

# Exhibit 17



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

In re:

J.T. THORPE, INC., a California corporation,  
J.T. THORPE, INC., a dissolved California  
corporation, THORPE TECHNOLOGIES,  
INC., a California corporation, and THORPE  
HOLDING COMPANY, a California  
corporation,

Debtors.

Case Nos. LA02-14216-BB, LA04-35876-BB,  
LA 04-35847-BB and LA04-35877-BB

Jointly Administered under Case No.  
LA02-14216-BB

Chapter 11

**DISCLOSURE STATEMENT FOR JOINT  
PLAN OF REORGANIZATION DATED  
FEBRUARY 25, 2005**

Date: July 14, 2005  
Time: 10:00 a.m.  
Place: Courtroom 1475  
255 E. Temple Street  
Los Angeles, CA 90012

FILED

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CALIFORNIA  
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TABLE OF CONTENTS

1  
2  
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6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<u>Page</u>
SECTION 1. INTRODUCTION.....	2
1.1    Introductory Statement.....	2
1.2    Summary of Voting Procedures.....	6
1.3    Overview of the Plan.....	7
SECTION 2. GENERAL INFORMATION .....	11
2.1    History and Business of the Debtors.....	11
2.2    Factors Leading to the Need for Bankruptcy Relief.....	17
2.3    Insurance Issues.....	20
2.4    The Debtors’ Insurance Coverage .....	21
SECTION 3. EVENTS DURING THE REORGANIZATION CASES .....	22
3.1    Commencement of the Reorganization Cases.....	22
3.2    Administation of the Reorganization Cases.....	24
3.3    The Asset Purchase Motion.....	24
3.4    Appointment of the Committee.....	26
3.5    Appointment of the Futures Representative.....	27
3.6    The Settlements.....	28
3.7    The Coverage Litigation.....	31
3.8    The Pre-Confirmation Claims Liquidation Process.....	35
3.9    Setting of the Confirmation Hearing.....	35
SECTION 4. SUMMARY OF THE PLAN .....	36
4.1    General.....	36
4.2    Classification.....	36
4.3    Treatment of Administrative Claims.....	39
4.4    Treatment of the Classified Claims.....	39

1	4.5	Means for Execution of the Plan.....	43
2	4.6	Executory Contracts, Unexpired Leases and Settlements.....	45
3	4.7	Injunctions, Releases and Discharge.....	46
4	4.8	Matters Incident to Plan Confirmation.....	54
5	4.9	Retention of Jurisdiction.....	56
6	4.10	Miscellaneous Provisions.....	57
7		SECTION 5. CONFIRMATION OF THE PLAN.....	60
8	5.1	Acceptance or Rejection of the Plan.....	60
9	5.2	Confirmation Hearing.....	63
10	5.3	Requirements for Confirmation.....	64
11	5.4	Conditions to Confirmation and Conditions for Effective Date.....	70
12	5.5	Effect of Confirmation.....	74
13	5.6	Post-Confirmation Management.....	74
14	5.7	Closing And Reopening Of Reorganization Cases.....	75
15		SECTION 6. TRUST AND ASBESTOS RELATED CLAIMS RESOLUTION MATTERS.....	75
16	6.1	Establishment and Purpose of the Trust.....	75
17	6.2	Receipt of Trust Assets.....	76
18	6.3	Discharge of Liabilities to Holders of Asbestos Related Claims.....	76
19	6.4	Excess Trust Assets.....	76
20	6.5	Trust Expenses.....	76
21	6.6	Selection of the Initial Trustees.....	76
22	6.7	The Futures Representative.....	77
23	6.8	Trust Advisory Committee.....	77
24	6.9	Trust Obligations to Assist Defense of the Injunctions.....	77
25	6.10	Assumption of Liabilities by the Trust.....	77
26	6.11	Indemnification of the Debtors by the Trust.....	77



1	6.12	Assignment of Direct Actions to the Trust.....	78
2	6.13	Distributions pursuant to the TDP.....	79
3		SECTION 7. ESTIMATED ASBESTOS RELATED CLAIMS .....	91
4	7.1	General. ....	91
5	7.2	Total Amount of the Debtors' Liability. ....	92
6		SECTION 8. RISKS OF THE PLAN .....	93
7	8.1	General. ....	93
8	8.2	Payment of the Holdings Note. ....	94
9	8.3	Insurance Coverage for Asbestos Related Claims. ....	94
10	8.4	Aggregate Amount of Asbestos Related Claims.....	96
11		SECTION 9. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN.....	96
12	9.1	Dismissal of These Cases. ....	97
13	9.2	Liquidation under Chapter 7.....	97
14	9.3	Alternative to the Plan of Reorganization. ....	102
15		SECTION 10. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN.....	103
16	10.1	Tax Consequences to the Debtors. ....	104
17	10.2	Tax Consequences to Holders of Claims Other Than Asbestos Related Claims.....	105
18	10.3	Tax Consequences to Holders of Asbestos Related Claims.....	106
19	10.4	Tax Consequences to the Trust. ....	106
20		SECTION 11. INFORMATION PROVIDED.....	107
21	11.1	General. ....	107
22	11.2	Sources of Information.....	107
23	11.3	Accounting Method.....	107
24			
25			
26			
27			
28			

1  
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**SECTION 1.  
INTRODUCTION**

**1.1 Introductory Statement.**

J.T. Thorpe, Inc., a California corporation ("Thorpe"), J.T. Thorpe, Inc. a dissolved California corporation ("Dissolved Thorpe"), Thorpe Technologies, Inc. a California corporation ("Technologies"), Thorpe Holding Company, Inc., a California corporation ("Holdings"), the debtors and debtors in possession in the above-captioned cases (each, a "Debtor" and, collectively, the "Debtors"), together with the Official Committee of Creditors Holding Unsecured Claims of Thorpe, Dissolved Thorpe, Technologies and Holdings, the Futures Representative of Thorpe and the Proposed Futures Representative of Dissolved Thorpe, Technologies and Holdings (collectively, the "Plan Proponents"), are soliciting votes to accept the Plan. **ALL**

**CAPITALIZED TERMS USED HEREIN SHALL HAVE THE MEANINGS DEFINED HEREIN OR ASSIGNED TO SUCH TERMS IN THE GLOSSARY OF TERMS FOR THE PLAN DOCUMENTS, ATTACHED TO THE PLAN AS EXHIBIT 1.** Those definitions and the rules of construction contained in them are incorporated herein by this reference. The Plan is the product of extensive negotiations among the Debtors, the Committee and the Futures Representative.

A. Relationship of the Debtors

Holdings is a California holding company and is the sole shareholder of Thorpe and Technologies. As is more fully explained below, Dissolved Thorpe was a California corporation whose assets were purchased by Thorpe.

B. Dissolved Thorpe.

Dissolved Thorpe is a California corporation that was formed in October 1932 to acquire the firebrick, high temperature insulation and acid proof masonry repair and construction work in the Southern California and Pacific Southwest that had previously been the business of JT Thorpe & Son, Inc.

Dissolved Thorpe dissolved as a California corporation pursuant to its certificate of dissolution dated December 30, 1986. As set forth in Section 2.2 below, prior to its bankruptcy

1 filing, Dissolved Thorpe was sued for asbestos related injuries individuals had suffered in  
2 connection with its business operations.

3 C. Thorpe.

4 Thorpe, initially named Thorpe Constructors, Inc., acquired substantially all of the  
5 business assets, including Dissolved Thorpe's name, combined the operations of Dissolved Thorpe  
6 and assumed substantially all the liabilities of Dissolved Thorpe pursuant to an Asset Purchase  
7 Agreement dated December 26, 1986 among Thorpe, Dissolved Thorpe and the shareholders of  
8 Dissolved Thorpe (referred to herein as the "Purchase Agreement"). After the dissolution of  
9 Dissolved Thorpe, Thorpe changed its name from Thorpe Constructors, Inc. to "J.T. Thorpe, Inc."  
10 In 1992, certain real estate assets were purchased from Thorpe by J.T. Thorpe & Sons, Inc., a  
11 corporation to which Thorpe is not related as described more completely below.

12 After completing the acquisition of Dissolved Thorpe's refractory contracting assets and  
13 being renamed "J.T. Thorpe, Inc.," Thorpe completed all ongoing projects of Dissolved Thorpe  
14 and continued in its refractory contracting business. Thorpe ceased performing refractory  
15 contracting on or about February 29, 1992 by completing all of its contracts, paying all of its  
16 suppliers and trade creditors and laying off all of its employees. Its refractory contracting assets,  
17 including the refractory materials, tools equipment inventories, trucks and a construction yard  
18 were sold.

19 Asbestos litigation was one of the significant reasons for cessation of refractory  
20 contracting operations. The first asbestos claim (non workers compensation) was filed against  
21 Thorpe in 1987. By 1991 a significant number of claims had been filed against Thorpe. By early  
22 2002, four of the known primary insurance companies of Thorpe asserted that all of the coverage  
23 available under their primary policies were exhausted, while another primary insurer refused to  
24 defend or indemnify Thorpe against the asbestos suits based on a "lost" policy dispute. Given that  
25 approximately 1,000 separate asbestos suits were pending against Thorpe in early 2002, in order to  
26 avoid a race to the courthouse to seize the remaining admitted insurance coverage, Thorpe  
27 determined that the best course of action was to file a bankruptcy case to allow for an orderly  
28 administration of its property for the benefit of all claimants and stakeholders and a systematic

1 marshalling of insurance assets. Thorpe filed its Chapter 11 petition on February 12, 2002 and  
2 remains a debtor-in-possession in the United States Bankruptcy Court, Central District of  
3 California, Los Angeles Division, Case No. LA 02-14216 BB.

4 D. Technologies

5 Technologies originally incorporated in 1988 as “Thermal Process, Inc.,” and is a wholly-  
6 owned subsidiary of Holdings. “Thermal Process, Inc.” was inactive until February 1992, when it  
7 was renamed Thorpe Technologies, Inc. On or about March 2, 1992, Technologies purchased the  
8 engineering assets of Thorpe and began its operations as an industrial furnace builder (including  
9 the design, engineering, assembly and installation of industrial furnaces and related equipment)  
10 primarily for the aluminum industry. Technologies provides turnkey industrial furnaces and  
11 related equipment to industrial users at competitive prices. The components of its products are  
12 manufactured by third parties and the assembly and installation is managed by Technologies.

13 Technologies’ business differs from that of Thorpe in that Thorpe primarily performed  
14 refractory contacting and maintenance services, but designed and installed a few industrial  
15 furnaces. Thorpe’s refractory contracting business involved the installation and maintenance of  
16 refractory linings, which allegedly contain asbestos. Thorpe was therefore the target of asbestos  
17 personal injury actions for its work as a refractory contractor. By the time Technologies was  
18 formed, asbestos had been removed from all refractory products used in industrial furnaces, and as  
19 a result Technologies contends that it has no asbestos liability resulting from its operations. As  
20 discussed more fully in Section 2.2 below, Technologies was sued for Asbestos Related Claims, as  
21 Thorpe’s alter ego, prior to Technologies’ bankruptcy filing.

22 E. Holdings

23 Holdings is a California corporation formed in 1986. It is the sole shareholder of Thorpe  
24 and Technologies. Holdings also owns 99.9% of Thorpe do Brasil Ltda, a Brazilian Corporation  
25 (“Thorpe Brazil”) and Thorpe Mexico SA de CV, a Mexican corporation (“Thorpe Mexico”).  
26 Neither Thorpe Brazil nor Thorpe Mexico have filed bankruptcy petitions.

27 Occasionally Technologies is requested to design and install furnaces in South America.  
28 In order to facilitate these requests, Technologies operates through its sister-companies, Thorpe

1 Brazil, which was created in order to allow Technologies to design and install furnaces in Brazil,  
2 and Thorpe Mexico, which was created to allow Technologies to design and install furnaces in  
3 Mexico. As set forth in Section 2.2 below, prior to its bankruptcy filing, Holdings was named as a  
4 defendant in actions alleging personal injury claims caused by asbestos based upon contentions  
5 that it was liable for such claims as Thorpe's alter ego.

6 F. Bankruptcy Filing By Dissolved Thorpe, Holdings and Technologies

7 On or about December 15, 2004, Dissolved Thorpe, Holdings and Technologies filed  
8 voluntary Chapter 11 bankruptcy petitions assigned case nos. LA04-35876-BB, LA04-35877-BB  
9 and LA04-35847-BB, respectively, after being served with complaints alleging liability for  
10 asbestos injuries. The cases of Dissolved Thorpe, Holdings, Technologies and Thorpe are being  
11 jointly administered.

