assumed by order of the Bankruptcy Court), the Asbestos Insurance Settlements  
24 with the Asbestos Insurers listed in Exhibit D to the Plan. In the case of Pacific, Exhibit E does not  
25 identify for assumption any executory contracts or unexpired leases. For the avoidance of doubt,  
26 Exhibit E to the Plan clarifies that certain pre-petition agreements have been previously assumed by  
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1 orders of the Bankruptcy Court.<sup>4</sup> Under Section 6.4 of the Plan, the Plan does not affect any  
2 executory contracts or unexpired leases that have been assumed prior to the Confirmation Date.

3 In addition, Exhibit E to the Plan clarifies that certain pre-petition tort litigation settlement  
4 agreements between Thorpe and various Asbestos Claimants are not considered executory contracts  
5 (notwithstanding their prior inclusion in Schedule G to the Schedules filed by Thorpe), and,  
6 accordingly, are not listed for either assumption or rejection by Thorpe under the Plan.

7 Nevertheless, any Asbestos Injury Claims against Thorpe arising under such agreements will be  
8 assumed by the Trust pursuant to the Plan.

9 Thorpe, Fireman's Fund and Continental are parties to a Wellington Agreement dated June  
10 1985. The Wellington Agreement is an omnibus insurance coverage and claims handling protocol  
11 among approximately 35 asbestos product manufacturers and distributors and certain of their  
12 respective insurers. The Wellington Agreement and the Wellington Settlement Agreement are not  
13 executory contracts and, accordingly, are not listed for either assumption or rejection by Thorpe  
14 under the Plan.

## 15 2. Rejection.

16 On the Effective Date, pursuant to Section 1123(b)(2) of the Bankruptcy Code, Thorpe and  
17 Pacific will reject the executory contracts and unexpired leases of Thorpe and Pacific that have been  
18 expressly identified for rejection on Exhibit F to the Plan (together with any additions, deletions,  
19 modifications or other revisions to such exhibit as may be made by the Proponents prior to the  
20 Confirmation Date). Each executory contract and unexpired lease listed in Exhibit F shall include  
21 any modifications, amendments and supplements to such agreement, whether or not listed in Exhibit  
22 F. Any Person asserting any Claim for damages arising from the rejection of an executory contract  
23 or unexpired lease of Thorpe or Pacific under the Plan shall file such Claim on or before the  
24 Rejection Claim Bar Date, or be forever barred from (i) asserting such Claim against the  
25 Reorganized Debtor, Thorpe, Pacific or any property of Thorpe or Pacific, and (ii) sharing in any  
26

27 <sup>4</sup> See, for example, the (a) *Amended Order Approving the Motion of Pacific Insulation Company for Authority to Assume*  
28 *Certain Executory Contracts and Unexpired Leases*, entered by the Bankruptcy Court on April 9, 2008, and (b) *Order*  
*Granting Pacific Insulation Authority to Assume Certain Executory Contracts re (1) Johns Manville and (2) Employees'*  
*Profit Sharing Plan*, entered by the Bankruptcy Court on May 22, 2008.

1 distribution under the Plan.

2 Exhibit F to the Plan does not identify any executory contracts or unexpired leases of either  
3 Thorpe or Pacific to be rejected under the Plan.

4 **3. Assumption Obligations.**

5 The Reorganized Debtor shall satisfy all Assumption Obligations, if any, by making a Cash  
6 payment in the manner provided in Section 2.2 of the Plan, equal to the amount specified in Exhibit  
7 E to the Plan, unless an objection to such proposed amount is filed with the Bankruptcy Court and  
8 served on counsel to the Debtors on or prior to the date set by the Bankruptcy Court for filing  
9 objections to Confirmation of the Plan and the Bankruptcy Court, after notice and hearing,  
10 determines that the applicable Debtor is obligated to pay a different amount under Section 365 of the  
11 Bankruptcy Code, in which case, the applicable Debtor shall have the right within ten (10) days after  
12 such determination to seek an order of the Bankruptcy Court rejecting such executory contract or  
13 unexpired lease. Any Person that fails to object to the Assumption Obligation specified in Exhibit E  
14 to the Plan on or prior to the date set by the Bankruptcy Court for filing objections to Confirmation  
15 of the Plan shall be forever barred from (i) asserting any other, additional or different amount on  
16 account of such obligation against the Reorganized Debtor, Thorpe, Pacific or any property of  
17 Thorpe or Pacific, and (ii) sharing in any other, additional or different distribution under the Plan on  
18 account of such obligation.

19 **4. Effect of Confirmation Order.**

20 The Confirmation Order shall constitute an order of the Bankruptcy Court approving, as of  
21 the Effective Date, the assumption or rejection by Thorpe and Pacific, as the case may be, pursuant  
22 to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of all executory contracts and unexpired  
23 leases identified under Article VI of the Plan.

24 **5. Post-Petition Agreements.**

25 Unless inconsistent with the provisions of the Plan, all contracts, leases and other agreements  
26 entered into or restated by either of the Debtors on or after their respective Petition Dates, or  
27 previously assumed by either of the Debtors prior to the Confirmation Date (or the subject of a  
28 pending motion to assume by either of the Debtors as of the Confirmation Date that is granted by the

1 Bankruptcy Court), which have not expired or been terminated in accordance with their terms, shall  
2 be performed by the Reorganized Debtor in the ordinary course of business and shall survive and  
3 remain in full force and effect following the Effective Date.

4 **6. Insurance of Debtors.**

5 Any insurance policy acquired for the benefit of the Debtors (or any officers and directors of  
6 any of the Debtors) before or after the Petition Date, including any Asbestos Insurance Policy, shall  
7 remain in full force and effect after the Effective Date according to its terms, except as otherwise  
8 provided in any Asbestos Insurance Settlement.

9 **7. Employee Benefit Programs.**

10 All Employee Benefit Programs shall be treated as “executory contracts” and shall be  
11 assumed pursuant to Sections 365 and 1123(b)(2) of the Bankruptcy Code by operation of the Plan.  
12 The Debtors do not provide “retiree benefits” as that term is defined in Section 1114(a) of the  
13 Bankruptcy Code. Therefore, on and after the Effective Date the Debtors will not pay retiree  
14 benefits.

15 **8. Survival of Indemnification Obligations.**

16 Any and all obligations of Thorpe or Pacific to indemnify, reimburse or limit the liability of  
17 its past and present Agents pursuant to the applicable Charter, applicable law or specific agreements,  
18 or any combination of the foregoing, against any actions, suits and proceedings based upon any act  
19 or omission related to service with or for Thorpe or Pacific shall not be discharged or impaired by  
20 Confirmation.

21 **E. Conditions to Confirmation and Effectiveness**

22 **1. Conditions to Confirmation.**

23 The following are conditions precedent to confirmation of the Plan:

- 24 (a) The Bankruptcy Court shall have entered a Final Order approving a Disclosure  
25 Statement with respect to this Plan in form and substance satisfactory to the Proponents;  
26 (b) The Confirmation Order shall be in a form and substance reasonably acceptable to the  
27 Proponents; and  
28 (c) The Wellington Settlement Claims Favorable Determination shall have occurred.

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**2. Conditions to Effectiveness.**

The following are conditions precedent to the occurrence of the Effective Date:

- (a) The Confirmation Date shall have occurred;
- (b) The Confirmation Order shall be a Final Order;
- (c) No request for revocation of the Confirmation Order under Section 1144 of the Bankruptcy Code has been made, or, if made, remains pending;
- (d) The Trust Agreement shall have been executed and delivered;
- (e) The Professional Fee Reserve shall have been established and funded in an amount sufficient (as determined by the Debtors, in their reasonable discretion) to pay all anticipated Allowed Professional Fees accrued through the Effective Date and to reimburse Pacific for all Allowed Professional Fees previously paid by it during the course of its Chapter 11 Case, provided that, such reimbursement shall be reduced by \$250,000 on account of amounts previously funded by Pacific for retainers to Professionals; and
- (f) The Proponents shall have obtained a QSF Opinion in a form and substance reasonably acceptable to the Proponents.

**3. Waiver of Conditions.**

Conditions to Confirmation and the Effective Date may be waived, in whole or in part, by agreement of the Proponents at any time without notice, an order of the Bankruptcy Court, or any further action other than proceeding to Confirmation and consummation of the Plan, provided that, (i) the condition to Confirmation set forth in Section 7.1(c) of the Plan may only be waived pursuant to Section 7.4 of the Plan, and (ii) the condition to the occurrence of the Effective Date set forth in Section 7.2(e) of the Plan may be waived by the Committee and the Futures Representative (notwithstanding the disagreement of any other Proponent), by the delivery to the Debtors of a written, irrevocable election to cause the Trust to satisfy, or reimburse the Reorganized Debtor for, the sum of (x) all Allowed Professional Fees accrued through the Effective Date, plus (y) the amount necessary to reimburse Pacific for all Allowed Professional Fees previously paid by it during the course of its Chapter 11 Case, provided that, such amount shall be reduced by \$250,000 on account of amounts previously funded by Pacific for retainers to Professionals. Upon the Effective Date, the

1 election set forth in Section 7.3(ii) of the Plan shall be immediately and automatically valid and  
2 enforceable, and the Trust shall be irrevocably bound to perform in accordance with such election,  
3 without any further action of the Bankruptcy Court or further act or agreement of any Person.

4 **4. Waiver of Wellington Settlement Claims Favorable Determination.**

5 In the event that, following the commencement of the Confirmation Hearing, the only  
6 condition to Confirmation that has not been satisfied is the condition to Confirmation set forth in  
7 Section 7.1(c) of the Plan, the Committee and the Futures Representative may elect to waive such  
8 condition (notwithstanding the disagreement of any other Proponent), by making the Indemnity  
9 Election in writing delivered to the Debtors prior to the conclusion of the Confirmation Hearing.  
10 Upon the Effective Date, the Indemnity Election set forth in Section 7.4 of the Plan shall be  
11 immediately and automatically valid and enforceable, and the Trust shall be irrevocably bound to  
12 perform in accordance with such election, without any further action of the Bankruptcy Court or  
13 further act or agreement of any Person.

14 **5. Filing of Merger Agreement.**

15 The Debtors shall file the Merger Agreement with the Secretary of State of the State of  
16 California on, or as soon thereafter as practicable, the later, but subject to the occurrence, of: (a) the  
17 first Business Day that is at least thirty one (31) days after the Confirmation Date and on which no  
18 stay of the Confirmation Order is in effect; and (b) the Business Day, on which all of the conditions  
19 set forth in Section 7.2 of the Plan have been satisfied or waived as provided in Section 7.3 of the  
20 Plan.

21 **F. Effects of Confirmation**

22 **1. Binding Effect.**

23 The rights afforded under the Plan and the treatment of all Claims and Interests under the  
24 Plan shall be the sole and exclusive remedy on account of such Claims against, and Interests in the  
25 Debtors, the Reorganized Debtor, the Thorpe Assets and the Pacific Assets, including any interest  
26 accrued on such Claims from and after the pertinent Petition Date or interest which would have  
27 accrued but for the commencement of the Chapter 11 Cases. Confirmation of the Plan shall bind and  
28 govern the acts of the Reorganized Debtor and all holders of all Claims against, and Interests in the

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1 Debtors, whether or not: (i) a proof of Claim or proof of Interest is filed or deemed filed pursuant to  
2 Section 501 of the Bankruptcy Code; (ii) a Claim or Interest is allowed pursuant to Section 502 of  
3 the Bankruptcy Code, or (iii) the holder of a Claim or Interest has accepted the Plan.

4 **2. Revesting of Assets.**

5 Upon the Effective Date, with the exception of all Trust Assets that are transferred to the  
6 Trust pursuant to Section 5.4.1 of the Plan, title to all remaining Pacific Assets and Thorpe Assets  
7 shall vest in Pacific and Thorpe, respectively (and all such property shall be deemed to vest in the  
8 Reorganized Debtor concurrently with the Merger), for the purposes contemplated under the Plan.  
9 Except as otherwise provided in the Plan, upon the Effective Date all Pacific Assets and Thorpe  
10 Assets shall be free and clear of all Claims and Interests, including Liens, charges or other  
11 encumbrances of Creditors of Pacific and Thorpe.

12 **3. Discharge.**

13 Confirmation of the Plan shall discharge Thorpe, Pacific and the Reorganized Debtor from  
14 all Claims or other debts that arose at any time before the Effective Date, and all debts of the kind  
15 specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not: (i) a proof of  
16 claim based on such debt is filed or deemed filed under Section 501 of the Bankruptcy Code; (ii) a  
17 Claim based on such debt is Allowed under Section 502 of the Bankruptcy Code; or (iii) the holder  
18 of a Claim has accepted the Plan. As of the Effective Date, all entities that have held, currently hold  
19 or may hold a Claim or other debt or liability that is discharged or any other right that is terminated  
20 under the Bankruptcy Code or the Plan are permanently enjoined, to the full extent provided under  
21 Section 524(a) of the Bankruptcy Code, from “the commencement or continuation of an action, the  
22 employment of process, or an act, to collect, recover or offset any such debt as a personal liability”  
23 of Thorpe, Pacific or the Reorganized Debtor. Nothing contained in the foregoing discharge shall, to  
24 the full extent provided under Section 524(e) of the Bankruptcy Code, affect the liability of any  
25 other entity on, or the property of any other entity for, any debt of the Debtors that is discharged  
26 under the Plan.

27 **4. Injunctions.**

28 Upon the occurrence of the Effective Date, the Injunctions shall be deemed issued, entered

1 and enforceable by the District Court and shall supplement the discharge of the Debtors and the  
2 Reorganized Debtor according to their terms to the fullest extent permissible by Sections 524(g) and  
3 105(a) of the Bankruptcy Code.

4 **5. Limitation of Liability.**

5 The Debtors, the Reorganized Debtor, the Committee and the Futures Representative, and  
6 each of their respective Agents, shall have all of the benefits and protections afforded under 11  
7 U.S.C. § 1125(e) and applicable law.

8 **6. Exoneration and Reliance.**

9 The Debtors, the Reorganized Debtor, Farwest, the Identified Parties, the Committee, the  
10 Futures Representative and the Settling Asbestos Insurers, and each of their respective Agents, shall  
11 not be liable, other than for gross negligence or willful misconduct, to any holder of a Claim or  
12 Interest or any other entity with respect to any action, omission, forbearance from action, decision,  
13 or exercise of discretion taken at any time after the Petition Date and prior to the Effective Date in  
14 connection with: (a) the management or operation of the Debtors or the discharge of their duties  
15 under the Bankruptcy Code, (b) the implementation of any of the transactions provided for, or  
16 contemplated in, this Plan, (c) any action or inaction taken in connection with either the enforcement  
17 of the Debtors' rights against any entities or the defense of Claims asserted against the Debtors with  
18 regard to the Chapter 11 Cases, (d) any action taken in the negotiation, formulation, development,  
19 proposal, disclosure, Confirmation or implementation of the Plan, or (e) the administration of this  
20 Plan or the Trust or the assets and property to be distributed pursuant to this Plan. The Debtors, the  
21 Reorganized Debtor, Farwest, the Identified Parties, the Committee, the Futures Representative and  
22 the Settling Asbestos Insurers, and each of their respective Agents may reasonably rely upon the  
23 opinions of their respective counsel, accountants, and other experts and professionals and such  
24 reliance, if reasonable, shall conclusively establish good faith and the absence of gross negligence or  
25 willful misconduct; provided however, that a determination that such reliance is unreasonable shall  
26 not, by itself, constitute a determination or finding of bad faith, gross negligence or willful  
27 misconduct; further provided, however, that nothing in Section 8.7 of the Plan shall prevent the  
28 enforcement by any party to an Asbestos Insurance Settlement of the terms of such settlement

1 against any other party to such settlement. In any action, suit or proceeding by any holder of a  
2 Claim or Interest or any other entity contesting any action, omission, forbearance from action,  
3 decision or exercise of discretion in connection with the matters in subsections (a) through (e) above,  
4 by the Debtors, the Reorganized Debtor, Farwest, the Identified Parties, the Committee, the Futures  
5 Representative and the Settling Asbestos Insurers, and each of their respective Agents, the  
6 reasonable attorneys' fees and costs of the prevailing party shall be paid by the losing party. Any  
7 action, suit or proceeding by any holder of a Claim or Interest or any other entity contesting any  
8 action, omission, forbearance from action, decision or exercise of discretion by the Debtors, the  
9 Reorganized Debtor, Farwest, the Identified Parties, the Committee the Futures Representative, and  
10 the Settling Asbestos Insurers and each of their respective Agents, whether before or after the  
11 Effective Date, shall be commenced only in the Bankruptcy Court.

12 **7. Asbestos Insurance Policy with Pacific Indemnity Company.**

13 Upon the Effective Date, in accordance with the terms and conditions of the Asbestos  
14 Insurance Settlement with Pacific Indemnity Company (and subject to receipt of the final payment  
15 from Pacific Indemnity Company under such settlement), the Asbestos Insurance Policies with  
16 Pacific Indemnity Company that are referenced in such settlement, and all interests of the Debtors  
17 under such policies, shall be deemed transferred to Pacific Indemnity Company free and clear of all  
18 Claims and Interests, including Liens, charges or other encumbrances of Creditors of the Debtors.

19 **G. Retention of Jurisdiction**

20 Pursuant to the Plan, notwithstanding the entry of the Confirmation Order and the occurrence  
21 of the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases after  
22 the Effective Date to the extent legally permissible, including, without limitation, jurisdiction to:

- 23 (a) Allow, disallow, determine, liquidate, classify, estimate, or establish the priority or  
24 secured or unsecured status of any Claim, including the resolution of any request for payment of any  
25 Administrative Claim and the resolution of any objections to the allowance or priority of Claims;  
26 (b) Grant or deny any applications for allowance of compensation or reimbursement of  
27 expenses authorized under the Bankruptcy Code or the Plan;  
28 (c) Resolve any matters related to the assumption, assumption and assignment, or

1 rejection of any executory contract or unexpired lease to which any Debtor is a party and to hear,  
2 determine and, if necessary, liquidate, any Claims arising from, or cure amounts related to, such  
3 assumption or rejection;

4 (d) Ensure that Distributions to holders of Allowed Claims are accomplished in  
5 accordance with the Plan;

6 (e) Decide or resolve any motions, adversary proceedings, contested or litigated matters,  
7 and any other matters and grant or deny any applications or motions involving any Debtor that may  
8 be pending on the Effective Date;

9 (f) Enter such orders as may be necessary or appropriate to implement or consummate  
10 the provisions of the Plan and all contracts, instruments, releases, and other agreements or  
11 documents created in connection with the Plan or the Disclosure Statement;

12 (g) Resolve any cases, controversies, suits or disputes that may arise in connection with  
13 the consummation, interpretation or enforcement of the Plan or any Person's obligations incurred in  
14 connection with the Plan;

15 (h) Modify the Plan before or after the Effective Date under Section 1127 of the  
16 Bankruptcy Code or modify the Disclosure Statement or any contract, instrument, release, or other  
17 agreement or document created in connection with the Plan or the Disclosure Statement; or remedy  
18 any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the  
19 Disclosure Statement, or any contract, instrument, release, or other agreement or document created  
20 in connection with the Plan and the Disclosure Statement, in such manner as may be necessary or  
21 appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code;

22 (i) Enter and implement such orders as are necessary or appropriate if the Confirmation  
23 Order is for any reason modified, stayed, reversed, revoked, or vacated;

24 (j) Determine any other matters that may arise in connection with or related to the Plan,  
25 the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other  
26 agreement or document created in connection with the Plan, the Disclosure Statement or the  
27 Confirmation Order, except as otherwise provided in the Plan;

28 (k) Hear and determine any applications by the Trust to amend, modify, alter or repeal

1 any provision of the Trust Agreement or the TDP pursuant to applicable provisions of such  
2 instruments;

3 (l) Hear and determine Retained Claims and Defenses commenced by the Debtors or the  
4 Reorganized Debtor;

5 (m) Enter and implement other orders, or take such other actions as may be necessary or  
6 appropriate to restrain interference by any entity with consummation or enforcement of the  
7 Injunctions or the Plan, except as otherwise provided in the Plan; and

8 (n) Enter an order closing the Chapter 11 Cases which provides for the retention of  
9 jurisdiction by the Bankruptcy Court for purposes of Article 9 of the Plan.

10 **H. Amendment and Withdrawal of the Plan**

11 At any time before the Confirmation Date, the Proponents may alter, amend, or modify the  
12 Plan under Section 1127(a) of the Bankruptcy Code including, without limitation, the right to add  
13 additional Settling Asbestos Insurers to Exhibit D to the Plan, provided that, such alteration,  
14 amendment, or modification does not materially and adversely affect the treatment and rights of the  
15 holders of Claims under the Plan. After the Confirmation Date and before substantial consummation  
16 of the Plan as defined in Section 1101(2) of the Bankruptcy Code, the Proponents may, under  
17 Section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy  
18 any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the  
19 Confirmation Order, or as otherwise may be necessary to carry out the purposes and effects of the  
20 Plan so long as such proceedings do not materially and adversely affect the treatment of holders of  
21 Claims under the Plan; provided, however, that prior notice of such proceedings shall be served in  
22 accordance with the Bankruptcy Rules or applicable order of the Bankruptcy Court.

23 The Proponents reserve the right to revoke or withdraw the Plan in the event that the  
24 Proponents determine in good faith that any condition to Confirmation or the effectiveness of this  
25 Plan is unlikely to be satisfied as required herein. If the Plan is withdrawn or revoked, then the Plan  
26 shall be deemed null and void, and nothing contained in the Plan shall be deemed a waiver of any  
27 Claims by or against the Debtors or any other Person in any further proceedings involving the  
28 Debtors or an admission of any sort, and this Plan and any transaction contemplated by this Plan

1 shall not be admitted into evidence in any proceeding.

2 **VII. FORMATION OF TRUST, RESOLUTION OF ASBESTOS-RELATED CLAIMS**  
3 **AND ESTIMATE OF ASBESTOS LIABILITIES**

4 **The following is a summary of certain significant features of the Trust. This summary is**  
5 **qualified in its entirety by reference to the complete text of the Trust Documents and the**  
6 **Plan.**

7 **A. Establishment and Purpose of the Trust.**

8 On the Effective Date, the Trust shall be established pursuant to Section 524(g) of the  
9 Bankruptcy Code in accordance with the Trust Documents. The Trustees shall decide on the  
10 principal office and the jurisdiction of organization for the Trust. The Trust shall be a “qualified  
11 settlement fund” within the meaning of Treasury Regulations issued pursuant to sections 468B of the  
12 IRC. The purpose of the Trust shall be, among other things, to (a) liquidate, resolve, pay and satisfy  
13 all Asbestos Related Claims in accordance with the Plan, the TDP and the Confirmation Order; (b)  
14 preserve, hold, manage and maximize the Trust Assets for use in paying and satisfying Asbestos  
15 Related Claims; and (d) prosecute, settle and manage the Asbestos Insurance Litigation. The TDP  
16 shall provide for the liquidation and payment or the outright rejection or denial of Asbestos Related  
17 Claims in accordance with the terms of the Plan..

18 **1. Receipt of Trust Assets.**

19 On the Effective Date, all Trust Assets shall be transferred to, vested in and assumed by the  
20 Trust: (a) the Asbestos Insurance Rights, (b) cash as of the Effective Date (including qualified  
21 settlement funds) constituting the proceeds of Asbestos Insurance Settlements, less amounts  
22 deposited in the Professional Fee Reserve, (c) the Reorganized Debtor Notes, (d) the Farwest  
23 Contribution, (e) the Debtors’ rights of contribution, reimbursement, indemnity or subrogation on  
24 account of the payment by or on behalf of the Debtors prior to the Petition Dates of all or any part of  
25 any Asbestos Related Claim, other than rights against the Protected Parties, (f) all Business Losses,  
26 subject to the Business Loss Allocation payable to the Reorganized Debtor, (g) all rights to future  
27 payments from the 2002 Manville Personal Injury Settlement Trust (described in the next  
28 paragraph), and any income, profits and proceeds derived from the foregoing. To the extent that  
certain Trust Assets, because of their nature or because they will accrue subsequent to the Effective

1 Date, cannot be transferred to, vested in and assumed by the Trust on the Effective Date, such Trust  
2 Assets shall be transferred to, vested in and assumed by the Trust as soon as practicable after the  
3 Effective Date.

4 Thorpe was a distributor of Johns-Manville asbestos containing products. Under Section 1.7  
5 of the 2002 Manville Personal Injury Settlement Trust, Trust Distribution Procedures (“Manville  
6 TDP”) (a copy of which is attached to the Disclosure Statement as Exhibit “B”). Thorpe has the  
7 right to submit certain claims for payment. Proponents believe that the claim percentage assigned to  
8 Thorpe by the Manville Personal Injury Settlement Trust is 47.77%. Any future payments by the  
9 Manville Personal Injury Settlement Trust to Thorpe are hard to predict and will depend upon the total  
10 amount of payments that would qualify for payment under the Manville TDP as well as the funds  
11 available to the Manville Personal Injury Settlement Trust to pay claimants.

12 **2. Discharge of Liabilities to Holders of Asbestos Related Claims.**

13 Except as provided in the Plan and Confirmation Order, the transfer to, vesting in, and  
14 assumption by the Trust of the Trust Assets as contemplated by the Plan, among other things, shall  
15 discharge the Reorganized Debtor, enjoin further proceedings against the Reorganized Debtor and  
16 release the Protected Parties other than the Reorganized Debtor from and in respect of all Asbestos  
17 Related Claims. Except as provided in the Plan, the Trust shall assume the Debtors’ liabilities for all  
18 Asbestos Related Claims.

19 **3. Excess Trust Assets.**

20 To the extent there are any Trust Assets remaining after the payment, in full, of all Asbestos  
21 Related Claims and the payment, in full, of all Trust Expenses, such excess Trust Assets shall be  
22 used to adjust the Funds Received Ratio and distributed to claimants who are still entitled to receive  
23 distributions from the Trust pursuant to Section 2.3 of the TDP.

24 **4. Trust Expenses.**

25 The Trust shall pay all Trust Expenses from the Trust Assets. None of the Protected Parties  
26 shall have any obligation to pay any Trust Expenses. Professional Fees shall be paid pursuant to the  
27 Professional Fees Reserve set forth in Section 1.92 of the Plan unless the Committee and the Futures  
28 Representative exercise their waiver rights under Section 7.3 of the Plan in which case the Trust

1 shall reimburse the Reorganized Debtor for all paid Allowed Professional Fees through the Effective  
2 Date.

3 **5. Selection of the Initial Trustees.**

4 The three initial Trustees of the Trust shall be selected by the Committee and the Futures  
5 Representative on or before the Effective Date. If the Committee and the Futures Representative  
6 cannot agree on the three initial Trustees of the Trust, the Bankruptcy Court shall resolve any  
7 dispute. All successor Trustees shall be appointed in accordance with the terms of the Trust  
8 Agreement.