12 The Plan Proponents solicit sufficient acceptances to enable the Plan to be confirmed by the  
13 Bankruptcy Court pursuant to the provisions of the Bankruptcy Code. Because all Asbestos Related  
14 Claims will be channeled to and addressed by the Trust following the Effective Date of the Plan,  
15 this Disclosure Statement is distributed to provide adequate information to enable holders of  
16 Claims, including Asbestos Related Claims, to make an informed judgment in exercising their  
17 right to vote to accept or reject the Plan under section 1126 of the Bankruptcy Code.

18 **The Plan Proponents unequivocally support the Plan and strongly urge you to vote to**  
19 **accept it.**

20 The Plan complies with settlement agreements entered into with Nationwide Mutual  
21 Insurance Company ("Nationwide") and Federal Insurance Company ("Federal"), as discussed in  
22 Section 3.6 below, which provides the overwhelming majority of liquidated funding presently  
23 available to meet Claims. The Plan Proponents are unaware of any viable alternative plan. In the  
24 event that the Plan is not accepted by holders of the Asbestos Related Claims, the \$45 million  
25 settlement payment under the Federal Settlement would no longer be available, and recoveries  
26 from Federal would depend entirely on the outcome of the highly complex litigation conditionally  
27 compromised by the Federal Settlement. Similarly, a \$500,000 payment required under the  
28 Nationwide Settlement would no longer be available. In light of the difficulty of reaching the

1 settlement, no assurance can be given that any further settlement with Federal would be reached if  
2 the Plan were not accepted and approved. The alternatives to the Plan are further described in  
3 Section 9 below.

4 While the Debtors believe that they will prevail in the Coverage Litigation (see Sections  
5 2.3 and 3.7 below), no assurance can be given that there will be any insurance recoveries other  
6 than that provided for in the Nationwide Settlement and the Federal Settlement, and in casting a  
7 ballot in respect of the Plan, each voter should be aware that these settlement proceeds may  
8 represent all that will be distributed on Class 4 claims.

9 **1.2 Summary of Voting Procedures.**

10 The Debtors have sent a court-approved ballot to each known holder of a Class 4 Claim  
11 (i.e., to each known holder of an Asbestos Related Claim) with voting instructions and a copy of  
12 this Disclosure Statement. Holders of Class 4 Claims should read the ballot carefully and follow  
13 the voting instructions. Holders of Class 4 Claims should use only the ballot that accompanies this  
14 Disclosure Statement. A ballot was also sent to each known holder of Interests in Class 5-D (i.e.,  
15 to each known holder of an Interest in Holdings).

16 In order to be counted for voting purposes, ballots must be received by the Debtors' voting  
17 agent, Nora Boghossian (the "Voting Agent"), by 5:00 p.m. prevailing **PACIFIC TIME** on May  
18 12, 2005 (the "Voting Deadline"), at the following address:

19 Nora Boghossian.  
20 Rutter Hobbs & Davidoff Incorporated  
21 1901 Avenue of the Stars, Suite 1700  
22 Los Angeles, CA 90067

22 Ballots must be submitted to the Voting Agent by the Voting Deadline by either hand-  
23 delivery, U.S. Mail or other delivery service. Ballots may not be submitted to the Voting Agent  
24 by facsimile or email, and any ballots submitted by facsimile or email will not be considered.

25 A ballot must be by or on behalf of one claimant. Neither master ballots nor class ballots  
26 will be counted.

27 Either a claimant or his or her attorney or may sign a ballot. If an attorney signs a ballot  
28 for a client, that signature shall constitute a declaration under penalty of perjury that, as to any fact

1 that is not within the attorney's personal knowledge, the attorney's file concerning the client  
2 contains reliable information that the facts stated are true and correct and that the attorney is  
3 authorized to sign the ballot on the client's behalf.

4 If you are a holder of a Class 4 Claim (i.e., an Asbestos Related Claim) entitled to vote on  
5 the Plan and did not receive a ballot, received a damaged ballot or lost your ballot, you should  
6 contact the Voting Agent. If you have any questions about the Plan, this Disclosure Statement or  
7 the procedures for voting on the Plan, you should contact your attorney or the Debtors' bankruptcy  
8 counsel.

9 For detailed voting instructions, see Section 5 below and the instructions accompanying  
10 your ballot.

11 **1.3 Overview of the Plan.**

12 The following is a brief summary of certain information contained elsewhere in this  
13 Disclosure Statement and the Plan. This summary is necessarily incomplete and is qualified in its  
14 entirety by reference to the more detailed information contained elsewhere in this Disclosure  
15 Statement, the exhibits hereto and the other Plan Documents. The terms of the Plan are  
16 controlling.

17 The Plan is the product of extensive efforts by the Plan Proponents to negotiate a plan of  
18 reorganization for the Debtors that is fair and equitable to all parties in interest. The Plan will  
19 discharge certain of the Debtors and enjoin prosecution of actions against all of the Debtors, from  
20 all Claims. The Plan contemplates the issuance of injunctions under Sections 524(g) and 105(a) of  
21 the Bankruptcy Code that will result in channeling of the Asbestos Related Claims of the Debtors  
22 into the Trust.

23 The essential elements of the reorganization contemplated by the Plan include, among  
24 other things:

25 (a) As to Administrative Claims that are subject to approval by the Bankruptcy Court,  
26 that each holder thereof will be paid as soon as practicable after there is a Final Order granting  
27 such approval. As to all other Claims against the Debtors, other than Asbestos Related Claims,  
28 including but not limited to Priority Tax Claims, Priority Claims, Secured Claims and Unsecured

1 Claims other than Asbestos Related Claims, the Plan does not impair them but rather leaves  
2 unaltered the legal, equitable and contractual rights to which such Claims entitle the holder  
3 thereof. Upon confirmation of the Plan, Technologies and Holdings will receive a discharge from  
4 all Claims, and all the Debtors will receive an injunction precluding further Asbestos Related  
5 Claims against them.

6 (b) The Trust, which will enjoy the status of a “qualified settlement fund” for purposes  
7 of the Treasury Regulations issued under section 468B of the IRC, will assume all the liabilities  
8 and obligations of the Debtors, among other parties, with respect to Asbestos Related Claims, and  
9 will provide for the equitable distribution of the Trust Assets in partial payment of all Asbestos  
10 Related Claims.

11 (c) The Trust will be funded by the Trust Assets.

12 (d) The Bankruptcy Court, as affirmed by the District Court, will issue pursuant to  
13 sections 524(g) and/or 105(a) of the Bankruptcy Code, certain injunctions as to Asbestos Related  
14 Claims, including but not limited to the Discharge Injunction, the Channeling Injunction, the  
15 Supplemental Injunction and the Asbestos Insurance Company Injunction, all as described below,  
16 for the benefit the Debtors and certain third parties, including the Nationwide Parties and the  
17 Federal Parties, as appropriate.

18 To address Asbestos Related Claims fairly and efficiently, the Plan provides for the  
19 establishment of the Trust for the payment of Allowed Asbestos Related Claims. Asbestos  
20 Related Claims will be assumed by and transferred to the Trust, and will be liquidated and allowed  
21 or disallowed in accordance with the J.T. Thorpe, Inc., a California corporation/J.T. Thorpe, Inc., a  
22 dissolved California corporation/Thorpe Technologies, Inc., a California corporation/Thorpe  
23 Holdings Company, Inc., a California corporation, Asbestos Personal Injury Settlement Trust  
24 Distribution Procedures (“TDP”) established pursuant to the Trust Agreement.

25 The Trust will be funded with the Trust Assets, which include, among other things, the  
26 following assets to be delivered to the Trust pursuant to the Plan Documents or otherwise : (a) all  
27 shares of the common stock of Dissolved Thorpe, (b) the Holdings Note, (c) rights under the  
28 Holdings Pledge Agreement, (d) the Thorpe Business Loss Insurance Security , (e) the Thorpe



1 General Insurance Security, (f) all Asbestos Insurance Action Recoveries, and any income, profits  
2 and proceeds derived from the foregoing. The Trust Assets shall additionally include the Debtors'  
3 rights for contribution and reimbursement against parties other than Released Parties, as provided  
4 in Section 8.10 of the Plan.

5 The Trust will be administered by the Trustees pursuant to the TDP, in consultation with,  
6 and with the consent as to certain matters of, the Futures Representative and the TAC. The  
7 mechanisms of the Trust have been designed, over months of intense negotiations, to provide  
8 reasonable assurance that the Trust will value, and will be in a financial position to pay, similar  
9 present and future Asbestos Related Claims in substantially the same manner. See Section 6  
10 below for further information regarding the Trust and the TDP.

11 After the Effective Date, Technologies and Holdings will continue their business  
12 operations. Thorpe will continue to assist the Trust, as requested, in the Trust's implementation of  
13 its duties, Dissolved Thorpe will continue to wind up its affairs pursuant to the provisions of the  
14 Plan, the California Corporations Code and orders of the Superior Court of California for the  
15 County of Sacramento. The management, control and operation of Thorpe, Technologies and  
16 Holdings will remain the responsibility of their respective boards of directors. Dissolved Thorpe  
17 will continue to be managed by John Allen, the director appointed by the Superior Court. The  
18 Plan permits the business of Thorpe, Technologies and Holdings to operate free of Claims. The  
19 operating businesses will be protected from Claims by virtue of certain of the Debtors' discharge  
20 and the Injunctions. In addition, the Plan provides for the issuance of the Supplemental Injunction  
21 to protect the Nationwide Parties, the Federal Parties and all other Settling Asbestos Insurance  
22 Companies that provide funding to the Debtors or the Trust for the payment of holders of Asbestos  
23 Related Claims. Though the Injunctions are not conditions precedent to the Plan, as the Plan can  
24 be confirmed without the issuance of the Injunctions pursuant to Bankruptcy Code section 524(g),  
25 the Debtors believe that they will be able to satisfy the requirements of section 524(g) of the  
26 Bankruptcy Code, so long as the requisite number of Asbestos Related Claimants vote in favor of  
27 the Plan.

28

1           The Plan divides all Claims and Interests into five different Classes. The Class of  
2 Unsecured Claims (non-asbestos) is further divided into two separate sub-Classes, and the Class of  
3 Interests is further divided into four separate sub-Classes. Each Claim will receive the same  
4 percentage payment amount on its liquidated Claim as all other Claims within the same class or  
5 sub-class under the Plan. Each Interest will receive the same treatment as all other Interests within  
6 the same sub-class under the Plan. Section 5.4 below contains a description of the treatment of  
7 each Class under the Plan, including whether the Class is impaired or unimpaired by the Plan and  
8 whether the Class is channeled into and addressed by the Trust. The Class for Asbestos Related  
9 Claims is the only Class of Claims that is entitled to vote to accept or reject the Plan under  
10 section 1126 of the Bankruptcy Code. Claims in that class are all channeled to, addressed,  
11 processed and paid, if allowed, by the Trust. The payment of present and future Asbestos Related  
12 Claims by the Trust as provided for in the Plan is consistent with the Bankruptcy Code and the  
13 terms of all settlements between or among the Debtors and the other parties in interest. The Class  
14 of Interests in Holdings is also entitled to vote to accept or reject the Plan.

15           The TDP to be established and adopted by the Trust pursuant to the Trust Agreement will  
16 be used to assign a value to all Asbestos Related Claims that are timely filed with the Trust and  
17 not rejected or denied and to determine the timing and amount of payments to be made in respect  
18 of Asbestos Related Claims. In addition to resolving promptly Asbestos Related Claims, the TDP  
19 will significantly reduce operating expenses, which expenses would otherwise reduce Trust Assets  
20 available for distribution to holders of Asbestos Related Claims. All holders of Allowed Asbestos  
21 Related Claims will benefit from such cost savings, by maximizing the assets that are to be used  
22 for the payment of Asbestos Related Claims.

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**SECTION 2.**

**GENERAL INFORMATION**

**2.1 History and Business of the Debtors.**

**(a) Dissolved Thorpe.**

Dissolved Thorpe was formed on October 11, 1932 to acquire the firebrick, high temperature insulation and acid proof masonry repair and construction work in the Southern California area and Pacific Southwest which had previously been the business of J.T. Thorpe & Sons, Inc. Dissolved Thorpe was in the business of refractory contracting. In particular, Dissolved Thorpe was engaged in the installation and maintenance of refractory linings in certain industries in the Southwestern United States, most particularly in California. This work included the design, construction and repair of refractory lined and acid resistant structures for the containment and control of heat, abrasion and corrosion. Dissolved Thorpe designed and constructed linings for furnaces, kilns, vessels, tanks and stacks for oil, chemical, cement, glass ceramic, metallurgical power and incinerator industries. Depending on the customer and/or application requirements, the linings could be made out of one or several different materials including, but not limited to, brick, tile, castable, gunning mixes, plastics or block insulation or ceramic fiber.