9 **6. The Futures Representative.**

10 The Futures Representative shall serve as the Futures Representative pursuant to Article 5 of  
11 the Trust Agreement, on and after the Effective Date, and shall have the functions and rights  
12 provided in the Trust Documents. Prior to the Effective Date, the Futures Representative shall have  
13 the functions, rights and obligations asset forth in the Bankruptcy Code.

14 **7. Trust Advisory Committee.**

15 The Trust Advisory Committee ("TAC") has the functions and rights provided in the Trust  
16 Documents. On or before the Confirmation Date, the TAC shall be selected by the Committee and  
17 appointed to serve from and after the Effective Date pursuant to the terms of the Plan and the  
18 Confirmation Order.

19 **8. Trust Obligations to Assist Defense of the Injunctions.**

20 The Trust and, to the extent necessary for the Trust to act, the Trustees, shall cooperate as set  
21 forth in the Plan with and assist any Protected Party, at the request of any such Protected Party, to  
22 resist and oppose any Entity claiming a right against any Protected Party in violation of any of the  
23 Injunctions.

24 **9. Assumption of Liabilities by the Trust.**

25 Except as set forth in the Plan, pursuant to Section 1.4 of the Trust Agreement, on the  
26 Effective Date, the Trustees on behalf of the Trust will expressly assume all liability arising from or  
27 based on Asbestos Related Claims, remaining obligations, if any, for bankruptcy court appointed  
28 insurance coverage counsel according to the terms of the order of appointment and Trust Expenses.



1 In addition, the Trust may assume liability arising from contingent obligations set forth in Section  
2 7.3 (certain Allowed Professional Expenses) and Section 7.4 (certain Wellington Settlement Claims).

3 **10. Indemnification of the Indemnified Parties by the Trust.**

4 Pursuant to Sections 1.4 and 4.7 of the Plan, each Indemnified Party shall be entitled to  
5 indemnification from the Trust for any expenses, costs and fees (including attorneys' fees and costs  
6 but excluding any such expenses, costs and fees incurred prior to that Debtor's respective Petition  
7 Date), judgments, settlements or other liabilities arising from or incurred in connection with any  
8 action based on an Asbestos Related Claim, including, but not limited to, indemnification or  
9 contribution for Asbestos Related Claims prosecuted against the Reorganized Debtor.

10 **B. Distributions pursuant to the TDP.**

11 **1. Trust Goals.**

12 The goal of the Trust is to pay all claimants the entire liquidated value of their claims.  
13 However, the amount of the total liquidated value that the Trust will be able to pay will depend upon  
14 the amount of assets available to date. Until the Trust has collected all of the assets available, the  
15 interim goal of the Trust is to pay claimants the same percentage of their liquidated Asbestos Related  
16 Claims, whether the Asbestos Related Claims were liquidated before the Effective Date or will be  
17 liquidated after the Effective Date. The TDP, attached to the Plan as Exhibit I, furthers that goal by  
18 setting forth procedures for processing and paying claims generally on an impartial, first-in-first-out  
19 ("FIFO") basis, with the intention of paying all claimants over time as equivalent a share as possible  
20 of the value of their claims based on historical values for substantially similar claims in the tort  
21 system. To this end, the TDP establishes for unliquidated claims in the Case Valuation Matrix (the  
22 "Matrix"), attached to the Plan as Exhibit I, a schedule of five asbestos-related diseases (the  
23 "Compensable Diseases"), which have presumptive medical and exposure requirements (the  
24 "Medical/Exposure Criteria"), criteria for establishing liquidated values (the "Matrix Values"), the  
25 anticipated average values (the "Average Values"), the indicated base case values ("Base Case"),  
26 and caps on liquidated values ("Maximum Values"). The Compensable Diseases,  
27 Medical/Exposure Criteria, Matrix Values, which are set forth in the Matrix, have all been selected  
28 and derived by the Futures Representative and Committee with the intention of achieving a fair

1 allocation of the Trust funds as among claimants suffering from different disease processes in light  
2 of the best available information, considering the settlement history of the Debtors and the rights  
3 claimants would have in the tort system absent the bankruptcy.

4 These disease criteria have been used in substantially the same form in two other confirmed  
5 and court approved asbestos related bankruptcy. *In re Western Asbestos*, 2004 WL 1944792  
6 (N.D.Cal.) (“Western Asbestos”); *In re J.T. Thorpe*, Case No. LA02-14216- BB, United States  
7 Bankruptcy Court for the Central District of California. An adjustment has been made here because  
8 by definition the claimant population has aged. They generally reflect the disease categories and  
9 criteria that exist in the tort system as asbestos cases that have been settled and tried in California.  
10 Because the asbestos victims have direct claims against some of the debtors and derivative claims  
11 against other debtors arising from the same exposure, using the same disease criteria and values for  
12 all claimants assures more evenhanded treatment among claimants past and future. The tort system  
13 results do not reflect material differences between direct and derivative claims for the same  
14 exposures.

15 Insurers of the Debtors have refused to make historical settlement data available to the  
16 Futures Representative or the Committee in a form to enable evaluation of that data in relation to the  
17 Matrix, and the Debtors have declined to provide this information based on the Insurers’ objections.  
18 However, given the passage of time and the changing settlement values in the tort system for  
19 asbestos related claims, if that data is made available, the Futures Representative and the Committee  
20 believe it is quite likely that adjustments will be necessary to reflect tort system values as of the  
21 petition date. There are significant similarities between the Debtors here and the former debtors in  
22 the Western Asbestos case: both were Mansville Distributors of asbestos containing products during  
23 similar time periods in California (Thorpe in the South and Western in the North); both were  
24 relatively similar in size; and both installed and removed asbestos containing pipe insulation in  
25 commercial, industrial and some shipyard settings. Because of the similarity between these two  
26 companies and their profile the same Matrix Values and Base Case Values are being used as were  
27 approved in Western Asbestos. But because those values were calculated a number of years ago,  
28 those values have been adjusted by the United States Department of Labor Statistics Urban Wage

1 Earners and Clerical Workers index (CPI-W)(“Inflation Adjustment”). The Average Values for the  
2 five disease categories contained in the Matrix are as follows:

3	<b>Disease</b>	<b>Average Value for Thorpe Insulation Several Share</b>
4	Mesothelioma	\$597,913
5	Lung Cancer	\$227,282
6	Other Cancer	\$85,575
7	Grade I Non-Malignancy	\$58,827
8	Grade II Non-Malignancy	\$24,892

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1 The Proponents reserve the right to change the terms of the TDP and the Matrix at anytime  
2 prior to the conclusion of the Confirmation Hearing. Once additional data is available, these  
3 settlement values may be adjusted as appropriate to current settlement values using settlement data  
4 from Thorpe and derived from other defendants who remained active in the tort system. In  
5 connection with the Confirmation Hearing, to the extent there are any modifications, the Proponents  
6 will file with the Court the modified TDP and/or modified Matrix and will request that the Court  
7 approve such documents as part of the plan confirmation process. A copy of the current versions of  
8 the TDP, the Trust Agreement and the Matrix are attached as Exhibit I to the Plan. To date, the  
9 Debtors have not participated in the development of the TDP or the Matrix.

10 All claims must be liquidated before they can be paid. The Plan contemplates payments to  
11 holders of Pre-Confirmation Liquidated Claims shortly after the Effective Date. Unliquidated  
12 Claims cannot be paid until after the Trust established by the Plan has determined a liquidated value  
13 for those claims. Some of the Insurers assert that the TDP may violate the insurers' contractual right  
14 to investigate claims and participate in or control the defense of claims, and, as a result, these  
15 insurers assert that the Insurers may have no obligation to pay claims that are liquidated pursuant to  
16 the TDP.

17 **2. Trust Claim Liquidation Procedures.**

18 Claims not liquidated prior to the Effective Date cannot be paid until after the Trust  
19 established by the Plan has determined a liquidated value for those claims. A Trust claim form will  
20 be created with the consent of the TAC and Futures Representative. Section VI of the TDP outlines  
21 the process by which the Trust claim form materials will be created and establishes minimum  
22 requirements for the claim form. The Trust claim form will require certain information including:  
23 the information contained in standard interrogatory answers to establish personal data, smoking  
24 history and occupational history; medical reports and/or death certificates to establish diagnosis of  
25 the asbestos related disease; economic reports to establish the level of wage and pension loss;  
26 medical bills; the face page of the complaint or equivalent proof of commencement of litigation; and  
27 social security records to verify work history. All claimants the Trust is aware of as of the Effective  
28 Date who allege that they have an Asbestos Related Claim against the Debtors will be sent such a

1 claim form by the Trust and will be invited to complete the claim form and submit it to the Trust.

2 The Trust will order all submitted unliquidated Trust claims for processing purposes on a  
3 first-in-first-out (i.e., FIFO) basis except as otherwise provided in the TDP (the “FIFO Processing  
4 Queue”). For all claims filed on or before the date six months after the Effective Date (the “Initial  
5 Claims Filing Date”), a claimant’s position in the FIFO Processing Queue shall be determined as of  
6 the earlier of: (i) the date prior to the Petition Dates that the specific claim was either served or filed  
7 against Debtors in a court in which the Debtors could properly have been sued; (ii) the date prior to  
8 the Petition Dates that a claim was filed or served against another defendant in the tort system if at  
9 the time the claim was subject to a tolling agreement with the Debtors; (iii) the date after the Petition  
10 Dates but before the Effective Date that the claim was filed or served against another defendant in a  
11 court in which the Debtors could properly have been sued; or (iv) the date after the Effective Date  
12 but on or before the Initial Claims Filing Date that the claim was filed with the Trust. Following the  
13 Initial Claims Filing Date, the claimant’s position in the FIFO Processing Queue shall be determined  
14 by the date the claim was served or filed with the Trust. For all claims filed on the same date, the  
15 claimant’s position in the FIFO Processing Queue shall be determined by the date of the diagnosis of  
16 the asbestos-related disease.

17 The information and documentation required to be provided in the Trust claim form will  
18 permit the Trust to determine whether a submitted claim meets the presumptive Medical/Exposure  
19 Criteria required under the Matrix. The Trust shall liquidate all claims submitted to the Trust that  
20 meet the presumptive Medical/Exposure Criteria in accordance with the Matrix, and shall reject all  
21 claims that do not meet such requirements, subject to the Trust’s Individual Review Process  
22 described in the Matrix.

23 Claimants who do not meet the presumptive Medical/Exposure Criteria for the relevant  
24 Compensable Disease can pursue the Trust’s Individual Review Process described in the Matrix. If  
25 the Trust is satisfied that the claimant has presented a claim that would be cognizable, valid and  
26 compensable in the tort system, the Trust can offer the claimant an amount up to the Average Value  
27 as defined in the Matrix of that Compensable Disease, notwithstanding that the claim does not meet  
28 the presumptive Medical/Exposure Criteria for the relevant Compensable Disease.

1 All unresolved disputes over a claimant's medical condition, exposure history and/or the  
2 liquidated value of the claim shall be subject to binding or non-binding arbitration, at the election of  
3 the claimant, under the Arbitration Rules. Disputes with the Trust that cannot be resolved by non-  
4 binding arbitration may enter the tort system as provided in Section 5.10 and 7.3 of the TDP.  
5 However, if and when such a claimant obtains a judgment in the tort system, to the extent the  
6 judgment will be payable by the Trust (subject to the Funds Received Ratio, Maximum Annual  
7 Payment and Claims Payment Ratio provisions set forth below) it will be paid as provided in Section  
8 7.4 of the TDP.

9 **3. Trust Application of the Funds Received Ratio.**

10 After the liquidated value of a Trust Claim is determined, the claimant will ultimately receive  
11 a pro-rata share of that value based on a Funds Received Ratio calculated as described in Section 4.2  
12 of the TDP. Because assets received to date (after taking into account the expenses of administration  
13 of the Chapter 11 case, the costs of administering the Trust, anticipated contingencies as well as  
14 interest rates and rates of inflation) are small relative to the Debtors total asbestos liability, the Initial  
15 Funds Received Ratio will be set by the Trustees subject to the consent of the TAC and the Futures  
16 Representative. The Funds Received Ratio shall be adjusted upwards or downwards from time to  
17 time by the Trust with the consent of the TAC and the Futures Representative to reflect then current  
18 estimates of the Trust's assets and its liabilities, as well as the estimated value of then pending and  
19 future claims. The Funds Received Ratio will be reviewed no less frequently than every three years,  
20 or sooner if requested by the TAC or the Futures Representative, the then current Funds Received  
21 Ratio will be reviewed to ascertain whether in light of current information any adjustment should be  
22 made. However, any adjustment to the Funds Received Ratio shall be made only pursuant to Section  
23 4.2 of the TDP. If the Funds Received Ratio is increased over time, claimants who have previously  
24 been paid by the Trust will receive a proportional additional payment unless the Trust with consent  
25 of the TAC and the Futures Representative concludes that the amount is so modest and the  
26 administrative costs and burdens are so great in comparison to the benefits to claimants that such  
27 additional payments shall be omitted or deferred. A claimant may only participate in such additional  
28 payments which have been approved pursuant to Section 4.2 of the TDP on or before the later of the

1 following dates: (i) the fifteenth anniversary of the Trust's first payment to the claimant; or (ii) the  
2 tenth anniversary of the resolution of the Asbestos Insurance Litigation. If it becomes relevant, the  
3 date of resolution of the Asbestos Insurance Litigation will be determined by the Trust with the  
4 consent of the Futures Representative.