Dissolved Thorpe's work included the installation and repair of refractory linings in boilers, kilns and furnaces and the design of duct and heater systems. The bulk of its work was performed within the State of California, particularly the Los Angeles area. Outside of California, Dissolved Thorpe worked in 36 states performing a variety of services over the fifty-four years of its existence. A limited number of jobs were performed in Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana, New Jersey, Ohio, Oregon, Pennsylvania, Tennessee, Virginia, West Virginia and Wyoming. Dissolved Thorpe performed a great number of jobs in Arizona, Illinois, Louisiana, Mississippi, Nevada, New Mexico, Oklahoma, Texas, Utah and Washington.

1 Dissolved Thorpe was liquidated on December 30, 1986 after selling all of its assets and  
2 liabilities, (except its shares in a Texas company known as J.T. Thorpe Corporation (“Thorpe  
3 Corp.”) and its ownership interest in certain real property), to Thorpe, then known as Thorpe  
4 Constructors, Inc. The sale of Dissolved Thorpe’s business to Thorpe was consummated pursuant  
5 to the Asset Purchase Agreement dated December 26, 1986 among Dissolved Thorpe, as seller,  
6 Thorpe, as buyer, and Dissolved Thorpe’s shareholders for a purchase price of \$5,051,021.74 of  
7 which \$4,589,271.74 was paid in cash at closing. The balance of \$461,750 was evidenced by a  
8 promissory note in this amount. Excluded from the assets were (i) Thorpe Corp. stock and  
9 (ii) Dissolved Thorpe’s interest in real property, located in Monterey Park, California (both of  
10 which were sold to another company) as well as (iii) shareholder notes payable to Dissolved  
11 Thorpe in the approximate amount of \$196,000 and (iv) Dissolved Thorpe’s rights and  
12 responsibilities under the 1986-1989 Inside Wireman’s Agreement between IBEW Local 11 and  
13 the Los Angeles County Chapter of the National Electrical Contractor Association. At the closing  
14 of the acquisition pursuant to the Purchase Agreement, Thorpe assumed certain liabilities of  
15 Dissolved Thorpe, including scheduled liabilities totaling approximately \$4.1 million.

16 By Certificate of Dissolution filed in the Office of Secretary of State of California on  
17 December 30, 1986, Dissolved Thorpe dissolved. Thorpe then filed a Certificate of Amendment  
18 of Articles of Incorporation in the Office of the Secretary of State on December 31, 1986 changing  
19 its name from “Thorpe Constructors, Inc.” to “J.T. Thorpe Inc.,” which name was among the  
20 assets acquired by it from Dissolved Thorpe in connection with the Purchase Agreement.

21 Dissolved Thorpe continues to exist for the purposes of winding up its assets and  
22 liabilities. A dissolved corporation continues to exist for the purpose of winding up its affairs,  
23 prosecuting actions by it, defending actions against it and enabling it to collect and discharge  
24 obligations, dispose of and convey its property and collect and divide its assets. Accordingly, a  
25 corporation’s dissolution is best understood not as its death, but merely as its retirement from  
26 active business, other than activities for the purpose of winding up its affairs, including the  
27 activities described immediately above. The California Supreme Court has held that California’s  
28

1 Corporations Code permits the corporate existence of dissolved corporations to continue  
2 indefinitely for the purpose of post-dissolution claims against them.

3 The California Corporations Code further provides that any assets inadvertently or  
4 otherwise omitted from winding up continue in the dissolved corporation for the benefit of the  
5 persons entitled to them upon dissolution of the corporation and on realization shall be distributed  
6 accordingly. Thus, insurance policies, if any, not effectively transferred to Thorpe, remain with  
7 Dissolved Thorpe for the benefit of the persons entitled to them.

8 Dissolved Thorpe's directors had either passed away or were no longer interested in acting  
9 as directors. Any interested person may petition the superior court of the proper county to appoint  
10 directors to wind up the affairs of the corporation, after hearing upon such notice to such persons  
11 as the Court may direct. Cal. Corp. Code § 2003. In July 2004, Thorpe, as such an interested  
12 person, therefore petitioned the Superior Court of California, County of Sacramento to appoint a  
13 director for Dissolved Thorpe. The Superior Court granted Thorpe's petition and appointed John  
14 E. Allen as Dissolved Thorpe's director for the purposes of winding up its affairs and distributing  
15 its assets.

16 Dissolved Thorpe has therefore filed a bankruptcy case in order to wind up its affairs and  
17 distribute its assets pursuant to the priorities set forth in the Bankruptcy Code.

18 **(b) Thorpe.**

19 Thorpe was incorporated in California on November 3, 1986 as Thorpe Constructors, Inc.  
20 As discussed above, on December 31, 1986, following the liquidation of Dissolved Thorpe, it was  
21 renamed J.T. Thorpe, Inc. Thorpe continued the same refractory contracting operations of  
22 Dissolved Thorpe until February 29, 1992. This refractory contracting work included refractory  
23 maintenance, repair and construction work in many industries in the Southwestern United States,  
24 most particularly in California. This work also included the design, construction and repair of  
25 refractory lined and acid resistant structures for the containment and control of heat, abrasion and  
26 corrosion. Thorpe designed and constructed linings for furnaces, kilns, vessels, tanks and stacks  
27 for oil, chemical, cement, glass ceramic, metallurgical power and incinerator industries.

28 Depending on the customer and/or application requirements, the linings could be made out of one

1 or several materials, including but not limited to, brick, tile, castable, gunning mixes, plastics,  
2 block insulation or ceramic fiber.

3 Thorpe continued in all respects the business operations of Dissolved Thorpe, including  
4 completing the contracts that were in place; using the same equipment; employing the same  
5 personnel; conducting the same operations for the same customers at the same locations; using the  
6 same customer lists; and operating from the same locations. Additionally, three of the five  
7 shareholders of Dissolved Thorpe became shareholders of Thorpe. Thorpe has always  
8 acknowledged that it is responsible for the asbestos liabilities arising from operations of Dissolved  
9 Thorpe and exposures to asbestos that occurred during the period Dissolved Thorpe was in  
10 business, as a matter of law. The 1986 transaction was not intended to relieve Thorpe of  
11 responsibility for the asbestos liabilities of Dissolved Thorpe. Accordingly, Debtors contend that  
12 for purposes of liability arising from the Asbestos Related Claims, and rights to insurance,  
13 Dissolved Thorpe and Thorpe are indistinguishable under applicable law. Certain defendant  
14 insurance companies in the Coverage Litigation dispute this contention.

15 Thorpe ceased performing refractory contracting on or about February 29, 1992. By that  
16 time, Thorpe ceased its refractory contracting business by completing all of its contracts, paying  
17 all of its suppliers and trade creditors and laying off all of its employees. Its engineering assets  
18 were sold to Technologies. Its refractory contracting assets, including the refractory materials,  
19 tools equipment inventories, trucks and a construction yard were sold to J.T. Thorpe & Sons, Inc.

20 The asbestos litigation was one of the most significant reasons for cessation of refractory  
21 contracting operations. The first asbestos claim (non workers compensation) was filed against  
22 Thorpe in 1987. By 1991 a significant number of claims had been filed against Thorpe, and the  
23 insurance carriers took the position that Thorpe was running out of coverage. During this time,  
24 certain key employees and shareholders left Thorpe and formed a competing company, which  
25 unlike Thorpe was not saddled with asbestos liabilities for which insurers disclaimed coverage.  
26 This competition took a significant portion of Thorpe's business.

27 After cessation of Thorpe's refractory operations, Thorpe turned its full-time business to  
28 the claims administration business. This business included review of each asbestos complaint,

1 forwarding each complaint to its insurance carriers, and tracking settlements. In approximately  
2 1993, when the insurance companies took the position that there was no further coverage, Thorpe  
3 hired attorneys and participated in the negotiations with various carriers which provided continued  
4 coverage until immediately prior to the bankruptcy filing in 2002. Beginning in the late 1990's, it  
5 became clear that the settlement payments made by the insurance companies as well as the number  
6 of claims were greatly increasing. During this time Thorpe continued to search for a solution to its  
7 situation.

8 On March 2, 1992, Thorpe contracted with Technologies to provide the services of John  
9 Allen and Thomas Carpenter to perform the functions of the President and CEO and  
10 Secretary/Treasurer respectively on a contract basis. They were hired to manage the claims  
11 administration process. Thorpe also secured other administrative, accounting, and legal services  
12 required to administer its asbestos claims on a contract basis from Technologies. John Allen and  
13 Thomas Carpenter are the two directors of Thorpe.

14 Thorpe currently is in possession of its assets and continues its operations of administering  
15 several thousand asbestos bodily injury claims that have been asserted over the past decade or  
16 more and seeking to recover under its historical liability insurance policies.

17 **(c) Technologies.**

18 Technologies was originally incorporated in 1988 as "Thermal Process, Inc.," a wholly-  
19 owned subsidiary of Holdings. Although incorporated, Thermal Process for several years was an  
20 inactive corporation. In February 1992, Thermal Process, Inc. was renamed Thorpe Technologies,  
21 Inc. On or about March 2, 1992, Technologies purchased some of the engineering assets of  
22 Thorpe and began its operations as a designer, engineer, assembler and installer of industrial  
23 furnaces and related equipment for the aluminum industries. In 1992, the sale of certain of  
24 Thorpe's engineering assets to Technologies was consummated between Thorpe, as seller, and  
25 Technologies, as buyer for a purchase price of approximately \$129,000. Technologies also hired  
26 certain employees that had previously been terminated by Thorpe. Technologies' operations  
27 solely consist of the business of designing and installing custom industrial furnaces primarily for  
28 the aluminum industry. Technologies designs, engineers, assembles and installs thermal

1 processing equipment, industrial furnaces, thermal oxidizers and combustion systems primarily in  
2 California but also throughout the United States. The equipment that Technologies designs and  
3 installs include sowing driers, delacquering systems, charging machines, melting and holding  
4 furnaces (including stationary, tilting, sidewell, round, and top charged configurations) and  
5 homogenizing and process furnaces (including shuttle, car bottom, box and continuous walking  
6 beam furnaces). Components are manufactured by third parties and the assembly and installation  
7 is managed by Technologies. These systems designed and constructed by Technologies can be  
8 used for decoating and melding aluminum scrap, including used beverage cans, mixed low copper  
9 scraps, painted siding, litho sheets and crushed cast.

10 The current directors of Technologies are John Allen and Thomas Carpenter. Mr. Allen  
11 serves as its President, Gary D. Newby is its Vice President and Mr. Carpenter is its  
12 Secretary/Treasurer.

13 **(d) Holdings.**

14 Holdings was formed in 1986 as a holding company incorporated in the state of California.  
15 It currently owns 100% of Thorpe, 100% of Technologies, 99.9% of Thorpe Brazil and 99.9 % of  
16 Thorpe Mexico. The main office of Holdings is in Whittier, California. Holdings has no time or  
17 contract employees. Its shareholders are John Allen (28,205.1 shares), Thomas Carpenter (11,825  
18 shares), Gary D. Newby (4,923.17 shares), R. P. Angarella (4,923.17 shares), Dean W. Barnes  
19 (2,029.49 shares), S. Trakhtenberg (800 shares) and Gary Hodge (800 shares). Its functions are  
20 carried out by its directors and officers, John E. Allen Thomas Carpenter and Gary D. Newby.  
21 Mr. Allen is the President of Holdings and Mr. Carpenter is its Secretary /Treasurer.

22 **(e) Other Thorpe Unrelated Companies.**

23 At the turn of the century, the Debtors are informed and believe that an individual named  
24 JT Thorpe had a business installing brick and other linings in San Francisco. His business became  
25 the company known as JT Thorpe & Sons. In the 1920s, the company called JT Thorpe & Sons  
26 was sold to certain other individuals, who the Debtors believe continue to operate the business. In  
27 1932, Dissolved Thorpe was formed to do business in the Southern California area, although it  
28 also performed services in other states as discussed above. Dissolved Thorpe had some of the



1 same shareholders as JT Thorpe & Sons, but was not a subsidiary. In the 1950s, some of the  
2 shareholders of Dissolved Thorpe formed a company in Texas which was named J.T. Thorpe, Inc.  
3 (“Thorpe Corp.”). Thorpe Corp. has also filed a Chapter 11 bankruptcy case in Texas. The  
4 Debtors are also aware of other companies in the refractory and furnace business bearing similar  
5 names to the Debtors. These companies include a company known as Thorpe Insulation  
6 Company. The Debtors are informed and believe that Thorpe Insulation Co. was formed by some  
7 of the same shareholders as Dissolved Thorpe, but do not have information in this regard.  
8 Likewise, the Debtors are informed and believe that there is a company known as Thorpe  
9 Insulation operating in Texas (“Thorpe Insulation Texas”) and a Thorpe USA, Inc. operating in  
10 San Francisco, California. None of the Debtors owns any interest in J.T. Thorpe & Sons, Inc.,  
11 Thorpe Corp., Thorpe Insulation Co., Thorpe Insulation Texas or Thorpe USA, Inc., and they have  
12 no common directors or officers with the Debtors. Each of these companies is unrelated to the  
13 Debtors, and persons holding claims against these other, unrelated companies should not file any  
14 such claims against these other, unrelated companies in the Debtors’ Reorganization Cases.

15 **2.2 Factors Leading to the Need for Bankruptcy Relief.**

16 By early 2002, four of the Debtors’ known primary insurance companies asserted that all  
17 of the coverage available under their primary policies was exhausted, while another primary  
18 insurer refused to defend or indemnify Thorpe against the asbestos suits based on a “lost” policy  
19 dispute. Nationwide defended and indemnified Thorpe under separate umbrella policies that it  
20 issued, but immediately prior to the bankruptcy filing of Thorpe, asserted that only approximately  
21 \$950,000 remained available under its policies and that its obligation to defend and indemnify  
22 Thorpe was rapidly concluding.

23 Given that a large number of asbestos suits were pending against Thorpe in early 2002,  
24 Thorpe determined that the \$950,000 of allegedly unexhausted remaining coverage was  
25 insufficient to pay for the existing asbestos suits, as well as the asbestos suits that Thorpe  
26 reasonably expected to receive in the future. In order to avoid a race to the courthouse to seize the  
27 remaining admitted insurance coverage, Thorpe determined that the best course of action was to  
28

1 file a bankruptcy case to allow for an orderly administration of its property for the benefit of all  
2 claimants and stakeholders and a systematic marshalling of insurance assets.

3 Thorpe filed its Chapter 11 petition on February 12, 2002. Since that date, Thorpe has  
4 continued to manage its assets as a debtor-in-possession pursuant to Sections 1107 and 1108 of the  
5 Bankruptcy Code.

6 Thereafter, actions alleging personal injury and wrongful death claims seeking recovery for  
7 damages caused by the presence of or exposure to asbestos or asbestos containing products were  
8 filed against Dissolved Thorpe, Technologies and Holdings. Dissolved Thorpe was sued for  
9 injuries individuals had suffered in connection with Dissolved Thorpe's business operations.  
10 Holdings and Technologies were sued on claims that they were liable for Asbestos Related Claims  
11 as Thorpe's alter ego. The lawsuits contended that Holdings and Technologies were liable as  
12 Thorpe's alter ego based, in part, on allegations that Holdings and Technologies had diverted  
13 assets away from Thorpe to the detriment of Thorpe's asbestos creditors; that Holdings and  
14 Technologies manipulated assets and liabilities between the entities so as to concentrate the assets  
15 in Holdings and Technologies and the liabilities in Thorpe; identical equitable ownership between  
16 Thorpe and Technologies; that Thorpe, Holdings and Technologies used the same office or  
17 business location and the employed the same employees; and that Thorpe, Holdings and  
18 Technologies had disregarded corporate formalities and the failed to maintain arm's-length  
19 relationships among the related entities. Thorpe, Dissolved Thorpe, Holdings and Technologies  
20 all deny these allegations and assert that there is no basis for their liability for Asbestos Related  
21 Claims. Nevertheless, Thorpe, Dissolved Thorpe, Holdings and Technologies are subject to  
22 substantial future demands for payment of Asbestos Related Claims.

23 The Futures Representative and the Committee contend that based upon the state of the  
24 law as well as the experience of other related companies that have been unsuccessful in their  
25 attempts to insulate themselves from asbestos liability that all Debtors here face liability, for  
26 Thorpe and Dissolved Thorpe directly and for Holdings and Technologies derivatively, from those  
27 victims who have been injured as a result of exposure to asbestos as a result of Debtors'  
28 operations. The Futures Representative is responsible for protecting the interest of Asbestos

1 Related Claimants who will file claims in the future. The Committee is responsible for the  
2 interests of Asbestos Related Claimants who have or are filing claims. In order to resolve all of  
3 these issues, the Debtors, the Futures Representative and the Committee have agreed to jointly  
4 sponsor this Plan.

5 Because the liability for all of the Debtors is for the same potential group of future  
6 Asbestos Related Claimants, the Futures Representative participated in the negotiations with the  
7 Debtors and the Committee on behalf of the same future Asbestos Related Claimants who will  
8 assert claims in the future against all the Debtors. Since the Plan calls for a single Trust, discussed  
9 in more detail in sections 3.3 and 8.3 below, the negotiations by the Futures Representative was on  
10 behalf of all future Asbestos Related Claimants for all Debtors. The Futures Representative and  
11 his counsel have announced to the Court that they intend to seek employment retroactively on  
12 behalf of future Asbestos Related Claimants for all Debtors.

13 The Committee has already been appointed as the Official Committee for Unsecured  
14 Creditors in all of the Debtors' cases. Again, because the present Asbestos Related Claimants are  
15 the same for all Debtors, the Committee's negotiations on behalf of present Asbestos Related  
16 Claimants against the Debtors and the Futures Representative protected the interests of all present  
17 Asbestos Related Claimants. The single Trust structure similarly protects the present Asbestos  
18 Related Claimants with claims against all Debtors to assure similar treatment.

19 Similarly, because of the interrelationship between the Debtors, their ownership structure  
20 and the common liability for the same Asbestos Related Claimants, RHD represented all Debtors  
21 during negotiations with respect to the Plan under a written conflict waiver. The potential  
22 conflicts that were waived include arguments that some Debtors, such as Technologies and  
23 Holdings, might claim that the corporate transactions they engaged in would provide a defense to  
24 asbestos liabilities.

25 Dissolved Thorpe, Technologies and Holdings have each filed a voluntary Chapter 11  
26 bankruptcy petition. Each of Dissolved Thorpe, Technologies and Holdings intends to continue to  
27 manage its assets as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy  
28 Code.

1           **2.3     Insurance Issues.**

2           Thorpe instituted Adversary Proceeding No. AD-04-01438 (the “Coverage Litigation”) in  
3 the Bankruptcy Court by complaint dated February 24, 2004 against the insurance company  
4 defendants named therein for declaratory relief, breach of contract and tortious breach of the  
5 implied covenant of good faith and fair dealing. Thorpe commenced the Coverage Litigation to  
6 marshal the insurance assets for the benefit of present and future asbestos claimants.

7           From 1987 until 2002, certain of the defendant insurance companies in the Coverage  
8 Litigation provided defense and indemnity insurance coverage to Thorpe for the Asbestos Related  
9 Claims arising from the operations of Dissolved Thorpe, without distinguishing between  
10 Dissolved Thorpe and Thorpe. These insurance companies (with the exception of Nationwide  
11 Insurance Company) ceased defending and indemnifying for Asbestos Related Claims in 2002,  
12 alleging that their policies contained aggregate limits for the Asbestos Related Claims and that  
13 such limits had been exhausted. It was always the intent of Dissolved Thorpe that Thorpe would  
14 have the benefit of any and all of its liability insurance as a result of Thorpe’s continuation of the  
15 business of Dissolved Thorpe. Dissolved Thorpe hereby reaffirms that all such liability insurance  
16 is, and has been, vested in Thorpe for purposes of covering the asbestos liabilities. If necessary to  
17 effectuate the vesting of such insurance in Thorpe, Dissolved Thorpe will execute whatever  
18 documents, or seek whatever court orders, that may be appropriate to assure that its liability  
19 insurance is, has been, and remains available to Thorpe to cover the asbestos liabilities.

20           The defendant insurance companies in the Coverage Litigation have asserted, among other  
21 things, that the insurance policies were not transferred from Dissolved Thorpe to Thorpe. The  
22 insurance companies have resisted meeting their obligations under their policies. Thorpe believes  
23 the insurance policies were transferred to it in connection with Thorpe’s acquisition of Dissolved  
24 Thorpe’s business and provide coverage for the asbestos claims. Additionally, Thorpe believes  
25 that, for purposes of asbestos liabilities and insurance coverage, Dissolved Thorpe and Thorpe are  
26 the same entity as a continuing business under applicable law. Because Dissolved Thorpe and  
27 Thorpe are, and have been, treated as a single entity and a continuous business for purposes of  
28 Asbestos Related Claimants, the Asbestos Insurance Policies issued by the Asbestos Insurance

1 Companies are equally available to satisfy both their liabilities. There is no conflict of interest  
2 between Dissolved Thorpe and Thorpe with respect to Asbestos Action Insurance Recoveries  
3 inasmuch as they have been treated as a single entity and a continuous business for purposes of  
4 Asbestos Action Insurance Recoveries and are seeking a single recovery from the Asbestos  
5 Insurance Companies. Accordingly, there is no possibility that the Asbestos Action Insurance  
6 Companies in the Coverage Litigation will be required to pay more than once for the Asbestos  
7 Related Claimants of Dissolved Thorpe and Thorpe.

8 While Thorpe believes that the position of the insurance companies lacks merit, Thorpe  
9 obtained an order from the Superior Court of California to have the Superior Court appoint John  
10 Allen as the director of Dissolved Thorpe to wind up its affairs and collect on the insurance  
11 policies and discharge its obligations. The Debtors believe that the resolution of the asbestos  
12 claims and disputes involving the insurance companies will be most effectively resolved by the  
13 addition of Dissolved Thorpe as a party plaintiff in the Coverage Litigation.

14 **2.4 The Debtors' Insurance Coverage**

15 The Debtors have general liability insurance policies issued by numerous insurers  
16 stretching back decades. The insurers include: (a) Federal; (b) St. Paul Marine And Fire  
17 Insurance Company ("St. Paul"); (c) National Union Fire Insurance Company of Pittsburgh, PA  
18 ("National Union"); (d) American Motorists Insurance Company ("AMICO"); (e) First State  
19 Insurance Company ("First State"); (f) Nationwide; and (g) Mission Insurance Company  
20 ("Mission").<sup>1</sup>

21 The Debtors contend that many of the policies issued by the foregoing insurers contain no  
22 "aggregate" limits for claims alleging injurious exposure to asbestos during business operations.  
23 The Asbestos Action Insurance Company defendants in the Coverage Litigation dispute this  
24 contention. Additionally, certain of the Asbestos Insurance Policies issued by the Asbestos  
25 Insurance Company defendants, including all of the policies issued by defendant AMICO, have  
26 not yet been located. With respect to these missing or incomplete policies, there is substantial

27 \_\_\_\_\_  
28 <sup>1</sup> Mission is currently in liquidation.

1 secondary evidence reflecting their material terms and conditions. Under applicable law, it is not  
2 necessary that the policies be located in order for coverage to exist; coverage may be demonstrated  
3 through the use of secondary evidence. *Dart Industries, Inc. v. Commercial Union Ins. Co.*, 28  
4 Cal. 4th 1059 (2002). Some of the insurers assert that these policies also require the insured to  
5 comply with certain conditions precedent to coverage, including without limitation, the duty to  
6 cooperate with the insurers in the defense and settlement of claims, and a prohibition against  
7 assigning the policies to any other person or entity without the insurer's consent. These insurers  
8 further assert to the extent the Debtor violates these conditions precedent to coverage, as these  
9 insurers assert is contemplated by the Plan as currently drafted, these insurers further assert there  
10 is a material risk that no coverage will be available to pay asbestos claims. These disputes will be  
11 resolved in the Coverage Litigation, absent settlement with the affected defendant Asbestos  
12 Insurance Companies.

13 Certain of the Debtors have other insurance coverage; however, this insurance has  
14 exclusions for Asbestos Related Claims. The Debtors continue to investigate whether any other  
15 insurance coverage may be available for Asbestos Related Claims.

### 16 SECTION 3.

#### 17 EVENTS DURING THE REORGANIZATION CASES

##### 18 3.1 Commencement of the Reorganization Cases.

19 The Debtors have retained Rutter Hobbs & Davidoff Incorporated ("RH&D") as their  
20 general bankruptcy counsel. Following Thorpe's bankruptcy filing, Thorpe filed an application to  
21 employ the law firm of Howrey Simon Arnold & White LLP ("HSAW") as special insurance  
22 litigation counsel. After negotiations with the Committee, Thorpe ultimately retained Zevnik  
23 Horton, LLP ("ZH") as its special insurance litigation counsel. In October 2003, the attorneys at  
24 ZH joined Morgan, Lewis & Bockius LLP ("ML&B"), and the Bankruptcy Court approved  
25 ML&B's substitution in as Thorpe's special insurance litigation counsel in the place and stead of  
26 ZH in an order entered on February 25, 2004. The Bankruptcy Court approved Thorpe's retention  
27 of G-Risk Strategies LLC ("G-Risk") as its insurance consultant.