5 An estimate at this time of the actual Initial Funds Received Ratio is difficult as it is not  
6 possible to know now the exact amount of assets available for distribution on the Effective Date of  
7 the Plan. Accordingly the Trustees, with the consent of the TAC and the FCR, will compute the  
8 Initial Funds Received Ratio when the Trust has sufficient assets and information to make payments  
9 worth the expense and burden on claimants to do so.

10 At this time it is known that there are assets from settlements. However, from these assets  
11 must be deducted further costs of administration as well as from some of these settlement assets  
12 certain amounts needed to pay to the Debtors as part of the Net Recoveries. As discussed in Article  
13 IV.C.2 in this Disclosure Statement, various other insurers have been sued. It is impossible to  
14 determine if further settlements will be entered prior to the Confirmation Hearing or the Effective  
15 Date of the Plan, which would increase amounts available for distribution.

16 The actual liability of the Debtors for Asbestos Related Claims is unknown at this time  
17 because of the objections of Debtors' insurers to (a) production of relevant claims information for  
18 the expert of the Futures Representative; and (b) the employment by the Committee of an expert. As  
19 a result, this calculation will be done at a later time by the Trust with the consent of the TAC and the  
20 Futures Representative.

21 **4. Trust's Determination of the Maximum Annual Payment.**

22 The Trust shall estimate or model the amount of cash flow anticipated to be necessary over  
23 its entire life to ensure that funds will be available to treat all present and future claimants as  
24 similarly as possible. In each year, the Trust will be empowered to pay out all of the interest earned  
25 during the year, together with a portion of its principal, calculated so that the application of Trust  
26 Assets over its life shall correspond with the needs created by the anticipated flow of claims (the  
27 "Maximum Annual Payment"). The Trust's distributions to claimants for that year shall not exceed  
28 the Maximum Annual Payment determined for that year; provided, however, that the Maximum

1 Annual Payment limitation shall not apply to any Pre-confirmation Liquidated Claims. (See Section  
2 VII.B.6 below.)

3 If the Maximum Annual Payment is not reached in a given year, the Trustees, with the  
4 consent of the Futures Representative and the TAC, may increase the amount paid to past, present  
5 and future claimants as described in Section 4.2 of the TDP.

6 The Maximum Annual Payment limitation provides a process to control the Trust’s payments  
7 to claimants should the Trust be faced with unexpectedly high volumes of claim filings not  
8 consistent with the Debtors’ claims history or the projection of future claims, so that the Trust can  
9 reexamine its claims forecast in an orderly fashion, avoiding a run on Trust assets. This limitation  
10 may impose a short term delay on some claims filed during any period of unanticipated increases in  
11 claims filings in order to assure that the Trust can adjust to such increases in an informed and orderly  
12 manner.

13 **5. Trust Claims Payment Ratio.**

14 Because certain of the Debtors’ insurers have objected to providing the Futures  
15 Representative and the Committees Debtors’ historical claims history data, it has not been possible  
16 to analyze that history independently and determine the appropriate ratio between the category of  
17 disease claim against the Debtors (the “Disease Categories”).

18 The Disease Category Claim Payment Ratio will be set by the Trustees with the consent of  
19 the TAC and the Futures Representative at a certain percentage (the “Category A Percentage”) for  
20 “Category A” claims, which consist of Trust Claims involving malignant claims that were  
21 unliquidated as of the Confirmation Date, and a certain percentage for “Category B” claims (the  
22 “Category B Percentage”), which are Trust Claims involving non-malignant claims that were  
23 similarly unliquidated as of the Confirmation Date. In each year, after the determination of the  
24 Maximum Annual Payment, the Category A Percentage of that amount will be available to pay  
25 liquidated Category A claims and the Category B Percentage will be available to pay liquidated  
26 Category B claims that have been liquidated since the Confirmation Date.

27 In the event there are insufficient funds in any year to pay the liquidated claims against the  
28 Debtors within either or both of the Disease Categories, the available funds within the particular

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1 Disease Category shall be paid to the maximum extent to claimants in the particular Disease  
2 Category based on their place in the FIFO Payment Queue. Claims for which there are insufficient  
3 funds will be carried to the next year where they will be placed at the head of the FIFO Payment  
4 Queue. If there are excess funds in either or both Disease Categories, because there was an  
5 insufficient amount of liquidated claims to exhaust the respective Maximum Annual Payment  
6 amount for that Disease Category, then the excess funds for either or both Disease Categories will be  
7 rolled over and remain dedicated to the respective Disease Category to which they were originally  
8 allocated.

9 The Disease Category Claims Payment Ratio and its rollover provision shall be continued  
10 absent circumstances, such as a significant change in law or medicine, necessitating amendment to  
11 avoid a manifest injustice. The accumulation, rollover and subsequent delay of claims resulting  
12 from the application of the Claims Payment Ratios, shall not, in and of itself, constitute such  
13 circumstances. Nor may an increase in the numbers of Disease Category B claims beyond those  
14 predicted or expected be considered as a factor in deciding whether to reduce the percentage  
15 allocated to Disease Category A. In considering whether to make any amendments to the Disease  
16 Category Claims Payment Ratio and/or its rollover provisions, the Trustees are directed by the TDP  
17 also to consider the reasons for which the Disease Category Claims Payment Ratio and its rollover  
18 provisions were adopted, the settlement history that gave rise to its calculation, and the foreseeability  
19 or lack of foreseeability of the reasons why there would be any need to make an amendment. In that  
20 regard, the Trustees are directed by the TDP also to keep in mind the interplay between the Funds  
21 Received Ratio and the Disease Category Claims Payment Ratios as it affects the net cash actually  
22 paid to claimants. In any event, no amendment to the Disease Category Claims Payment Ratio may  
23 be made without the consent of the TAC and the Futures Representative pursuant to the consent  
24 process set forth in Section 2.2(f) of the Trust Agreement. However, the Trustees may offer the  
25 option of a reduced Funds Received Ratio to either Disease Category in return for prompter payment  
26 (the "Reduced Payment Option"), after first obtaining the consent of the TAC and Futures  
27 Representative.

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1                   **6. Payment of Pre-Confirmation Liquidated Claims.**

2                   As soon as practicable after the Effective Date, the Trust shall make an initial distribution on  
3 all Trust Claims that were liquidated by (i) a settlement agreement entered into prior to the Petition  
4 Date for the particular claim or (ii) pursuant to the Pre-Confirmation Claims Liquidation Process  
5 (collectively, the “Pre-Confirmation Liquidated Claims”). The liquidated value of a Pre-  
6 Confirmation Liquidated Claim shall be the amount agreed to in the binding settlement agreement,  
7 or the amount at which the claim is liquidated pursuant to the Pre-Confirmation Claims Liquidation  
8 Process, as applicable. Moreover, to the extent that a claim is the subject of a written settlement  
9 agreement executed prior to the Petition Date, the holder of that claim shall have the option of (i)  
10 having the liquidated value be the amount agreed to in the binding settlement agreement, or (ii)  
11 having his or her claim re-liquidated pursuant to the Pre-Confirmation Liquidated Process and  
12 having the liquidated value be the amount at which the claim is liquidated pursuant to the Pre-  
13 Confirmation Liquidated Process. Pursuant to Section 7.2 of the TDP, the liquidation value of a Pre-  
14 Confirmation Liquidated Claim shall not include any punitive or exemplary damages. Whether pre-  
15 petition interest has accrued on Pre-Petition Liquidated Claims will depend on state law or the  
16 specific contract agreements entered into by the Debtor pre-petition.

17                   Pre-Confirmation Liquidated Claims shall be processed and paid within 90 days of the  
18 Effective Date, if feasible, or as soon thereafter as possible. The amounts payable with respect to  
19 such claims shall not be subject to or taken into account in consideration of the Maximum Annual  
20 Payment or Disease Category Claims, but shall be subject to the Funds Received Ratio provisions set  
21 forth in Section 4.2 of the TDP.

22                   **7. Payment of Claims That Are Liquidated Post-Effective Date.**

23                   The Plan’s proposed claims procedures are intended to pay all anticipated Asbestos Related  
24 Claims in a timely manner-as such claims are filed with the Trust and thereafter liquidated.

25                   The claims procedures proposed for the Trust are designed to provide equivalent treatment of  
26 all Asbestos Related Claims both with regard to the percent of their claims that can be paid and the  
27 timing of their payments.

28                   The claims procedures apply the same pro rata payment process for all Asbestos Related

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1 Claims. Whether a claim was liquidated by application of the Matrix either before or after the  
2 Effective Date, the Trust’s payment for every claimant will be determined by multiplying the  
3 allowed value of the claim times the then current Funds Received Ratio.

4 In establishing the Initial Funds Received Ratio the Proponents assume that all present and  
5 future claimants will be paid solely from the presently available cash or cash equivalents. When the  
6 Trust receive additional settlements, then the Funds Received Ratio would be recalculated as set  
7 forth in Section 4.2 of the TDP.

8 The claims procedures are designed to permit pending and forecasted future claims to be  
9 liquidated and paid within a year after their submission. Pre-Confirmation Liquidated Claims will  
10 receive the first payment, within 90 days of the Effective Date if at all possible. It has become  
11 standard in bankruptcies of asbestos defendants to place such earlier liquidated claims at the head of  
12 the queue for payment of asbestos bodily injury claims, both because those claims typically have  
13 already had the longest wait for payment and also because those claims do not have to wait for the  
14 trust’s liquidation processes. For these reasons, the Plan places Pre-Confirmation Liquidated Claims  
15 at the head of the queue.

16 The proposed claims procedures include provisions that would allow the Trust to continue to  
17 allow and pay claims even if it were overwhelmed with an unexpectedly large number of future  
18 claims. In such circumstances, the Trustees are required to reconsider and, if necessary, adjust the  
19 Funds Received Ratio to provide equivalent treatment of then pending and future claimants.

20 The claims procedures provide a process to control the Trust’s payments to claimants should  
21 the Trust be faced with unexpectedly high volumes of claims filings, so that the Trust can reexamine  
22 its claims forecast in an orderly fashion, avoiding unanticipated increases in total claims payment.  
23 The claims procedures require that the Trust pay claims in numbers that are no greater than those  
24 forecasted by the claims projections that are used in the Trust’s then current calculations of its Funds  
25 Received Ratios. This means that the volume of payments will always be consistent with the  
26 assumptions underlying the Funds Received Ratio calculation. Should actual claim filings  
27 materially exceed the forecast, then the Trust must reconsider and adjust its Funds Received Ratio  
28 using new and larger forecasts based on this increased volume of claims. Upon such

1 reconsideration, the Trust will then increase the volume of its claim payments to reflect this  
2 increased volume of filings. This process may impose a short term delay on some claims filed  
3 during any period of unanticipated increases in claims filings in order to assure that the Trust can  
4 adjust to such increases in an informed and orderly manner.

5 **8. Inflation Adjustments**

6 The TDP provides that claims paid in the future will be adjusted for inflation. *See*  
7 Section 5.3(d) of the TDP.

8 **9. Interest**

9 No interest will accrue or be paid on any post-petition Trust Claim. *See* Section  
10 5.3(e). Whether pre-petition interest has accrued on Pre-Petition Liquidated Claims will depend on  
11 state law or the specific contract agreements entered into by the Debtor pre-petition. *See* Section 5.4  
12 of the TDP.

13 **10. Trust Indemnity and Contribution Claims.**

14 As set forth in Section 5.6 of the TDP, Trust Claims for indemnity and contribution will be  
15 subject to the same categorization, evaluation and payment provisions of the TDP as all other Trust  
16 Claims.

17 **C. Statute of Limitations**

18 All claims barred by a statute of limitations or repose on the Petition Dates shall  
19 remain barred. All claims not so barred shall be tolled for a period of one year after the date the  
20 Trust begins accepting new claims. *See* Section 5.3a(2) of the TDP.

21 **D. Extraordinary Claims**

22 For those claimants who can demonstrate that more than 80% of their exposure to  
23 asbestos containing products as a result of Debtors' activities, Trust payments can exceed the cap for  
24 maximum claim payments. *See* Section IX of the Matrix.

25 **E. Hardship or Exigent Claims**

26 If the Trust determines in its sole discretion that a claimant is in dire financial need  
27 and requires financial assistance on an immediate basis as a result of that claimant's asbestos related  
28 disease, such claims may be processed at the head of the FIFO claim queue. *See* Section 5.5 of the

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1 TDP

2 **F. Secondary Exposure Claims**

3 Claimants who assert that they have an asbestos related disease as a result of  
4 derivative exposure from a family member may be compensated under the TDP if they meet specific  
5 criteria set forth in Section VII(a)(2) of the Matrix.

6 **G. Evidentiary Requirements**

7 Trust Claimants will need to meet the medical evidence criteria for the disease  
8 alleged as set forth in the Matrix and in the TDP with respect to claims materials. *See* Section 6 of  
9 the TDP. All claims materials are subject to audit in the discretion of the Trustees. Generally  
10 speaking Trust claimants must have a diagnosis from a qualified medical professional who has  
11 actually examined the claimant or the claimant's pathology and provided a written diagnosis of an  
12 asbestos related disease. Medical reports based upon a finding that a claimant's medical condition is  
13 "consistent with" an asbestos related disease are not sufficient.

14 **H. Exposure Evidence**

15 The evidence required to prove exposure to asbestos as a result of Debtors' activities  
16 are set forth in Section 6 of the TDP and Section VII of the Matrix. Generally speaking there  
17 requirements include deposition testimony, invoices, affidavits, business records, deck logs, military  
18 service records or other credible evidence acceptable to the Trust, that establishes the Injured  
19 Person's presence at a particular ship, facility, job site, building or buildings, or location during a  
20 time period in which the asbestos-containing material for which Thorpe is responsible was present.