28

1 ML&B, RH&D and G-Risk have each entered into contingency fee agreements with  
2 Thorpe with respect to the Coverage Litigation. The terms of the contingency fee agreements  
3 between Thorpe and ML&B, G-Risk and RH&D are set forth in engagement letters between the  
4 parties. Under the terms of the foregoing engagement agreements, which have been approved by  
5 the Bankruptcy Court, a percentage of the recovered amounts from the Debtors' Asbestos  
6 Insurance Companies are payable as contingency fees.

7 Under the engagement agreement with ML&B and RH&D, fees shall be payable to ML&B  
8 from qualifying insurance recoveries as follows:

- 9 • from the first \$1.00 up to \$30 million so received, 11.0% of each such  
10 dollar, with a cap on fees of \$2,750,000;
- 11 • from recoveries over \$30 million and up to \$50 million, 3.85% of each such  
12 dollar;
- 13 • from recoveries over \$50 million and up to \$500 million, 3.30% of each  
14 such dollar;
- 15 • from amounts received in excess of \$500 million, 1.65% of each such  
16 dollar.

17 From the foregoing contingency fees which ML&B may be entitled to receive, RH&D is  
18 will be paid 18.18% of the contingency fees payable to ML&B.

19 Under the engagement agreement with G-Risk, fees shall be payable to G-Risk from  
20 qualifying insurance recoveries as follows:

- 21 • from the first \$1.00 up to \$30 million so received, 9.0% of each such dollar,  
22 with a cap on fees of \$2,250,000;
- 23 • from recoveries over \$30 million and up to \$50 million, 3.15% of each such  
24 dollar;
- 25 • from recoveries over \$50 million and up to \$500 million, 2.70% of each  
26 such dollar;
- 27 • from amounts received in excess of \$500 million, 1.35% of each such  
28 dollar.

The aggregate contingency fee of both ML&B (including the portion which ML&B must  
pay to RH&D) and G-Risk is:

- from the first \$1.00 up to \$30 million so received, 20.0% of each such  
dollar, with a cap on fees of \$5,000,000;
- from recoveries over \$30 million and up to \$50 million, 7% of each such  
dollar;
- from recoveries over \$50 million and up to \$500 million, 6% of each such  
dollar;
- from amounts received in excess of \$500 million, 3% of each such dollar.

1 The “recoveries” referenced above include structured settlements, “coverage-in-place”  
2 transactions and court judgments. “Coverage-in-place” in this instance means a binding  
3 agreement between the Debtors and one or more of its Asbestos Insurance Companies that sets  
4 forth a mutually agreeable method for securing insurance coverage for the Asbestos Related  
5 Claims on an ongoing basis.

6 To date, on account of the contingency fee agreement, approximately \$698,500 has been  
7 paid during the Reorganization Cases to the three aforementioned entities from funds thus far  
8 received under the Nationwide Settlement. ML&B and ZH have received approximately  
9 \$314,332; RH&D has received approximately \$60,843; and G Risk has received approximately  
10 \$413,325.

11 Following their filings of bankruptcy petitions in December 2004, Dissolved Thorpe,  
12 Technologies and Holdings filed applications seeking to retain RH&D as their bankruptcy counsel  
13 and special litigation co-counsel, ML&B as their lead special insurance litigation counsel and G-  
14 Risk as their insurance consultant. Each of the Debtors has executed a written waiver, consenting  
15 to the joint representation of each of the Debtors by RH&D, ML&B and G-Risk.

16 **3.2 Administration of the Reorganization Cases.**

17 On or shortly after the Debtors’ respective Petition Dates, the Debtors sought relief  
18 designed to minimize the disruption of the Debtors’ business operations and to facilitate their  
19 reorganization. This included relief sought by the Debtors in the following motions and  
20 applications: (a) motion for joint administration of the Reorganization Cases, (b) application for  
21 an order approving the Debtors’ employment of RH&D as their reorganization counsel, and  
22 (c) motion to authorize the sale of a portion of Thorpe’s business loss to facilitate financing.

23 **3.3 The Asset Purchase Motion.**

24 Technologies is in the business of designing and installing custom industrial furnaces  
25 primarily for the aluminum industry. Technologies can only obtain some of the materials for its  
26 projects from certain limited vendors. Those vendors operate on tight repayment dates and,  
27 Technologies believes, were unlikely to extend credit to a company in bankruptcy. Even if they  
28 did extend credit, Technologies was concerned that with unpaid payments owing to them, many of



1 the vendors would file mechanics liens. If this occurred, it would set off a chain reaction on the  
2 pending jobs that Technologies currently had under construction and would more than likely result  
3 in the owners stopping the flow of progress payments to Technologies. This in turn would result  
4 in Technologies being unable to pay its vendors for services performed and materials delivered to  
5 the job sites.

6 Recognizing that it needed to file a bankruptcy, Technologies needed financing to pay its  
7 vendors before it filed bankruptcy so as to avoid the downward spiral described above.  
8 Technologies made several efforts to obtain financing from financial institutions. After suffering  
9 rejection from these sources, Technologies hired a broker to assist it. With the assistance of the  
10 broker, Technologies located and provided financial statements to at least two asset-based lenders.  
11 One evidenced interest in providing financing to Technologies. Technologies again provided  
12 further financial information and the parties negotiated the terms of the lending agreement. After  
13 several rounds of negotiations and revisions, the necessary documents were finalized. On the day  
14 of the closing, however, the lender decided to back out of the agreement and did not sign the  
15 financing agreement documents.

16 Therefore, prior to the filing of the bankruptcy cases by Dissolved Thorpe, Holdings and  
17 Technologies, Thorpe and Global Risk Trading LLC, a Delaware Limited Liability company  
18 (“Global”) entered into an Asset Purchase Agreement (“APA”) whereby Thorpe agreed to sell to  
19 Global the first \$1.8 million of Business Loss which Thorpe is entitled to receive under the Plan  
20 assuming the Plan is confirmed (“Asset”). The purchase price for the Asset is \$900,000. The  
21 funds from the sale allowed Technologies to pay its trade creditors in full pre-petition. Since the  
22 APA requires Bankruptcy Court approval, Thorpe and Global provided a means for unwinding the  
23 sale if the Bankruptcy Court approval is not obtained. Prior to the filing of the Technologies  
24 bankruptcy, Technologies and Global entered into a Secured Guaranty Agreement under which  
25 Technologies guaranteed repayment of the \$900,000 to Global in the event that the Bankruptcy  
26 Court did not approve the APA. The guaranty of Technologies was secured by a security interest  
27 in the assets of Technologies. Under the APA, upon Bankruptcy Court approval of the APA, the  
28 obligations of Technologies are terminated. The APA provides that it may be approved by the

1 Bankruptcy Court either at a sale hearing to be held on or before March 8, 2005, or if not approved  
2 at such sale hearing, then it must be approved, if at all, at a hearing in conjunction with the Plan no  
3 later than June 6, 2005. At a hearing on February 26, 2005, the Bankruptcy Court delayed final  
4 ruling on the APA until a later hearing to be set at, or prior to, the hearing on confirmation of the  
5 Plan. The Debtors are also in the process of scheduling an overbid procedure and hearing with  
6 respect to the Asset to be sold under the APA.

7 The claims of Global, or that of the highest bidder of the Asset, are not impaired. If the  
8 Bankruptcy Court does not approve the APA, Thorpe will not sell the Asset, and Technologies  
9 will be responsible for paying Global or the highest bidder for the Asset, \$900,000 over thirty six  
10 months together with interest at 5% per annum.

11 **3.4 Appointment of the Committee.**

12 Section 1102 of the Bankruptcy Code authorizes the appointment of a committee of  
13 holders of Unsecured Claims. On or about August 30, 2002, the Office of the United States  
14 Trustee (the “U.S. Trustee”) appointed the Committee to serve in Thorpe bankruptcy case. The  
15 Committee is comprised of: (a) Various Asbestos-Related Disease Claimants represented by  
16 Steven Kazan, Esq., Kazan, McClain, Edises, et al.; (b) Sylvia Clinton represented by Philip  
17 Harley, Esq., Paul, Hanley & Harley LLP, successor to Harry F. Wartnick, Esq., the Wartnick Law  
18 Firm; (c) Various Asbestos-Related Disease Claimants represented by David Rosen, Esq., Rose,  
19 Klein & Marias, LLP; and (d) Various Asbestos-Related Disease Claimants represented by Alan  
20 R. Brayton, Esq., Brayton Purcell. As Asbestos Related Claims are the only claims to be impaired  
21 under the Plan, only holders of these claims sit on the Committee. The Official Committees of  
22 Holders of Unsecured Claims recently appointed for Dissolved Thorpe, Technologies and  
23 Holdings consist of the same members.

24 The Committee has retained the law firm of Sheppard Mullin Richter & Hampton LLP as  
25 its counsel. The Committee has also retained Legal Analysis Systems, Inc., and in particular Dr.  
26 Mark Peterson thereof, as its expert consultant.

27 The Committee will function until the Effective Date of the Plan as the sole official  
28 committee in these Reorganization Cases.

1 **3.5 Appointment of the Futures Representative.**

2 After reviewing the qualifications and potential conflicts of candidates to serve as the  
3 Futures Representative to represent the interests of those who have made Demands, and after  
4 careful deliberation, Thorpe and the Committee jointly asked the Honorable Charles B. Renfrew  
5 (Ret.) to serve as the Futures Representative in the Thorpe Reorganization Case.

6 Judge Renfrew served as a United States District Judge for the Northern District of  
7 California from 1972 to 1980, a position he left to serve as the Deputy Attorney General of the  
8 United States from 1980 to 1981. He was a partner in the firm of Pillsbury Madison & Sutro from  
9 1981 to 1982. He was the Vice President of Legal Affairs and later on the Board of Directors of  
10 Chevron Corporation from 1983 to 1993. He was a partner in the firm of LeBoeuf, Lamb, Greene  
11 & McRae L.L.P. from 1993 to 1997. Judge Renfrew is now in private practice and is regularly  
12 selected as an arbitrator or private judge in national and international disputes. Judge Renfrew is  
13 the Futures Representative in the bankruptcy cases of In re Western Asbestos Company, Western  
14 MacArthur Co. and Mac Arthur Co., jointly administered under Case No. 02-46284T in the United  
15 States Bankruptcy Court for the Northern District of California, Oakland Division.

16 The Bankruptcy Court appointed Judge Renfrew as the Futures Representative in the  
17 Thorpe Reorganization Case on December 2, 2002.

18 The Futures Representative has engaged Fergus, a Law Firm as his legal counsel. The  
19 Futures Representative has also engaged the firm of Hamilton, Rabinovitz & Alschuler, and in  
20 particular Dr. Francine Rabinovitz thereof, as his expert consultant.

21 The Plan Proponents believe that in addition to serving as the Futures Representative in the  
22 Thorpe Reorganization Case, Judge Renfrew should be the Futures Representative in each of the  
23 other three Debtors' Reorganization Cases. Accordingly, the Plan Proponents will be seeking to  
24 have the Court appoint Judge Renfrew as the Futures Representative in the Dissolved Thorpe,  
25 Technologies and Holdings Reorganization Cases.

26 //  
27 //  
28 //

1 **3.6 The Settlements.**

2 **(a) The Nationwide Settlement.**

3 Nationwide issued a number of primary and umbrella policies between February 15, 1986  
4 and February 15, 1992. The Nationwide policies are unique in the coverage program because they  
5 contain limitations, exclusions and restrictions that do not appear in the other earlier policies  
6 issued by other insurers and which also cover the asbestos bodily injury claims.

7 First, the Nationwide policies each contain “aggregate” limits for all claims seeking the  
8 recovery of money damages resulting from alleged bodily injury. By contrast, the coverage issued  
9 by the other insurance companies contains “aggregate” limits only for certain claims within the  
10 “products/completed operations” coverage afforded by the policies, and only “per occurrence”  
11 limits for operations claims. Thus, while the coverage issued by most of the insurance companies  
12 has no aggregate limits for the vast majority of the asbestos claims, and thus are of very  
13 substantial value, the coverage afforded by the Nationwide policies is highly restricted and capped  
14 by its aggregate limits. Second, unlike the earlier coverage, at least five of the Nationwide  
15 policies contain absolute asbestos exclusions, thus making these policies completely unavailable  
16 to defend or indemnify against the asbestos bodily injury lawsuits. Thorpe and Nationwide  
17 reached a settlement of all disputes which was approved by the Bankruptcy Court on April 27,  
18 2004. In sum, the settlement (“Nationwide Settlement”) provided that Nationwide would pay  
19 Thorpe’s estate an aggregate amount of \$3,992,499.43, payable as follows:

- 20 1. An initial payment by Nationwide of \$952,899.43 – this has been paid.
- 21 2. A second payment by Nationwide of \$1,269,800 – this has been paid.
- 22 3. A third payment by Nationwide in the amount of \$1,269,800 – this has been paid.
- 23 4. A fourth payment of \$500,000 by Nationwide – payable if Thorpe confirms a  
24 Chapter 11 plan that contains a channeling injunction pursuant to 11 U.S.C. Section 524(g), or a  
25 similar injunction in favor of Nationwide with substantially the same effect.

26 Nationwide has also assigned to Thorpe and the Trust all of its equitable contribution,  
27 subrogation and indemnity rights, or similar other common-law or statutory relief that it has with  
28 respect to any other Asbestos Insurance Company or any other third parties.

1 In return, Thorpe has released any known, or unknown, claims to coverage, including any  
2 extra-contractual recovery, under the Nationwide policies. Thorpe has agreed to defend and  
3 indemnify Nationwide, up to the settlement amount, for certain claims that may be brought against  
4 Nationwide that concern the subject matter of the Settlement Agreement. As part of this  
5 indemnification obligation, Thorpe obtained a preliminary injunction providing that any asbestos  
6 claims against Nationwide, including but not limited to claims for equitable contribution,  
7 subrogation, indemnity or any similar common-law or statutory relief related to asbestos claims,  
8 be stayed for 120 days. At a hearing held on January 26, 2005, the Bankruptcy Court extended the  
9 preliminary injunction through May 18, 2005, subject to further renewal of the preliminary  
10 injunction before it expires.

11 **(b) The Federal Settlement.**

12 Thorpe and Federal reached a settlement of all disputes, which was approved by the  
13 Bankruptcy Court by order entered on May 28, 2004. In sum, the settlement agreement ("Federal  
14 Settlement") provides that upon entry of the order, Federal would place \$45,000,000 into a  
15 mutually agreed escrow account. Upon the Effective Date of Thorpe's Chapter 11 Plan, which  
16 under the Federal Settlement must contain either: (i) an injunction in favor of Thorpe under 11  
17 U.S.C. § 524(g)(4)(A) or 11 U.S.C. § 105 or (ii) a waiver by Thorpe of all contractual,  
18 extracontractual and other claims that Thorpe may have against Federal, as more fully set forth in  
19 the Federal Settlement and a provision in the Plan that such waiver is binding upon the Trust, the  
20 Federal settlement payment will be transferred to Thorpe or a trust established under § 468(b) of  
21 the Internal Revenue Code, or to a segregated account, consistent with the terms of the Plan.

22 Federal is also assigning to Thorpe and the Trust all of its equitable contribution,  
23 subrogation and indemnity rights, or similar other common-law or statutory relief that it has with  
24 respect to any other Asbestos Insurance Company or any other third parties.

25 In return for the payments that Federal is committed to make under the Federal Settlement,  
26 Thorpe will on the Effective Date of the Plan release any known, or unknown, claims to coverage  
27 under the Federal policies, thus "selling back" the policies to Federal. Further, Thorpe will on the  
28 Effective Date of the Plan release any possible claims for extra-contractual recovery against

1 Federal, including any claims for breach of the implied covenant of good faith and fair dealing.  
2 Subject to the terms of the Plan, Thorpe will also on the Effective Date of the Plan hold Federal  
3 harmless from contribution claims by other insurers, if any, as set forth in the Federal Settlement.

4 If the Plan is confirmed by the Bankruptcy Court, but is appealed, Thorpe shall be entitled  
5 during the pendency of the appeal, to distribute up to \$15,000,000 of the settlement payment to  
6 claimants or for other purposes. If the order confirming the Plan is not affirmed on appeal,  
7 Federal will be entitled to a return of the balance of the settlement payment, less such payments up  
8 to \$15,000,000 made by Thorpe.

9 If Thorpe’s Plan is not confirmed, the Federal Settlement Agreement will be voidable by  
10 either Thorpe or Federal. If voided, the litigation between the parties, commenced in the Coverage  
11 Litigation described in Section 3.7 below, shall resume.

12 **(c) Settlement Accounts.**

13 Pursuant to a Court order entered April 27, 2004, Thorpe established two Qualified  
14 Settlement Fund (“QSF”) accounts. A fund, account or trust is a “qualified” settlement fund under  
15 26 C.F.R. §1.468B-1(c), if it meets the following three requirements:

16 (1) It is established pursuant to an order of, or is approved by, the  
17 United States,... or any agency or instrumentality (including a court of law) of any of the  
18 foregoing and is subject to the continuing jurisdiction of that governmental authority;

19 (2) It is established to resolve or satisfy one or more contested or  
20 uncontested claims that have resulted or may result from an event (or related series of events) that  
21 has occurred and that has given rise to at least one claim asserting liability—

22 (3)(i) Under the Comprehensive Environmental Response, Compensation  
23 and Liability Act of 1980 (hereinafter referred to as CERCLA), as amended, 42 U.S.C. 9601 et  
24 seq.; or

25 (ii) Arising out of a tort, breach of contract, or violation of law; [and]

26 ....

27 (3) The fund, account, or trust...or its assets are otherwise segregated from  
28 other assets of the transferor (and related persons). 26 C.F.R. §1.468B-1(c).

The first QSF account maintained funds in the amount of \$715,198.20 as ordered by the  
Court on February 25, 2004 (“QSF No.1”). The second QSF account holds all remaining funds  
from the Nationwide Settlement Agreement (“QSF No. 2”). QSF No. 2 was also segregated from

1 the other assets of Thorpe and reserved for the payment of asbestos claimants and other claim  
2 holders, including those of administrative claimants. QSF No. 2 was used to pay the approved  
3 fees and costs of Thorpe's bankruptcy professionals including ongoing administrative expenses,  
4 such as U.S. Trustee fees and insider compensation payments without the necessity of a court  
5 order. These are payments that Thorpe considered were in the ordinary course of its claims  
6 administration business. Thorpe has now also established a third QSF account held with U.S. Bank  
7 as escrow agent ("QSF No.3"). This account holds the \$45,000,000 proceeds from the Federal  
8 Settlement.

9 John Allen, the president of Thorpe, is the Settlement Fund administrator. As such, he is  
10 the person charged with executing the tax reporting requirements. The signatures of both Mr.  
11 Allen and Mr. Thomas Carpenter, Thorpe's Chief Financial Officer, are required to draw funds  
12 from the QSF No. 1 and QSF No. 2 accounts. The QSF No. 3 account requires the instructions of  
13 all of Federal, Thorpe, the Committee and the Futures Representative to make disbursements.

14 Upon the Effective Date and after payments made as outlined elsewhere in the Plan, the  
15 funds in the QSF accounts will be transferred to the Trust, which itself will be qualified under 26  
16 C.F.R. §1.468B.

17 **3.7 The Coverage Litigation.**

18 On February 24, 2004, Thorpe filed the Coverage Litigation as adversary proceeding no.  
19 AD-04-01438-BB in the Bankruptcy Court against several insurance carriers for declaratory relief  
20 to (i) determine the rights and obligations between and among one or more of the Debtors and the  
21 defendant insurance companies with respect to insurance coverage available for creditors asserting  
22 injury as a result of alleged exposure to asbestos, (ii) establish the criteria by which such insurance  
23 company would respond to asbestos claims pursuant to the Debtors' ultimate plan of  
24 reorganization, and (iii) assist in quantifying the amount of insurance available to creditors  
25 alleging asbestos-related injury. The defendants in the Coverage Litigation are Federal, St. Paul,  
26 National Union, AMICO and First State.

27 Defendant Federal issued at least the following liability insurance policies to one or more  
28 of the Debtors that cover the asbestos bodily injury claims and that Debtors contend contain no

1 “aggregate” limits for claims alleging injurious exposure to asbestos during one or more of the  
2 Debtors’ business operations:

	<u>Policy No.</u>	<u>Period</u>
3		
4	7721-63-41	1/1/66 - 1/1/67
5	7740-09-00	1/1/67 - 1/1/68
6	7740-43-73	1/1/68 - 1/1/69
7	7744-56-66	1/1/69 - 1/1/70
8	7750-32-17	1/1/70 - 1/1/71
9	7761-04-25	1/1/71 - 1/1/72
10	7761-07-17	1/1/72 - 1/1/73
11	7772-89-23	1/1/73 - 1/1/74
	7772-89-23	1/1/74 - 1/1/75
	7772-89-23	1/1/75 - 1/1/76
	7772-89-23	1/1/76 - 1/1/77
	7772-89-23	1/1/77 - 1/1/78

12 Defendant St. Paul issued at least the following liability insurance policies to one or more  
13 of the Debtors that cover the asbestos bodily injury claims and that Debtors contend contain no  
14 “aggregate” limits for claims alleging injurious exposure to asbestos during one or more of the  
15 Debtors’ business operations:

	<u>Policy No.</u>	<u>Period</u>
16		
17	661-NB-1940	1/1/78 - 1/1/79
18	661-NB-1940	1/1/79 - 1/1/80
19	661-NB-6062	1/1/80 - 1/1/81
20	661-NB-6062	1/1/81 - 1/1/82
21	661-NB-6062	1/1/82 - 1/1/83
22	661-NB-6062	1/1/83 - 1/1/84
23	659-NB-1238	1/1/84 - 1/1/85

24 Defendant National Union issued at least the following liability insurance policy to one or  
25 more of the Debtors that cover the asbestos bodily injury claims and that Debtors contend  
26 contains no “aggregate” limits for claims alleging injurious exposure to asbestos during one or  
27 more of the Debtors’ business operations:

	<u>Policy No.</u>	<u>Period</u>
28		
	GLA116-8146RA	1/1/85 - 1/1/86



1 Defendant AMICO issued at least the following liability insurance policies to one or more  
2 of the Debtors that cover the asbestos bodily injury claims and that Debtors contend contain no  
3 “aggregate” limits for claims alleging injurious exposure to asbestos during one or more of the  
4 Debtors’ business operations:

	<u>Policy No.</u>	<u>Period</u>
6	F3M70249	1/1/53 - 1/1/54
7	3M426192	1/1/53 - 1/1/54
8	4ZM-70-249	1/1/54 - 1/1/55
9	5ZM-70-249	1/1/55 - 1/1/56
10	6ZM-70-249	1/1/56 - 1/1/57
11	7ZM-432-163	1/1/57 - 1/1/58
12	8ZM-432-163	1/1/58 - 1/1/59
13	9ZM-432-163	1/1/59 - 1/1/60
14	0ZM-432-163	1/1/60 - 1/1/61
15	1ZM-432-163	1/1/61 - 1/1/62
16	2ZM-432-163	1/1/62 - 1/1/63
17	3ZM-432-163	1/1/63 - 1/1/64
18	4ZM-432-163	1/1/64 - 1/1/65
19	5ZM-432-163	1/1/65 - 1/1/66

15 Defendant First State issued at least the following liability insurance policy to one or more  
16 of the Debtors that cover the asbestos bodily injury claims and that Debtors contend contains no  
17 “aggregate” limits for claims alleging injurious exposure to asbestos during one or more of the  
18 Debtors’ business operations:

	<u>Policy No.</u>	<u>Period</u>
20	EU 002628	2/15/85 - 2/15/86

23 Thorpe alleged in the Coverage Litigation that consistent with the “continuous trigger” of  
24 coverage under applicable law, the asbestos bodily injury claims are covered under its insurance  
25 policies in effect during any portion of the asbestos disease process—i.e., from first exposure to  
26 asbestos through death. Similarly, under the “all sums” rule under applicable law, Thorpe alleged  
27 that its insurance carriers must pay for Thorpe’s entire loss up to its “per occurrence” limit, even  
28 though asbestos bodily injury continues over multiple policy periods.

1 Thorpe further alleged that the vast majority of asbestos bodily injury claims are covered  
2 under the “premises-operations” coverage of the defendant insurers’ policies. The “premises-  
3 operations” coverage in the insurers’ policies have per occurrence limits with no aggregate limits.  
4 Thorpe contends the asbestos bodily injury claims have arisen from multiple occurrences and  
5 therefore Thorpe is entitled to multiple limits under the insurers’ policies.