21 **I. Second Disease (Malignancy Claims)**

22 Those claimants who are first diagnosed with a non-malignant asbestos related  
23 disease may file a new claim for a malignant disease that is subsequently diagnosed. *See* Section 5.8  
24 of the TDP.

25 **VIII. TAX CONSEQUENCES OF THE PLAN**

26 The following discussion is a summary of certain federal income tax aspects of the Plan.  
27 This discussion is provided for general information only and should not be relied upon for purposes  
28 of determining the specific tax consequences of the Plan to a particular holder of a Claim. This

1 discussion does not purport to be a complete analysis or listing of all potential tax considerations.  
2 The Plan may have significant tax consequences for all Creditors and Equity Holders of the Debtors.  
3 Accordingly, each holder of a Claim or Equity Interest is strongly urged to consult with his or her  
4 tax advisor regarding the federal, state, local and foreign tax consequences of the Plan.

5 This discussion is based upon existing provisions of the IRC, existing and proposed  
6 regulations thereunder, and current administrative rulings and court decisions. No assurance can be  
7 given that legislative or administrative changes or court decisions may not be forthcoming which  
8 would require significant modification to the statements expressed in Article VIII of the Plan.  
9 Moreover, the tax consequences to holders of Claims may vary based upon the individual tax  
10 circumstances of each such holder.

11 **NO RULING HAS OR WILL BE REQUESTED OR OBTAINED FROM THE**  
12 **INTERNAL REVENUE SERVICE WITH RESPECT TO ANY OF THE TAX ASPECTS OF**  
13 **THE PLAN AND NO OPINION OF COUNSEL HAS BEEN OR WILL BE OBTAINED BY**  
14 **EITHER OF THE DEBTORS IN RESPECT THEREOF. ACCORDINGLY, NO**  
15 **REPRESENTATIONS OR ASSURANCES ARE BEING MADE WITH RESPECT TO THE**  
16 **FEDERAL INCOME TAX CONSEQUENCES AS DESCRIBED HEREIN. CERTAIN**  
17 **HOLDERS OF CLAIMS MAY BE SUBJECT TO SPECIAL RULES NOT ADDRESSED IN**  
18 **THIS SUMMARY OF FEDERAL INCOME TAX CONSEQUENCES. THERE ALSO MAY**  
19 **BE STATE, LOCAL OR FOREIGN INCOME TAX CONSIDERATIONS APPLICABLE TO**  
20 **EACH HOLDER OF A CLAIM OR INTEREST WHICH ARE NOT ADDRESSED HEREIN.**  
21 **THE DEBTORS AND THE REORGANIZED DEBTOR MAY WITHHOLD ALL**  
22 **AMOUNTS REQUIRED BY LAW TO BE WITHHELD FROM PAYMENTS TO HOLDERS**  
23 **OF ALLOWED CLAIMS. ADDITIONALLY, SUCH HOLDERS MAY BE REQUIRED TO**  
24 **PROVIDE CERTAIN TAX INFORMATION TO THE DEBTORS AND THE**  
25 **REORGANIZED DEBTOR AS A CONDITION TO RECEIVING DISTRIBUTIONS UNDER**  
26 **THE PLAN.**

1           **A. Tax Consequences to the Debtors**

2                   **1. Discharge of Indebtedness**

3           Under the IRC, a taxpayer will generally be deemed to realize and recognize gross income to  
4 the extent its indebtedness is discharged during the taxable year. Section 108(a)(1)(A) of the IRC  
5 provides an exception to this rule when a taxpayer is subject to the jurisdiction of a bankruptcy court  
6 and where the discharge of indebtedness is granted by that court or is effected pursuant to a plan  
7 approved thereby, subject to the condition, imposed by section 108(b) of the IRC, that the income  
8 realized from the indebtedness discharge be applied to reduce certain tax attributes of the taxpayer in  
9 the following order: net operating losses, tax credit carryforwards, capital loss carryforwards, the  
10 basis of the taxpayer's assets and foreign tax credit carryforwards (the "Tax Attributes"). Section  
11 108(b)(5) of the IRC provides that a taxpayer may elect to first apply the reduction to the basis of the  
12 taxpayer's assets, with any remaining balance applied to the other Tax Attributes. Section 108(e)(2)  
13 of the IRC provides a further exception, to the effect that the taxpayer will be deemed not to have  
14 realized income from the discharge of indebtedness to the extent that the taxpayer's satisfaction of  
15 the debt would have given rise to an income tax deduction. The effect of section 108(e)(2) of the  
16 IRC, where applicable, is to allow the taxpayer to discharge indebtedness without recognizing  
17 income and avoid any reduction of its Tax Attributes.

18           With respect to payment of holders of Claims, the satisfaction and discharge of such Claims  
19 should not result in discharge of indebtedness income pursuant to section 108(e)(2) because payment  
20 of the Claims would have given rise to income tax deductions to the Debtor. Therefore, any  
21 discharge relating to these Claims will not result in income to the Debtor or a reduction of the  
22 Debtor's Tax Attributes.

23                   **2. Transfers to the Trust**

24           Assuming that the Trust receives certain approvals from the Bankruptcy Court, the Trust  
25 should qualify as a "qualified settlement fund" ("QSF") within the meaning of section 468B of the  
26 IRC and the regulations thereunder, and the Debtors should be treated as qualified transferors  
27 thereto.

28           A qualified transferor must treat a transfer of property to a QSF as a sale or exchange of that

1 property. In computing gain or loss, the amount realized by the transferor is the fair market value of  
2 the property on the date the transfer is made to the QSF. A transferor must obtain a so-called  
3 “qualified appraisal” to support a loss or deduction claimed with respect to a transfer to a QSF with  
4 respect to certain types of property.

5 If an accrual-method transferor makes a transfer to a QSF to resolve or satisfy a liability, so-  
6 called “economic performance” occurs at the time and to the extent of the transfer (subject to  
7 limitations for transfers of debt instruments of the transferor, and amounts that are subject to a right  
8 of current reversion or refund to the transferor (or refunds certain to occur at a future time)) and the  
9 transferor is generally entitled to an income tax deduction at such time.

10 A transferor must include in gross income the fair market value of any distribution (or  
11 deemed distribution) received by it from a QSF.

#### 12 **B. Tax Consequences to the Holders of Claims**

13 To the extent that payments from the Trust to holders of Claims constitute damages received  
14 by holders of such Claims on account of personal physical injuries, such payments should not  
15 constitute gross income to such recipients under section 104 of the IRC, except to the extent that  
16 such payments are attributable to medical expense deductions allowed under section 213 of the IRC  
17 for a prior taxable year. To the extent that payments from the Trust to holders of Claims constitute  
18 damages received by holders of such Claims on account of claims other than personal injuries (such  
19 as lost wages), such payments will be includible in gross income to such holders.

20 The tax consequences of payments received by holders of Claims will depend upon the  
21 individual nature of each Claim and the particular circumstances and facts applicable to the holder of  
22 the Claim at the time each such payment is made. If required by the IRS, the Trust will issue Form  
23 1099s to holders of Claims. Neither the Trust, the Debtors nor the Reorganized Debtor will attempt  
24 to allocate amounts paid with respect to Claims between physical and non-physical injuries.

#### 25 **C. Tax Consequences to the Trust**

26 The Trust should qualify as a QSF within the meaning of section 468B of the IRC and the  
27 regulations thereunder at the time it receives certain approvals from the Bankruptcy Court (or earlier  
28 to the extent a relation-back election” is made) and the Debtors and the Reorganized Debtor should



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1 be treated as qualified transferors to the Trust. The Trust will be required to pay taxes on modified  
2 gross income as defined within the Treasury regulations (generally at the highest rate applicable to  
3 estates and trusts). For certain federal income tax purposes, the Trust will be treated as a  
4 corporation. The Trust will generally not be required to include in income amounts transferred to it  
5 by or on behalf of the Debtors and the Reorganized Debtor to satisfy their asbestos liabilities. The  
6 Trust will not be entitled to deduct for federal income tax purposes amounts paid out to holders of  
7 Claims, provided that, the Trust will be entitled to deduct amounts paid for administrative costs and  
8 other incidental costs of the Trust. The Trust's basis in the assets received by it under the Plan will  
9 be the fair market value of such assets at the time of receipt.

10 **THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND NOT A**  
11 **SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX ADVISOR. THE**  
12 **FEDERAL, STATE, LOCAL AND FOREIGN INCOME TAX CONSEQUENCES OF THE**  
13 **PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. SUCH CONSEQUENCES**  
14 **ALSO MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH**  
15 **HOLDER OF A CLAIM OR INTEREST. ACCORDINGLY, EACH HOLDER OF A CLAIM**  
16 **OR INTEREST IS URGED STRONGLY TO CONSULT WITH HIS, HER OR ITS OWN**  
17 **TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME**  
18 **TAX CONSEQUENCES OF THE PLAN**

19 **IX. RISK FACTORS**

20 As with any plan of reorganization or other financial transaction, there are certain risk factors  
21 that must be considered. This Disclosure Statement contains forward-looking statements that  
22 involve risks and uncertainty. All risk factors cannot be anticipated, some events will develop in  
23 ways that were not foreseen, and actual results could differ materially from those anticipated in such  
24 forward-looking statements. **HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD**  
25 **CONSIDER CAREFULLY THE FOLLOWING FACTORS, IN ADDITION TO THE**  
26 **OTHER INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, BEFORE**  
27 **SUBMITTING A VOTE TO ACCEPT OR REJECT THE PLAN.**

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**A. Appointment of Professionals and Fiduciaries**

The Bankruptcy Court has appointed the Honorable Charles B. Renfrew (Ret.) as the legal representative for the purpose of protecting the rights of persons that might subsequently assert Asbestos Related Claims. The Debtors’ insurers objected to the appointment of the Futures Representative and appealed the order authorizing his retention to the District Court. The District Court has dismissed the appeal, on the grounds that the order appointing the Futures Representative is interlocutory (and not subject to immediate appeal) and that the appellants lack standing to pursue the appeal.

In addition, the Debtors’ insurers have objected to the employment by the Debtors of numerous professionals. The Debtors’ insurers have appealed the Bankruptcy Court’s orders overruling their objections. For example, in April 2008, the District Court remanded to the Bankruptcy Court for further evidentiary hearings concerning aspects of the Bankruptcy Court’s approval of the employment of the Debtors’ insurance coverage counsel. If the Debtors’ insurance coverage counsel are not employed, there is the possibility of resulting delay.

Fireman’s Fund and Continental, and possibly other Asbestos Insurers, may continue to dispute the Debtors’ employment of its special insurance coverage counsel, or the terms of such employment, and may seek to appeal any further determinations made by the Bankruptcy Court relating to such employment. Such efforts may delay or impede Confirmation of the Plan.

**B. Appointment of Trustee**

The Debtors’ insurers filed a motion seeking appointment of a trustee to manage Thorpe’s estate. The Bankruptcy Court denied the motion and the insurers appealed. There is a risk that the District Court could reverse the bankruptcy court’s decision. If a Trustee is appointed, there could be a delay and there is the possibility that the proposed plan of reorganization would not be acceptable to a court-appointed Trustee.

**C. Insurance Coverage Litigation**

The Debtors’ insurers assert that there is no remaining insurance coverage for Asbestos Related Claims. The Debtors believe that there is substantial insurance coverage for certain Asbestos Related Claims and that it has meritorious extra-contractual or punitive damage

1 claims against various insurers based upon their conduct. If the Debtors' insurers are correct and  
2 there is no remaining insurance coverage, then it is unlikely that the Trust will have sufficient assets  
3 to cover the costs of administration of the bankruptcy and the Trust, and still make a meaningful  
4 distribution on Asbestos Related Claims.

5 **D. Investment Risks**

6 While the Trust Agreement provides prudent rules for guiding Trustees in making  
7 Trust investments with Trust assets, there is still the risk that the Trust will not earn as much money  
8 as expected or that its investments will decrease in value such that future asbestos claimants may be  
9 paid less for substantially the same claim.

10 **E. Legislation Risks**

11 In the past there have been proposals for the United States government to acquire or  
12 seize the assets of trusts established by Section 524(g) trusts to fund a national asbestos  
13 compensation system. Those legislative efforts were not successful in the past. There is a risk that  
14 that those efforts could begin again.

15 **F. Claims Risk**

16 The Plan calls for the Trust to set the Matrix Average Values, Base Case Values as  
17 well as the Funds Received Ratio. There is the possibility that despite the best efforts of the  
18 Trustees, the TAC and the Futures Representative, more legitimate claims will be presented to the  
19 Trust than anticipated. If that happens, there is the possibility that the Funds Received Ratio would  
20 have to be lowered, resulting in some asbestos claimants being paid less for substantially the same  
21 claim.

22 **G. Inflation Risk**

23 The Plan calls for inflation adjustments for future claim payments. There is a risk  
24 that the level of inflation will outstrip the after tax return on Trust investments. If that happens, there  
25 is a risk that future asbestos claimants will be paid less for substantially the same claim.

26 **H. Wellington Settlement Claims**

27 As described, *supra*, at Section IV(C)(3) of this Disclosure Statement, one condition to  
28 Confirmation of the Plan is the issuance of the Wellington Settlement Claims Favorable

1 Determination. Although this condition may be waived by the Committee and the Futures  
2 Representative by making the Indemnity Election, there can be no assurance that such election will  
3 be made, or that it will be made before the conclusion of the currently scheduled date for the  
4 Confirmation Hearing. As a result, depending on the nature and status of the Debtors’ objections to  
5 the Wellington Settlement Claims, the Confirmation of the Plan may be delayed. In addition, if the  
6 Debtors are not able to obtain the Wellington Settlement Claims Favorable Determination (and the  
7 Indemnity Election is not made), the Plan may need to be withdrawn or modified.

8 **I. Risk of Non-Confirmation of the Plan**

9 Although the Proponents believe that the Plan will satisfy all requirements necessary for  
10 Confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will  
11 reach the same conclusion. There can also be no assurance that modifications of the Plan will not be  
12 required for Confirmation, that such negotiations would not adversely affect the holders of Allowed  
13 Claims and Equity Interests, or that such modifications would not necessitate the re-solicitation of  
14 votes.

15 As discussed below, if any impaired class of Claims or Equity Interests does not accept a  
16 plan of reorganization, the Bankruptcy Court may nevertheless confirm such a plan of reorganization  
17 at a proponent’s request if at least one impaired class has accepted the plan of reorganization  
18 (without including the acceptance of any “insider” in such class) and, as to each impaired class that  
19 has not accepted the plan of reorganization, the Bankruptcy Court determines that the plan of  
20 reorganization “does not discriminate unfairly” and is “fair and equitable” with respect to rejecting  
21 impaired classes.

22 **J. Disputes Regarding “Insurance Neutrality” of Plan**

23 Fireman’s Fund and Continental, and possibly other Asbestos Insurers, may contend that the  
24 Plan is not truly “insurance neutral” and that selected provisions of the Plan or the Trust Documents  
25 may undermine, or interfere with, their respective Asbestos Insurance Defenses. They may also  
26 contend that the Asbestos Insurance Defenses that are preserved under the Plan (as defined in  
27 Section 1.12 of the Plan), impermissibly exclude certain defenses that should nonetheless be retained  
28 by the insurers. The insurers may therefore object to Confirmation of the Plan on the grounds that

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1 the Plan impairs their rights, claims or defenses in the Coverage Litigation, under their Asbestos  
2 Insurance Policies or otherwise. The Proponents believe that the Plan has been carefully structured  
3 to preserve in all respects all Asbestos Insurance Defenses and that any exclusions from such  
4 retained defenses are authorized under well-established precedent. Nevertheless, there can be no  
5 assurance that the Bankruptcy Court will not require modifications to “insurance neutrality”  
6 provisions of the Plan that may or may not be acceptable to the Proponents.

7 **K. Other Confirmation Risks Articulated by Certain Insurers**

8 Fireman’s Fund and Continental, and possibly other Asbestos Insurers, may contend that the  
9 Plan is objectionable on a number of other grounds and that Confirmation of the Plan may be denied  
10 or delayed as a result. In particular, certain insurers may contend that the provisions of Section  
11 5.4.1 of the Plan, relating to the transfer of Asbestos Insurance Rights to the Trust, is unlawful,  
12 impermissible, inappropriate or otherwise objectionable. The Proponents believe that the provisions  
13 of Section 5.4.1 of the Plan are authorized under the Bankruptcy Code and well-established  
14 precedent. Certain insurers may also dispute the scope of the Channeling Injunction under the  
15 Bankruptcy Code, or may contend that the inclusion of certain Protected Parties within the reach of  
16 the Channeling Injunction is not fair and equitable. The Proponents believe that the Protected  
17 Parties under the Channeling Injunction are permissible beneficiaries of an injunction issued under  
18 Section 524(g) of the Bankruptcy Code and that the pertinent requirements of the Bankruptcy Code  
19 will be established at the Confirmation Hearing. Certain insurers believe that the Debtors cannot be  
20 merged pursuant to the Plan without the Plan proposing to “substantively consolidate” the assets and  
21 liabilities of the Debtors (i.e., treat the assets and liabilities of the entities as if they belong to a  
22 consolidated, single entity), which the Plan does not do. The Proponents believe that it is  
23 unnecessary for the Plan to treat the Debtors’ assets and liabilities on a substantively consolidated  
24 basis in order for the Plan to be implemented by a merger of the Debtors. Nevertheless, as with all  
25 litigation, the outcome of such disputes is uncertain and there can be no assurance that the  
26 Proponents will prevail. There will be other objections to the Plan that will be raised and  
27 strenuously prosecuted by numerous insurers, any one of which may constitute a risk factor affecting  
28 Confirmation.

1 **X. CHAPTER 7 LIQUIDATION AS AN ALTERNATIVE TO THE PLAN**

2 If the Plan is not timely confirmed the most likely alternative is a chapter 7 liquidation  
3 proceeding. The Debtors assume that, under chapter 7, two separate trustees would be appointed for  
4 each of the Debtors. Presumably, the trustees would hire new counsel and consultants to pursue and  
5 defend litigation. The delays and uncertainty caused by the failure to confirm the Plan would  
6 increase the liquidation costs and reduce recoveries to Creditors. Moreover, absent confirmation of  
7 the Plan under chapter 11 of the Bankruptcy Code, the Debtors would not be able to obtain the  
8 benefits of the provisions of Section 524(g) of the Bankruptcy Code which would materially reduce  
9 recoveries under existing settlements with certain insurers, and would likely reduce the recoveries  
10 from future settlements with insurers by eliminating the ability to grant settling insurers protection  
11 under the provisions of Section 524(g). Under the circumstances, the Debtors believe that  
12 confirmation of the Plan is preferable to liquidation under chapter 7.

13 **XI. LIQUIDATION ANALYSIS**

14 Section 1129(a)(7) of the Bankruptcy Code requires that a holder of a Claim in an impaired  
15 Class receive or retain under the Plan not less than the holder would receive or retain on account of  
16 the Claim if the debtor were liquidated under chapter 7 of the Bankruptcy Code. This test is often  
17 referred to as the “best interest of creditors” test. Under the Plan, all Claims other than Asbestos  
18 Injury Claims are paid in full, and thus the best interest of creditors test is inapplicable to holders of  
19 Claims other than Asbestos Injury Claims.

20 To apply the “best interests” test, the Bankruptcy Court must first calculate the aggregate  
21 dollar amount that would be generated from a liquidation of each Debtor’s assets in hypothetical  
22 liquidations on the Effective Date of the Plan under chapter 7, including the amount of cash and  
23 other tangible assets held by such Debtor and the value of any projected recoveries on actions  
24 against third parties and other intangible assets held by such Debtor (the “Liquidation Value”). The  
25 Liquidation Value must then be reduced by the costs of liquidation, including administrative costs of  
26 the chapter 7 estates and compensation to the chapter 7 trustees and other professionals retained by  
27 the trustees (the “Liquidation Costs”). After estimating the Liquidation Value and the Liquidation  
28 Costs, the Bankruptcy Court must ascertain the potential chapter 7 recoveries by Creditors and then

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1 compare those recoveries with the distributions offered under the Plan to determine if the Plan is in  
2 the “best interests” of Creditors in each Class.

3 In a hypothetical chapter 7 case, the Debtors’ rights in the Coverage Litigation would be  
4 preserved. It cannot be assumed, however, that the settlement value of the Debtors’ claims in the  
5 Coverage Litigation would be as great in chapter 7 as in chapter 11. The benefits of the provisions  
6 of Section 524(g) of the Bankruptcy Code can be obtained only through confirmation of a chapter 11  
7 plan of reorganization. If such a plan is not confirmed, Thorpe will be unable to satisfy the  
8 conditions for receiving additional sums of at least \$20 million from its settlements with Pacific  
9 Indemnity Company, Great American Insurance Company and Republic Indemnity Company of  
10 North America. In addition, conversion to chapter 7 could reduce the value of future settlements  
11 with insurers by eliminating the ability to grant settling insurers protection under the provisions of  
12 Section 524(g).

13 Accordingly, the Debtors believe that the Liquidation Value is no greater than, and likely is  
14 less than, the value of the assets to be distributed under the Plan. In addition, the Debtors believe  
15 that the Liquidation Costs in chapter 7 would exceed the costs of administering the Plan. The fees of  
16 possibly two chapter 7 trustees (one in each case) can be avoided by confirming the Plan. Moreover,  
17 the new, outside professionals retained by a trustee would have to expend substantial time in  
18 familiarizing themselves with the intricacies of these cases that would not be necessary in chapter  
19 11. A trustee might choose to explore further legal actions and increase his or her legal expenses  
20 even more than has been projected. In addition, the creation of a new bar date for claims would  
21 allow previously late-filed claims to be filed in a timely fashion and permit claims that are presently  
22 time-barred to be timely filed. This would increase the claims pool and further dilute the recoveries  
23 to creditors.

24 Accordingly, the Debtors believe that Creditors will receive distributions under the Plan that  
25 are at least equal in value to the distributions they would receive in a chapter 7 liquidation and,  
26 therefore, the Plan is in their best interests.

27 **XII. ACCEPTANCE AND CONFIRMATION OF THE PLAN**

28 The following is a brief summary of the provisions of the Bankruptcy Code relevant to

1 acceptance and confirmation of a plan of reorganization. Holders of Claims and Equity Interests are  
2 encouraged to review the relevant provisions of the Bankruptcy Code with their own attorneys.

3 **A. Acceptance of the Plan**

4 This Disclosure Statement is provided in connection with the solicitation of acceptances of  
5 the Plan. The Bankruptcy Code defines acceptance of a plan of reorganization by a Class of Claims  
6 as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number,  
7 of the Allowed Claims of that Class that have actually voted or are deemed to have voted to accept  
8 or reject a plan. The Bankruptcy Code defines acceptance of a plan of reorganization by a Class of  
9 interests as acceptance by at least two-thirds in amount of the allowed interests of that Class that  
10 have actually voted or are deemed to have voted to accept or reject a plan.

11 If one or more impaired Classes reject the Plan, the Debtor may, in their discretion,  
12 nevertheless seek confirmation of the Plan if the Debtors believe that the requirements of Section  
13 1129(b) of the Bankruptcy Code for Confirmation of the Plan (which are summarized below) will be  
14 met, despite the lack of acceptance by all Impaired Classes.

15 **B. Confirmation**

16 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold  
17 a hearing on confirmation of a plan. Notice of the Confirmation Hearing regarding the Plan has been  
18 provided to all known holders of Claims and Equity Interests or their respective representatives  
19 along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to  
20 time by the Bankruptcy Court without further notice except for an announcement of the adjourned  
21 date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

22 Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to  
23 confirmation of a plan. Any objection to Confirmation of the Plan must be in writing, must conform  
24 with the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, must set forth the name of  
25 the objecting party, the nature and amount of Claims or Equity Interests held or asserted by that  
26 party against the Debtors' Estates or property, and the specific basis for the objection. Such  
27 objection must be filed with the Bankruptcy Court, together with a proof of service, and served on  
28 all parties and by the date set forth on the notice of the Confirmation Hearing.



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1 At the Confirmation Hearing, the Proponents will request that the Bankruptcy Court  
2 determine that the Plan satisfies the requirements of Section 1129 of the Bankruptcy Code. If the  
3 Bankruptcy Court so determines, the Bankruptcy Court will enter an order confirming the Plan. The  
4 applicable requirements of Section 1129 of the Bankruptcy Code are as follows:

- 5 • The Plan must comply with the applicable provisions of the Bankruptcy Code;
- 6 • The Debtors must have complied with the applicable provisions of the Bankruptcy Code;
- 7 • The Plan must have been proposed in good faith and not by any means forbidden by law;
- 8 • Any payment made or promised to be made by the Debtors under the Plan for professional  
9 services or for costs and expenses in, or in connection with, the chapter 11 Cases, or in  
10 connection with the Plan, must have been disclosed to the Bankruptcy Court, and any such  
11 payment made before Confirmation of the Plan must be reasonable, or if such payment is to  
12 be fixed after Confirmation of the Plan, such payment must be subject to the approval of the  
13 Bankruptcy Court as reasonable;
- 14 • The Debtors must have disclosed the identity and affiliates of any individual proposed to  
15 serve, after Confirmation of the Plan, as a director, officer, or voting trustee of the Debtors  
16 under the Plan. Moreover, the appointment to, or continuance in, such office of such  
17 individual, must be consistent with the interests of holders of Claims and Equity Interests and  
18 with public policy, and the Debtors must have disclosed the identity of any insider that the  
19 Reorganized Debtor will employ or retain, and the nature of any compensation for such  
20 insider. The Proponents will disclose the identity of the officers and directors of the  
21 Reorganized Debtor in the Plan Supplement;
- 22 • With respect to each Class of Impaired Claims or Equity Interests, either each holder of a  
23 Claim or Equity Interest of such Class must have accepted the Plan, or must receive or retain  
24 under the Plan on account of such Claim or Equity Interest, property of a value, as of the  
25 Effective Date of the Plan, that is not less than the amount that such holder would receive or  
26 retain if the Debtors were liquidated on such date under chapter 7 of the Bankruptcy Code;
- 27 • Each Class of Claims or Equity Interests must have either accepted the Plan or not be  
28 Impaired under the Plan;
- In order to issue the injunctions contemplated by the Plan and authorized under Section  
524(g) of the Bankruptcy Code, at least 75% of those voting in Class 5 must vote to accept  
the Plan;
- Except to the extent that the holder of a particular Claim has agreed to a different treatment  
of such Claim, the Plan provides that Allowed Administrative and Priority and Priority Tax  
Claims will be paid in full on the Effective Date;
- At least one impaired Class of Claim must have accepted the Plan, determined without  
including any acceptance of the Plan by any insider holding a Claim of such Class; and

- Confirmation of the Plan must not be followed by the liquidation, or the need for further financial reorganization of the Debtors or any other successor.