6 Prior to Thorpe’s bankruptcy, the insurers handling Thorpe’s claims previously classified  
7 all asbestos bodily injury claims against Thorpe as “products-completed operations” claims and  
8 applied an alleged “aggregate” to limit the payment for the asbestos bodily injury claims against  
9 Thorpe. Based on the alleged wrongful classification of the asbestos bodily injury claims filed  
10 against Thorpe, two of the remaining defendants—St. Paul and National Union—have claimed  
11 exhaustion. Federal, which recently settled for \$45,000,000, made similar claims. Two  
12 defendants—AMICO and First State—have not made any payments to Thorpe for the asbestos  
13 bodily injury claims. Thorpe disputes the claims of exhaustion and seeks a ruling that the  
14 defendant insurers have continuing obligations under their insurance policies for the asbestos  
15 bodily injury claims against Thorpe.

16 Thorpe further alleges that to the extent that the insurance policies contain “aggregate”  
17 limits of coverage, such “aggregate” limits apply solely with respect to claims for bodily injury  
18 that fall within the limitations of the “products-completed operations” coverage as defined by the  
19 policies. Thorpe asserts that claims fall within the limitations of the “products-completed  
20 operations” provisions of the policies only when the asbestos-related injury results from (i) an  
21 actual defect in goods or products manufactured, handled, sold, distributed or disposed of by  
22 Thorpe, the injuries occurred away from Thorpe’s premises, and the injuries occurred after Thorpe  
23 relinquished physical possession of its “goods” or “products,” or (ii) Thorpe’s completed work  
24 where the injury occurred away from premises owned, rented or controlled by Thorpe, and all of  
25 the injury occurred after the work was completed. The Asbestos Insurance Company defendants  
26 in the Coverage Litigation dispute these contentions.

27 //

28 //

1 St. Paul filed a motion to withdraw the reference from the Bankruptcy Court to the United  
2 States District court for the Central District of California. District Court Judge S. James Otero  
3 denied the motion. St. Paul filed a motion for reconsideration, which was also denied.

4 As set forth more fully above, Thorpe and Federal have reached a settlement agreement  
5 which could result in payment by Federal of \$45,000,000.

6 Dissolved Thorpe intends to file a motion in the Coverage Litigation seeking to be added  
7 as a plaintiff in the Coverage Litigation.

8 **3.8 The Pre-Confirmation Claims Liquidation Process.**

9 The Court approved the Plan Proponents' "Motion For Order Approving Pre-  
10 Confirmation Asbestos Related Claims Liquidation Procedures." which seeks approval of a  
11 procedure permitting holders of Asbestos Related Claims against the Debtors to liquidate their  
12 claims prior to or in connection with Plan Confirmation (the "Pre-Confirmation Claims  
13 Liquidation Process"). Attorneys for all known plaintiffs with Asbestos Related Claims against  
14 the Debtors will be invited and encouraged to submit written information to a claims liquidator  
15 equivalent to the information which will be required by the Trust under the TDP. Notwithstanding  
16 the foregoing option to participate in the Pre-Confirmation Claims Liquidation Process, a holder  
17 of an Asbestos Related Claim does not need to submit a claim in connection with such process,  
18 but instead may elect to submit his or her claim to the Trust after the Plan Effective Date.

19 **3.9 Setting of the Confirmation Hearing.**

20 The Debtors have requested the Bankruptcy Court to schedule the Confirmation Hearing,  
21 and to set the Voting Deadline and the date by which objections to the Plan must be filed. The  
22 Debtors anticipate that notice of the Confirmation Hearing will be published in newspapers of  
23 general circulation in locations where the Debtors have or had substantial business operations, and  
24 will be mailed to all known holders of Asbestos Related Claims, at least twenty-five days before  
25 the date by which objections to the Plan must be filed, unless the Bankruptcy Court specifies  
26 otherwise. See Section 5.2 below. Section 524(g) of the Bankruptcy Code requires that any  
27 confirmation order containing a supplemental injunction must be issued or affirmed by the District  
28

1 Court. The Debtors will therefore seek to have the Confirmation Order affirmed by the District  
2 Court. See Section 5.3(c) below.

## 3 4 SECTION 4.

### 5 SUMMARY OF THE PLAN

#### 6 4.1 General.

7 The following is a summary intended as a brief overview of certain provisions of the Plan  
8 and is qualified in its entirety by reference to the full text of the Plan. Other provisions of the Plan  
9 not summarized in this Section 4 may be summarized elsewhere in this Disclosure Statement.  
10 Holders of Claims and Interests are encouraged to review the Plan and this Disclosure Statement  
11 with their attorneys or other advisors. The terms of the Plan are controlling over any summary or  
12 statement made in the Disclosure Statement.

#### 13 4.2 Classification.

##### 14 (a) Generally.

15 Section 2 of the Plan sets forth a designation of Classes of Claims and Interests and an  
16 explanation of Claims that are not classified under the Plan. Pursuant to section 1122 of the  
17 Bankruptcy Code, a Claim or Interest is classified in a particular Class only to the extent that the  
18 Claim or Interest qualifies within the description of the Class and is classified in a different Class  
19 to the extent that such Claim or Interest qualifies within the description of that different Class.

##### 20 (b) Unclassified Claims.

21 In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims are  
22 not classified and are excluded from the Classes established in Section 2 of the Plan. The  
23 treatment accorded Administrative Claims is set forth in Section 1 of the Plan, and is summarized  
24 below.

25 The Bankruptcy Court has entered various orders authorizing the professionals retained by  
26 Thorpe, the Committee and the Futures Representative to be paid from the Thorpe's bankruptcy  
27 estate, including from certain insurance proceeds, pursuant to orders of the Bankruptcy Court.  
28 The Bankruptcy Court has to date approved RH&D to be paid from the Thorpe bankruptcy estate

1 for all services to the Debtors, except for services rendered exclusively to a Debtor other than  
2 Thorpe. Payment from the Thorpe estate for these latter services, is subject to further Bankruptcy  
3 Court approval. The Plan Proponents intend to request similar orders for other professionals  
4 employed in the bankruptcy cases for the Debtors other than Thorpe. The Debtors believe that  
5 there are no material unpaid claims that were accrued after their respective Petition Dates, other  
6 than trade payables incurred by Technologies which are paid in the ordinary course of business.

7 **(c) Classes.**

8 For purposes of the Plan, the Claims against, and Interests in, the Debtors are grouped in  
9 the following Classes in accordance with section 1122(a) of the Bankruptcy Code. With respect to  
10 Classes 1, 2 and 3 only, Claims against each Debtor although classified in the same Class as  
11 Claims against each of the other Debtors, shall have resort only to the assets of such Debtor  
12 responsible for such Claim.

13 **(1) Class 1 – Priority Claims.**

14 Class 1 consists of all Priority Claims against any of the Debtors including tax claims. The  
15 Debtors are not aware of any priority claims.

16 **(2) Class 2 – Secured Claims.**

17 Class 2 consists of all Secured Claims against any of the Debtors.

18 As set forth in above in Section 3.3 hereof, Technologies and Global entered into a  
19 Secured Guaranty Agreement under which Technologies guaranteed repayment of \$900,000 to  
20 Global in the event that the Bankruptcy Court does not approve the APA. The guaranty of  
21 Technologies was secured by a security interest in the assets of Technologies. Under the asset  
22 purchase agreement (“APA”) documents, if Bankruptcy Court approval is obtained of the APA,  
23 the obligations of Technologies under the Secured Guaranty Agreement are terminated. If the  
24 APA is not approved, Technologies’ assets will remain pledged as security for payment of the  
25 \$900,000 promissory note to Global, or the assignee thereof in the event of a successful overbid,  
26 payable in 36 equal monthly installments together with simple interest at 5% per annum. The  
27 Debtors are unaware of any other secured claims against Thorpe, Dissolved Thorpe, Holdings or  
28 Technologies.

1                                   **(3) Class 3 – Unsecured Claims.**

2                   Class 3 consists of all Unsecured Claims against the any of the Debtors, and is divided into  
3 two sub-classes: Class 3(a) consists of all Unsecured Claims other than Class 3(b) Unsecured  
4 Claims. At its Petition Date, Technologies had virtually no open trade payables as it had used the  
5 proceeds from the asset sale under the APA with Global, among other cash at hand, to pay such  
6 trade payables prior to its bankruptcy filing. No other Debtor had open trade payables as of their  
7 respective Petition Dates. Class 3(b) consists of Unsecured Claims against any of the Debtors  
8 which are personal injury tort claims, other than Asbestos Related Claims. Technologies is the  
9 defendant in a personal injury case filed in Kentucky in 1999 by an individual named Terry Gibbs.  
10 Mr. Gibbs was injured when moisture laden aluminum scrap was submerged in the furnace. Mr.  
11 Gibbs alleges that his injuries are due to a defect in Technologies’ furnace design and installation.  
12 Technologies is being defended by AIG, its liability insurance carrier. There is approximately  
13 \$5,000,000 of insurance coverage in the event that Mr. Gibbs is successful in his action which the  
14 Debtors believe substantially exceeds the most generous valuations of Mr. Gibbs’ case. The  
15 Debtors are unaware of any such other claims.

16                                   **(4) Class 4 – Asbestos Related Claims.**

17                   Class 4 consists of all Asbestos Related Claims against any of the Debtors The Plan  
18 Proponents’ estimate of the amount of all Asbestos Related Claims is set forth in Section 7.2  
19 below.

20                                   **(5) Class 5 – Interests.**

21   **(A) Class 5-A.**

22                   Class 5-A consists of all Interests in Thorpe. Thorpe is wholly owned by Holdings.

23   **(B) Class 5-B.**

24                   Class 5-B consists of all Interests in Dissolved Thorpe. Before Dissolved Thorpe  
25 dissolved, the shareholders were Horace Baker, Bill Solaini, Richard Neilson, Carl Stemon, Leo  
26 Purvis and John Allen. The Debtors are unaware whether after dissolution of Dissolved Thorpe the  
27 stock certificates in that entity were cancelled.

28

1 (C) Class 5-C.

2 Class 5-C consists of all Interests in Technologies. Technologies is wholly owned by  
3 Holdings.

4 (D) Class 5-D

5 Class 5-D consists of all Interests in Holdings. Holdings' shareholders are: John Allen  
6 (28,205.1 shares); Thomas Carpenter (11,825 shares); Gary D. Newby (4,923.17 shares); R.P.  
7 Angarella (4,923.17 shares); Dean W. Barnes (2,029.49 shares); S. Trakhtenberg (800 shares) and  
8 Gary Hodge (800 shares).

9 **4.3 Treatment of Administrative Claims.**

10 The Plan leaves unaltered the legal, equitable and contractual rights to which any  
11 Administrative Claim entitles the holder of such Claim. Each holder of an Administrative Claim  
12 that is subject to approval by the Bankruptcy Court before it can be paid by the Debtors will be  
13 paid as soon as practicable after such approval under a Final Order. All other Administrative  
14 Claims will be paid in full as they become due.

15 **4.4 Treatment of the Classified Claims.**

16 Claims and Interests, as classified in Section 2 of the Plan, shall be treated in the manner  
17 set forth in Section 3 of the Plan. The following constitutes a summary of such treatment:

18 (a) **Class 1 – Priority Claims.**

19 (1) **Treatment.**

20 The Plan leaves unaltered the legal, equitable and contractual rights to which any Priority  
21 Claim entitles the holder of such Claim. Each of these Claims will be paid in full (including the  
22 payment of simple interest at the rate of 5% per annum) on the later of the Effective Date or the  
23 date the Claim becomes due.

24 (2) **Impairment and Voting.**

25 This Class is unimpaired. Each holder of a Priority Claim is conclusively presumed to  
26 have accepted the Plan and is not entitled to vote to accept or reject the Plan, by operation of  
27 section 1126 of the Bankruptcy Code.

28 //

1           **(b) Class 2 – Secured Claims.**

2                   **(1) Treatment.**

3           Each holder of a Secured Claim shall retain, unaltered, the legal, equitable and contractual  
4 rights (including, but not limited to, any Liens that secure such Secured Claim) to which such  
5 Secured Claim entitles such holder. Each of these Claims will be paid in full (including the  
6 payment of interest at the rate set forth in such claimant’s agreement with the Debtor, on the later  
7 of the Effective Date or the date the Claim becomes due.

8                   **(2) Impairment and Voting.**

9           This Class is unimpaired. Each holder of a Secured Claim is conclusively presumed to  
10 have accepted the Plan and is not entitled to vote to accept or reject the Plan, by operation of  
11 section 1126 of the Bankruptcy Code.