**C. Confirmation Without Acceptance by All Impaired Classes.**

Section 1129(b) of the Bankruptcy Code allows a Bankruptcy Court to confirm a plan, even if such plan has not been accepted by all of the impaired Classes entitled to vote, provided that such plan has been accepted by at least one impaired Class, and the plan does not “discriminate unfairly” and is “fair and equitable” with respect to each Class of impaired Claims or Interests that has not accepted the plan. This procedure is commonly known as “cramdown.”

If any impaired Classes reject or are deemed to have rejected the Plan, the Debtors reserve their right to seek the application of the requirements set forth in Section 1129(b) of the Bankruptcy Code for Confirmation of the Plan despite the lack of acceptance by all impaired Classes.

**XIII. MISCELLANEOUS PROVISIONS**

**1. Objections to Claims**

After the Effective Date, objections to Administrative Claims and all other Claims may be made and objections to Administrative Claims and Claims made before the Effective Date may be pursued by the Reorganized Debtor or any other Person properly entitled to do so after notice to the Reorganized Debtor and approval by the Bankruptcy Court. Any objections to Administrative Claims and Claims made after the Effective Date shall be filed and served on the holders of such Administrative Claims and Claims not later than one hundred-twenty (120) days after the Effective Date or such later date as may be approved by the Bankruptcy Court.

**2. Settlement of Objections after the Effective Date**

From and after the Effective Date, the Reorganized Debtor may litigate to Final Order, propose and consummate settlements of, or withdraw objections to, all pending or filed Disputed Claims and may settle or compromise any Disputed Claim without notice and a hearing and without approval of the Bankruptcy Court.

**3. Holding of, and Failure to Claim, Undeliverable Distributions**

All Distributions are to be made by the Reorganized Debtor to the holder of each Allowed Claim at the address of such holder as listed on the Schedules at the time of such Distribution. If any

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1 holder's distribution is returned as undeliverable, no further Distributions to such holder shall be  
2 made unless and until the Reorganized Debtor are notified of such holder's then current address, at  
3 which time all required Distributions shall be made to such holder. Undeliverable distributions shall  
4 be held by the Reorganized Debtor until such Distributions are claimed. All claims for undeliverable  
5 Distributions shall be made on or before the first anniversary of the Effective Date. After such date,  
6 all unclaimed distributions shall revert to Reorganized Debtor and the Claim of any holder or  
7 successor to such holder with respect to such distribution shall be discharged and forever barred  
8 notwithstanding any federal or state escheat laws to the contrary.

9 **4. Transfer Taxes**

10 In accordance with Section 1146(c) of the Bankruptcy Code: (a) the transfer of the Equity  
11 Interests; (b) the making, assignment, modification, or recording of any lease or sublease; or (c) the  
12 making, delivery, or recording of a deed or other instrument of transfer under, in furtherance of, or in  
13 connection with, the Plan, the Confirmation Order, or any transaction contemplated above, or any  
14 transactions arising out of, contemplated by, or in any way related to, the foregoing shall not be  
15 subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax,  
16 mortgage tax, stamp act or real estate transfer tax, mortgage recording tax or other similar tax or  
17 governmental assessment and the appropriate state or local government officials or agents shall be  
18 directed to forego the collection of any such tax or assessment and to accept for filing or recordation  
19 any of the foregoing instruments or other documents without the payment of any such tax or  
20 assessment.

21 **5. United States Trustees' Fees**

22 The Reorganized Debtor shall pay all quarterly fees payable to the Office of the United  
23 States Trustee for the Debtors after Confirmation, consistent with applicable provisions of the  
24 Bankruptcy Code, Bankruptcy Rules, and 28 U.S.C. § 1930(a)(6).

25 **6. Method of Payment**

26 Payments of Cash required to be made under the Plan shall be made by check drawn on a  
27 domestic bank or by wire transfer from a domestic bank at the election of the Person making such  
28 payment. Whenever any payment or distribution to be made under the Plan is due on a day other

1 than a Business Day, such payment or distribution may instead be made, without interest, on the  
2 immediately following Business Day.

3 **XIV. RECOMMENDATION AND CONCLUSION**

4 The Proponents have analyzed different scenarios and believe that the Plan will provide for a  
5 larger distribution to holders of Claims and Equity Interests than would otherwise result if an  
6 alternative restructuring plan were proposed or if the Debtors were liquidated under chapter 7. In  
7 addition, any alternative other than Confirmation of the Plan could result in extensive delays and  
8 increased administrative expenses resulting in potentially smaller distributions to the holders of  
9 Claims and Equity Interests. Accordingly, the Proponents recommend confirmation of the Plan and  
10 urge all holders of Impaired Claims and Equity Interests to vote to accept the Plan and to indicate  
11 acceptance by returning their Ballots so as to be received by no later than the voting deadline.

12 [Signature Page Follows]

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1 Dated: Los Angeles, California  
2 July 24, 2008

Respectfully submitted,

3  
4 **Pachulski Stang Ziehl & Jones LLP**

5 By: /s/ Jeremy V. Richards  
6 Jeremy V. Richards  
7 Counsel to Thorpe Insulation Company

8 **Clark & Trevithick**

9 By: /s/ John A. Lapinski  
10 John A Lapinski  
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13 By: /s/ Robert W. Fults  
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15 Counsel to Official Committees of  
16 Unsecured Creditors of Thorpe Insulation  
17 Company and Pacific Insulation Company

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19 By: /s/ Peter Van N. Lockwood  
20 Peter Van N. Lockwood  
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22 Company and Pacific Insulation Company

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APPENDIX A

**DISCLAIMER:** *The information set forth below in this Appendix A has been supplied by Fireman's Fund and Continental, and certain other insurers, to provide alternative and/or additional disclosures regarding the Debtors' Asbestos Insurance Policies, the Coverage Litigation and the Wellington Settlement Claims. The information provided below has not been approved or disapproved by any of the Proponents, does not necessarily reflect the views of any of the Proponents, and shall not constitute or be construed as an admission of any fact or liability, stipulation or waiver on behalf of any of the Proponents, but rather as a statement of position made by certain insurers.*

Certain of Thorpe's insurers ("Insurers") strongly disagree with the adequacy of the Plan Proponents' description in Section IV.C of the Disclosure Statement as to, *inter alia*, Thorpe's insurance coverage and pending coverage disputes. The Insurers submit the summary below to supplement the Plan Proponents' description recognizing that the Plan Proponents do not agree with it:

A principal issue to be decided in the Coverage Litigation<sup>5</sup> is whether, as Thorpe contends, certain of its asbestos-related bodily injury claims are "non-products" or "operations" claims for which Thorpe contends it is entitled to additional insurance coverage. The Insurers, conversely, contend that Thorpe's asbestos claims fall within the products and/or completed operations hazards of Thorpe's policies, and are therefore subject to those policies' aggregate limits of liability. The Insurers' interpretation was the holding of the United States Court of Appeals for the Fourth Circuit in *In re Wallace & Gale Co.*, 385 F.3d 820 (4th Cir. 2004), the only federal appellate court decision that has addressed this issue. The Insurers' aggregate limits of liability were exhausted by payment to Thorpe of more than \$180 million in coverage over a 28-year period. Accordingly, it is the Insurers' position that Thorpe's insurance policies are fully exhausted, the Insurers' coverage obligations under those policies are fully satisfied, and Thorpe is entitled to no additional coverage for asbestos-related claims.

Because Thorpe waited almost three decades before asserting an alleged right to "nonproducts" coverage, the Insurers contend that even assuming *arguendo* certain of Thorpe's claims are "operations" claims, Thorpe waived, is time-barred and/or estopped from asserting an alleged right to such coverage. The factual basis for these and related defenses is outlined in the recent California Court of Appeal opinion establishing that course of performance pursuant to the applicable policies is admissible to interpret the policy language. *See Employers Reinsurance Co. v. Superior Court*, 161 Cal. App. 4th 906, 918-25 (2d Dist. 2008).

Moreover, Thorpe executed a settlement agreement with its primary insurers in 1984, which certain of Thorpe's primary insurers contend released them from any further liability for Thorpe claims upon exhaustion of their policies' aggregate limits. *Id.* at 925 (outlining factual basis of release defense). As a result, certain of Thorpe's excess carriers contend that such a release of Thorpe's underlying primary coverage constituted a breach of the excess policies, obviating some or all of Thorpe's excess coverage as well. *See Qualcomm, Inc. v. Certain Underwriters at Lloyd's, London*, 73 Cal. Rptr. 3d 770 (Cal. App. 4th Dist. 2008). These and other defenses set forth in the Insurers' pleadings in the Coverage Litigation, in the Insurers' view, make any further Thorpe recovery from them highly unlikely.

<sup>5</sup> As Wellington Agreement signatories, Fireman's Fund and Harbor are not parties to the pending Coverage Litigation.

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**APPENDIX B**

**DISCLAIMER:** *The information set forth below in this Appendix B has been supplied by Fireman's Fund and Continental, and certain other insurers, to provide alternative and/or additional disclosures regarding the Debtors' Asbestos Insurance Policies, the Coverage Litigation and the Wellington Settlement Claims. The information provided below has not been approved or disapproved by any of the Proponents, does not necessarily reflect the views of any of the Proponents, and shall not constitute or be construed as an admission of any fact or liability, stipulation or waiver on behalf of any of the Proponents, but rather as a statement of position made by certain insurers.*

Continental and Fireman's Fund strongly disagree with the Plan Proponents' description provided in Section IV.C of the Disclosure Statement as to, *inter alia*, (a) Thorpe's insurance coverage, (b) the coverage disputes, and (c) Continental's and Fireman's Fund's claims against Thorpe. Consequently, Continental and Fireman's Fund submit the factual summary below to supplement the Plan Proponents' narrative. Continental and Fireman's Fund expressly recognize that the Plan Proponents do not agree with the factual summary set forth below.

The Wellington Agreement, The Wellington Settlement, and the Wellington Arbitration

Before the Petition Date, Harbor Insurance Company ("Harbor"), issued four primary liability policies to Thorpe (collectively, the "Harbor Policies") covering the years 1971-1979. Fireman's Fund also issued or allegedly issued 17 primary policies to Thorpe covering the years 1952-1970. Each of Continental (as the successor-in-interest to Harbor with respect to the Harbor Policies), Thorpe, and Fireman's Fund are signatories to the Wellington Agreement, an omnibus insurance coverage and claims handling agreement executed in 1985 by approximately 35 asbestos producers and certain of their insurers. The Wellington Agreement provided for binding arbitration as the exclusive procedure for resolving disputes between the signatories.

Between 1978 and 1998, Thorpe sought, and both Continental (as the successor-in-interest to Harbor with respect to the Harbor Policies) and Fireman's Fund paid, a combined \$23.5 million in coverage. Continental and Fireman's Fund paid such amounts with the agreement and understanding that the asbestos claims against Thorpe were "products" and/or "completed operations" claims subject to their policies' aggregate limits of liability. The aggregate limits of the policies exhausted in April, 1998 for Continental and in September, 1998 for Fireman's Fund.

Upon exhaustion of its primary coverage, Thorpe began tendering claims to, and accepting coverage from, its excess carriers. These excess carriers were obligated to pay such claims only if the underlying primary policies were in fact exhausted. At approximately the same time, however, Thorpe tendered claims to Continental (as the successor-in-interest to Harbor with respect to the Harbor Policies) and Fireman's Fund as so-called "non-products" or "operations" claims. Thorpe argued that such claims were not subject to aggregate limits under their insurance policies. Continental and Fireman's Fund responded to Thorpe's claim by initiating arbitration under the Wellington Agreement to obtain a declaration that their primary policies were exhausted and that Thorpe was not entitled to additional "non-products" coverage thereunder.

The Honorable Abraham Sofaer, a former United States District Judge for the Southern District of New York, conducted the arbitration. Judge Sofaer rejected Thorpe's claim for additional coverage, and ruled that Thorpe was not entitled to "non-products" coverage from Continental or

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1 Fireman's Fund for its asbestos bodily injury claims. Judge Sofaer further ordered Thorpe, as the  
2 losing party, to pay Fireman's Fund's and Continental's attorneys' fees.

3 The Wellington Agreement provides for appeals from the decisions of Wellington arbitrators  
4 to a panel of Wellington arbitrators. Thorpe appealed Judge Sofaer's decision within the appeal  
5 structure established by the Wellington Agreement. On April 17, 2003, Fireman's Fund, Continental  
6 (as the successor-in-interest to Harbor with respect to the Harbor Policies), and Thorpe entered into  
7 that certain Wellington Settlement and Release (the "Wellington Settlement"), pursuant to which  
8 Thorpe released all claims of any kind, no matter how constituted, that it had or ever could have  
9 against Fireman's Fund and Continental. Among other things, Thorpe, defined to include any  
10 successor-in-interest, such as the Trust, released Continental, Harbor, and Fireman's Fund "from any  
11 claims for coverage of any kind under or related to the Policies," including "known and unknown"  
12 claims, "future" claims, claims "which do not yet exist and which could not be foreseen," and  
13 "unanticipated claims of any kind." Further, the Wellington Settlement was a "full and complete  
14 accord and satisfaction of any and all obligations that [Fireman's Fund and/or Continental (as the  
15 successor-in-interest to Harbor with respect to the Harbor Policies)] have or may ever have for any  
16 claim of any kind under the policies, whether described above or otherwise." In addition, the parties  
17 made the following warranties:

18 The parties to this Agreement each represent and warrant that they have not and will  
19 not in any manner assign, transfer, convey or sell, or purport to assign, transfer,  
20 convey or sell to any entity or person any cause of action, chose in action, or part  
21 thereof, arising out of or connected with the matters released herein, and that they are  
22 the only person or entities. entitled to recover for damages under such claims, causes  
23 of action, actions, and rights. The parties to this Agreement each further represent and  
24 warrant that they will not in any way voluntarily assist any other person or entity in  
25 the establishment of any claim, cause of action, action, or right against the other party  
26 to this Agreement arising out of, resulting from or in any way relating to the matters  
27 released.

28 The Wellington Settlement provided the following remedies for breach of these warranties:

Each party to this Agreement expressly agrees to indemnify the other for all expenses,  
reasonable fees, including reasonable attorneys' fees, and other consequences, of any  
breach by the indemnifying Party of a warranty expressly stated in this Agreement,  
provided that neither this provision nor any provision other than paragraph 27 limits  
the rights, obligations or duties of the parties hereto under the Wellington Agreement.

Finally, adhering to the Wellington Agreement's arbitration mandate, the parties agreed "to the  
continuing jurisdiction of Trial Judge Abraham D. Sofaer to enforce this Agreement and its terms."

The Coverage Litigation.

Following the Wellington Settlement, Fireman's Fund and Continental have contended that  
Thorpe continued to submit and accept payment from its excess carriers for claims as products  
claims subject to its excess limits. Fireman's Fund and Continental have contended that, in late 2005,  
as the remainder of these limits were approaching exhaustion, Thorpe asserted for the first time that  
it was entitled to "non-products" coverage from its non-Wellington carriers. To resolve this and  
other issues, Thorpe and two of its excess insurers filed competing declaratory judgment actions in  
California Superior Court. The actions were consolidated as coordinated proceedings before Judge  
Carolyn Kuhl in the Superior Court of California, County of Los Angeles (the "Coverage  
Litigation"). None of Continental, Harbor, or Fireman's Fund are parties to the Coverage Litigation.  
The parties litigated the Coverage Litigation for almost two years before the Petition Date.

Thorpe Cooperates With The Asbestos Claimants in Filing Direct Actions Against Fireman's  
Fund and Continental.



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1 Fireman's Fund and Continental have contended that Thorpe has aligned itself with the very  
2 asbestos claimants who are suing it, and has taken the position that it has a "common interest" with  
3 the asbestos claimants against its insurers. To this end, and despite (a) Thorpe's contractual duty to  
4 cooperate with the insurers to minimize its potential liability and (b) Thorpe's express warranty in  
5 the Wellington Settlement that it would not assist any party in the establishment of a claim against  
6 Fireman's Fund or Continental, Fireman's Fund and Continental believe that Thorpe has worked with  
7 asbestos claimants' counsel to develop and coordinate a strategy designed to coerce settlements from  
8 the insurers, including Fireman's Fund and Continental. Among other things, Fireman's Fund and  
9 Continental have contended that Thorpe has been colluding with counsel for the asbestos claimants  
10 to try and coerce settlements from Continental and Fireman's Fund by, inter alia, encouraging the  
11 claimants to bring "direct actions" against Continental and Fireman's Fund.

12 In particular, in late 2006, Brayton Purcell LLP (an asbestos plaintiffs' firm), on behalf of  
13 certain of its clients, filed several "direct actions" seeking coverage from the insurers who are parties  
14 to the Coverage Litigation. None of these actions named Continental, Harbor, or Fireman's Fund as  
15 parties. But after meeting with counsel for Thorpe in mid-September 2007, Brayton Purcell LLP  
16 filed several additional direct action lawsuits against Thorpe's insurers, this time naming as  
17 defendants Harbor and Fireman's Fund. Accordingly, Fireman's Fund and Continental have  
18 contended that Thorpe cooperated with and provided assistance to the asbestos claimants in bringing  
19 direct actions against Harbor and Fireman's Fund, which cooperation and assistance plainly violates  
20 the terms of the Wellington Settlement. Fireman's Fund and Continental contend that the Plan, as  
21 proposed, continues and extends this pre-petition breach. Fireman's Fund and Continental contend  
22 that in the Plan, Thorpe, as a Plan Proponent, has agreed with the claimants to a scheme by which  
23 Fireman's Fund and Continental alone are excepted from the Asbestos Insurer Injunction (see  
24 Exhibit C to the Plan) and thus subject to direct actions. As such, Fireman's Fund and Continental  
25 believe that Thorpe's apparent participation in this scheme to establish claims against Fireman's Fund  
26 and Continental should subject Thorpe and the Trust to substantial liability under the Wellington  
27 Settlement.

28 Thorpe Obtains and Assigns Contribution Rights From Settled Carriers.

Under certain circumstances, Fireman's Fund and Continental have contended that California  
courts have held that settlements between an insurer and its policyholder may not extinguish the  
contribution rights of other insurers against the settling insurer. As discussed in Section V.1. hereof,  
Thorpe has settled its coverage claims with at least five of its insurers. These settlement agreements  
include an assignment to Thorpe and the Trust of the various carriers' alleged contribution rights  
against, inter alia, Continental and Fireman's Fund. Fireman's Fund and Continental have contended  
that this attempt by Thorpe to acquire and assign to the claimants and the Trust claims against  
Continental and Fireman's Fund plainly violates the Wellington Settlement terms set forth above.

On September 28, 2007, both Fireman's Fund and Continental requested that Thorpe confirm  
that it was not: (a) taking any action to assist any party in asserting claims against Fireman's Fund,  
Continental, or Harbor; (b) acquiring, assigning or asserting any alleged rights against Fireman's  
Fund, Continental, or Harbor; or (c) taking any action to pursue or assist with . an insurance recovery  
from Fireman's Fund, Continental, or Harbor. Thorpe did not respond to these inquiries. As a result,  
Continental and Fireman's Fund initiated arbitration proceedings in September, 2007 with Judge  
Sofaer to enforce the terms of the Wellington Settlement. Thorpe responded by disputing Judge  
Sofaer's jurisdiction and opposing Continental's and Fireman's Fund's claim. Judge Sofaer agreed to  
exercise his exclusive jurisdiction over the dispute, and scheduled a hearing for October 16, 2007.

Before the scheduled hearing, counsel for Continental and Fireman's Fund again asked  
Thorpe's counsel if Thorpe was acquiring contribution rights from settling carriers or in any way  
assisting with the filing of direct actions against Harbor and Fireman's Fund. Thorpe's counsel  
Fireman's Fund and Continental submit that the Debtors cannot seek resolution of the Wellington  
Settlement Claims before the Bankruptcy Court including through a proof of claim objection or the

1 estimation of claims for voting purposes. As such, Fireman's Fund and Continental contend that the  
2 filing of proofs of claim did not and does not constitute consent by Fireman's Fund and Continental  
3 to the jurisdiction of the Bankruptcy Court with respect to the resolution of the Wellington  
4 Settlement Claims.  
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**EXHIBIT A**  
**FIRST AMENDED JOINT PLAN OF REORGANIZATION**

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EXHIBIT B

SECTION I.7 OF MANVILLE TDP

7. **Distributor Indemnity Claims.** Any Trust Beneficiary that is a Distributor may present Distributor Indemnity Claims to the Trust for processing and payment pursuant to the provisions of this subsection 7.

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

(b) **Distributor Indemnity Claims Not Waived.** No Distributor shall be deemed to have waived Distributor Indemnity Claims by any of the following: (i) failing to comply with the provisions of Sections II and III.D.1 of the Co-Defendants' Procedures, including not filing a timely proof of claim for Indemnity in the Cases; (ii) the making of the Contribution Claim Election; or (iii) the expungement of any Proof of Claim for Indemnity by the Bankruptcy Court.

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

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

(d) **Setting a Distributor Indemnity Claim Percentage.** The Distributor Indemnity Claim percentage applicable to a particular Distributor shall be determined by the following procedures. First, a Distributor must make a written submission to the Trust setting forth its position concerning the proper Distributor Indemnity Claim percentage for that Distributor and each component of that percentage. The Trust shall promptly notify the SCB of the Distributor's submission, the proposed Distributor Indemnity Claim percentage and each component thereof. The SCB may share such information only with those persons necessary to enable the SCB to respond to the Distributor's submission. The SCB shall have 45 days from receipt of such notice to make its own written submission to the Trust concerning the proper Distributor Indemnity Claim percentage for the Distributor, together with such supporting documents as the SCB deems appropriate.

By the same date the SCB's submission is due, the Distributor shall submit to the Trust all documents in support of its position it wishes the Trust to consider. Such information provided by the Distributor shall be kept confidential by the Trust and shall not be shared with any other Beneficiary. Within 10 days following the date the SCB's submission is due, the Trust shall determine the Distributor Indemnity Claim percentage, and shall notify the Distributor and the SCB of its determination. If either is dissatisfied, they may present the issue to the Special Advisor for mediation.

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1 These three factors are hereinafter referred to as the components of the Distributor Indemnity  
2 Claim percentage.

3 The Special Advisor shall receive copies of all submissions presented to the Trust. If the Special  
4 Advisor is unable to resolve the issue through mediation, it shall be resolved by binding  
5 arbitration. The Special Advisor shall nominate three potential arbitrators (none of whom shall be  
6 counsel representing any Trust Beneficiary), each party shall strike one and the remaining  
7 nominee shall be the arbitrator. If both parties strike the same nominee, the Special Advisor shall  
8 select the arbitrator from the remaining two nominees. The arbitrator shall determine the  
9 procedures for the arbitration. The arbitrator's determination of the appropriate Distributor  
10 Indemnity Claim percentage shall be final and binding on the Distributor, the Trust and the SCB.  
11 If this process results in a determination that less than 35% of the asbestos purchased by a  
12 Distributor was distributed by it or less than 35% of the asbestos or asbestos-containing products  
13 it purchased was from Manville, the Distributor shall not have the right to process its claims  
14 using a Distributor Indemnity Claim percentage (unless special circumstances are presented to  
15 and accepted by the Trust, as described below) and shall instead process its claims on a case-by-  
16 case basis as provided by subsection 7(f), below. Upon demonstration of special circumstances  
17 warranting such treatment, the Trust may in its discretion permit a Distributor to process its  
18 claims using a Distributor Indemnity Claim percentage even if the Distributor fails to meet the  
19 requirement set forth in the preceding sentence.

20 **(e) Processing Distributor Indemnity Claims with a Percentage.** Once a Distributor Indemnity  
21 Claim percentage has been established for a Distributor, the Distributor shall make any  
22 Distributor Indemnity Claims by submitting proof to the Trust that it has sustained an asbestos-  
23 related loss in a case which has been finally resolved by settlement, judgment or otherwise. Upon  
24 proof of such a loss, the Trust shall process and pay, in accordance with the procedures set forth  
25 in Section G, an amount equal to the Distributor Indemnity Claim percentage of such loss times  
26 the same pro rata share applicable to all Trust Claims, as described in Section H.

27 Distributor Indemnity Claims shall be processed and paid by the Trust in FIFO order in a queue  
28 separate from the queues for other Trust Claims. The Trust, in consultation with counsel for the  
Manville Distributors Subclass, shall establish appropriate forms and procedures for processing  
Distributor Indemnity Claims.

**(f) Processing Distributor Indemnity Claims With No Percentage.** Distributors who do not  
have the right to process claims using a Distributor Indemnity Claim percentage shall present any  
Indemnity Claims to the Trust on a case-by-case basis. The Distributor must establish that the  
particular loss it suffered gives rise to a right of indemnity against the Trust under applicable law.  
The Trust shall value such claims as provided by applicable law. They shall be processed and  
paid their pro rata share in FIFO order, in accordance with the procedures set forth in Sections G  
and H. The Trust, in consultation with counsel for the Manville Distributors Subclass, shall  
establish appropriate forms and procedures for processing such Distributor Indemnity Claims.

**(g) Distributor Information Confidential.** Any information submitted by a Distributor to the  
Trust pursuant to this subsection 7 (other than a proposed Distributor Indemnity Claim  
percentage and the components thereof) shall be kept confidential by the Trust and shall not be  
disclosed to any other Beneficiary.

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**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES )

I, Sophia L. Lee, am employed in the city and county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10100 Santa Monica Blvd., 11th Floor, Los Angeles, California 90067-4100.

On July 30, 2008, I caused to be served the **FIRST AMENDED DISCLOSURE STATEMENT CONCERNING THE FIRST AMENDED JOINT PLAN OF REORGANIZATION OF THORPE INSULATION COMPANY AND PACIFIC INSULATION COMPANY UNDER CHAPTER 11 OF THE BANKRUPTCY CODE** in this action by placing a true and correct copy of said document(s) in sealed envelopes addressed as follows:

*Please see attached Service List*

- (BY MAIL) I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY EMAIL) I caused to be served the above-described document by email to the parties indicated on the attached service list at the indicated email address.
- (BY FAX) I caused to be transmitted the above-described document by facsimile machine to the fax number(s) as shown. The transmission was reported as complete and without error. (Service by Facsimile Transmission to those parties on the attached List with fax numbers indicated.)
- (BY OVERNIGHT DELIVERY) By sending by \_\_\_\_\_ to the addressee(s) as indicated on the attached list.

I declare that I am employed in the office of a member of the bar of this Court at whose direction was made.

Executed on July 30, 2008, at Los Angeles, California.

/s/ Sophia L. Lee  
Sophia L. Lee

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**In re Thorpe Insulation Company**  
**Case No.: 2:07-bk-19271-BB**  
**File No.: 84264.001**  
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