12           **(c) Class 3 – Unsecured Claims.**

13                   **(1) Treatment.**

14           Class 3(a) Claims. The Plan leaves unaltered the legal, equitable and contractual  
15 rights to which any Unsecured Claim entitles the holder of such Claim. Each of these Claims will  
16 be paid in full (including the payment of simple interest at the rate of 5% per annum) on the later  
17 of the Effective Date or the date the Claim becomes due.

18           Class 3(b) Claims. Each Class 3(b) Claim holder shall have resort exclusively to  
19 the insurance policy/ies of the Debtor covering such claims and against which such Claim is made,  
20 and not to the other assets of the Debtor. Each of these Claims will be paid in full (including the  
21 payment of simple interest at the rate of 5% per annum) on the later of the Effective Date or the  
22 date the Claim becomes due from the insurance policies covering such claims.

23 Any holder of a non-asbestos related personal injury claim will be paid exclusively from the  
24 insurance proceeds of that particular Debtor upon settlement or final judgment.

25                   **(2) Impairment and Voting.**

26           This Class is unimpaired by the Plan. Each holder of an Unsecured Claim is conclusively  
27 presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan, by  
28 operation of section 1126 of the Bankruptcy Code.



1           **(d) Class 4 – Asbestos Related Claims.**

2                   **(1) Treatment.**

3           As of the Effective Date, the Trust shall assume the Debtors' liabilities for all Asbestos  
4 Related Claims against the Released Parties without further act or deed. Each Asbestos Related  
5 Claim against the Released Parties shall be addressed by the Trust pursuant to and in accordance  
6 with the TDP. The provisions of the TDP, unless the Confirmation Order provides otherwise and  
7 except as otherwise provided herein, shall apply to all Asbestos Related Claimants, including any  
8 Asbestos Related Claimant who elects to resort to the legal system and obtains a judgment for  
9 money damages. Each holder of an Asbestos Related Claim shall, under the conditions set forth in  
10 the Plan, be deemed to have assigned to the Trust, to the extent possible without diminishing or  
11 impairing any part of such Direct Actions, and the Trust shall be deemed such holder's sole  
12 attorney in fact, as may be appropriate, to prosecute, at the Trust's sole discretion, any Direct  
13 Action, other than against a Released Party.

14                   **(2) Impairment and Voting.**

15           This Class is impaired by the Plan. Each holder of an Asbestos Related Claim is entitled to  
16 vote to accept or reject the Plan by operation of section 1126 of the Bankruptcy Code, which  
17 requires that the holders of least two-thirds in amount and more than one-half in number of the  
18 Claims of this Class actually voting on the Plan vote to accept the Plan.

19           The Plan also requests relief pursuant to Bankruptcy Code section 524(g), though the Plan  
20 may still be confirmed even if relief under section 524(g) is not granted. Bankruptcy Code  
21 Section 524(g) of the modifies the voting requirement of Bankruptcy Code section 1126 by  
22 increasing to 75 percent in number the proportion of Asbestos Related Claimants actually voting  
23 on the Plan who must vote to accept the Plan.

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1 (e) Class 5 – Interests.

2 (1) Class 5-A. Thorpe Interests.

3 (A) Treatment.

4 Holdings, the holder of all of the common stock of Thorpe, shall continue to hold all stock  
5 of Thorpe.

6 (B) Impairment and Voting.

7 This subclass is unimpaired. Holdings is conclusively presumed to have accepted the Plan  
8 and is not entitled to vote to accept or reject the Plan, by operation of section 1126 of the Bankruptcy  
9 Code.

10 (2) Class 5-B. Dissolved Thorpe Interests.

11 (A) Treatment.

12 On the Effective Date, all of the voting stock or other equity ownership interest of  
13 Dissolved Thorpe shall be owned by the Trust.

14 (B) Impairment and Voting.

15 This subclass is impaired. Each holder, if any, of an Interest in Dissolved Thorpe is deemed  
16 to reject the Plan (but the Plan can be confirmed notwithstanding that rejection, as described in  
17 Section 5.3(b) below.)

18 (3) Class 5-C. Technologies Interests.

19 (A) Treatment.

20 Holdings, the holder of all of the common stock of Technologies, shall continue to hold all  
21 stock of Technologies.

22 (B) Impairment and Voting.

23 This subclass is unimpaired. Holdings is conclusively presumed to have accepted the Plan  
24 and is not entitled to vote to accept or reject the Plan, by operation of section 1126 of the Bankruptcy  
25 Code.

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1 (4) Class 5-D. Holdings Interests.

2 (A) Treatment.

3 On the Effective Date, the Trust shall receive the original of the Holdings Note, payment of  
4 which will be secured by the Holdings Pledge Agreement which grants a first priority, perfected  
5 security interest in 51% of the common stock of Holdings, and which will contain a provision  
6 whereby a 51% interest in Holdings must be deposited into escrow to be held as a pledge for  
7 delivery to the Trust in satisfaction of the Holdings Note upon the failure by Technologies and  
8 Holdings to cure in a timely fashion any defaults under the Holdings Note. The current  
9 shareholders of Holdings shall continue to own their shares in Holdings unless and until there is a  
10 default under the Holdings Note and the Holdings Pledge Agreement. Upon full payment of the  
11 Holdings Note, the 51% of the common stock of Holdings deposited into escrow shall be released  
12 to the shareholders of Holdings who deposited such common stock.

13 (B) Impairment and Voting.

14 This subclass is impaired. The holders of Interests in Holdings are entitled to vote to  
15 accept or reject the Plan.

16 4.5 Means for Execution of the Plan.

17 (a) Establishment of the Trust.

18 On the Effective Date, the Trust shall be established in accordance with the Plan  
19 Documents. Before the Effective Date, the Trustees shall have decided on the place of operation  
20 and the jurisdiction of organization for the Trust.

21 (b) Trust Funding.

22 On the Effective Date, or as soon as practicable thereafter, the Trust Assets shall become  
23 owned by the Trust as part of the consideration to be paid by the Debtors to the Trust for the  
24 Trust's assumption of all of the Asbestos Related Claims and Demands.

25 (c) The Trust Assets.

26 The Trust Assets includes the assets to be delivered to the Trust pursuant to the Plan  
27 Documents, or otherwise, and include without limitation the following assets and any income,  
28 profits, and proceeds derived therefrom: (a) all shares of the common stock of Dissolved Thorpe,

1 (b) the Holdings Note, (c) rights under the Holdings Pledge Agreement, (d) the Thorpe Business  
2 Loss Insurance Security (except for the Debtors Portion of the Business Loss), (e) the Thorpe  
3 General Insurance Security, (f) all Asbestos Insurance Action Recoveries (except for the Debtors  
4 Portion of the Business Loss and fees due under the contingency fee arrangements). The Trust  
5 Assets shall additionally include the Debtors' rights for contribution and reimbursement against  
6 parties other than Released Parties.

7 **(d) Vesting of Rights of Contribution and Indemnification.**

8 On the Effective Date of the Plan, all of the Debtors' right, title and interest, if any, in and  
9 to claims of contribution and indemnification against parties other than the Released Parties in  
10 Respect To Asbestos Related Claims shall be vested in the Trust. The Plan Proponents shall  
11 execute and deliver any and all necessary documents to confirm such vesting in the Trust,  
12 however, such vesting shall occur automatically. The Trust shall investigate, prosecute, settle or  
13 abandon such rights as may be determined in the sole discretion of the Trustees.

14 **(e) Preservation of Insurance Claims**

15 None of the discharge of Technologies or Holdings, the injunctions issued to Debtors, nor  
16 the Released Non-Debtor Parties' release from all Asbestos Related Claims and Demands as  
17 provided herein shall diminish or impair the enforceability of any of the Asbestos Insurance  
18 Policies against a party that is not a Released Party. Each Allowed Asbestos Related Claim and  
19 Demand shall be, and be deemed to be, a judgment against the respective Debtor liable for such  
20 Claim and the Trust (as successor for all purposes to the liabilities of the Debtors in respect of  
21 Asbestos Related Claims and Demands) in the Allowed Amount of such Asbestos Related Claim  
22 or Demand, as the case may be, which Allowed Asbestos Related Claim and Demand as against  
23 the Debtor liable for such Claim shall be channeled to the Trust for payment and entitle the holder  
24 thereof solely to beneficiary status as against the Trust, and not to satisfaction of its Allowed  
25 Asbestos Related Claim or Demand against the properties or assets of the Debtors.

26 **(f) Plan Distributions.**

27 Distributions to holders of Asbestos Related Claims and Demands shall be made by the  
28 Trust in accordance with the TDP. Certain claims against the Debtors by their attorneys in the

1 Coverage Litigation, and claims for Professional Fees, are to be paid in the future by the Trust, as  
2 Trust Expenses as set forth in the Plan. All other Claims other than Asbestos Related Claims  
3 against the Debtors will be paid by the Debtor which is obligated on the Claim on the latest of the  
4 Effective Date or the date the obligation becomes due by its terms.

5 **(g) Withholding of Taxes.**

6 The Debtors or the Trust, as applicable, shall withhold from any assets or property  
7 distributed under the Plan or by the Trust any amounts, assets or property that must be withheld  
8 for foreign, federal, state and local tax purposes to the extent required by applicable law.

9 **(h) Interest on Claims.**

10 To the extent interest is required by applicable contract, post-petition interest shall accrue  
11 on Claims, except Class 4 Claims, as set forth above under the treatment of each claim. The TDP  
12 shall govern interest on Class 4 Claims.

13 **(i) Disputed Claims.**

14 After the Effective Date, only the Trust shall have authority to reject or deny any Asbestos  
15 Related Claim or Demand, to engage in binding or non-binding arbitration with Asbestos Related  
16 Claimants, and for Asbestos Related Claimants who reject the result of non-binding arbitration or  
17 proceed to the tort system without first going through nonbonding arbitration pursuant to Section  
18 5.11 of the TDP, to litigate to judgment, settle or withdraw its rejection or denial. Asbestos  
19 Related Claims and Demands, whether or not a Proof of Claim is filed, shall be satisfied  
20 exclusively in accordance with the Trust Agreement and the TDP.

21 **4.6 Executory Contracts, Unexpired Leases and Settlements.**

22 **(a) Assumption of Executory Contracts and Unexpired Leases.**

23 Exhibit 9 to the Plan is a list of each unexpired lease and/or executory contract in existence  
24 as of the Petition Dates and as to which each of the Debtors is still a party. Each such contract  
25 shall, as of the Confirmation Date (subject to the occurrence of the Effective Date), be deemed to  
26 have been assumed by such Debtor which is the party to such lease or contract. Entry of the  
27 Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions  
28 pursuant to sections 365 and 1123 of the Bankruptcy Code. Each executory contract and

1 unexpired lease assumed pursuant to Section 5.1 of the Plan shall, on the Effective Date, vest in  
2 and be fully enforceable by each such Debtor in accordance with its terms. Executory contracts  
3 and leases entered into by the any of the Debtors after their Petition Dates, shall be performed by  
4 the Debtors in the ordinary course of their business.

5 **(b) Cure of Defaults.**

6 Any monetary amounts by which an executory contract or unexpired lease to be assumed  
7 pursuant to the Plan is in default shall be cured, to the extent required by section 365(b)(1) of the  
8 Bankruptcy Code, by the Debtor that is a party to the contract or lease, by cash payment to the  
9 non-Debtor party. If there is a dispute regarding (i) the nature or amount of any cure, (ii) the  
10 ability of any Debtor to provide “adequate assurance of future performance” (within the meaning  
11 of section 365 of the Bankruptcy Code) under the contract or lease to be assumed or (iii) any other  
12 matter pertaining to assumption, the Debtor shall cure that default following the entry of a Final  
13 Order resolving the dispute and approving the assumption or assumption and assignment, as the  
14 case may be. The Confirmation Order shall contain provisions providing for notices of proposed  
15 assumptions and proposed cure amounts to be sent to applicable third parties and procedures for  
16 objecting thereto and resolution of disputes by the Bankruptcy Court.

17 **4.7 Injunctions, Releases and Discharge.**

18 **(a) Term of Certain Injunctions and the Automatic Stay.**

19 All of the injunctions and the automatic stay provided for in or in connection with  
20 the Reorganization Cases, whether pursuant to section 105, section 362 or any other provision of  
21 the Bankruptcy Code or other applicable law, in existence immediately prior to Confirmation,  
22 shall remain in full force and effect until the Injunctions become effective, and thereafter if so  
23 provided by the Plan, the Confirmation Order or by their own terms. In addition, on and after  
24 Confirmation, the Debtors may seek such further orders as they may deem necessary to preserve  
25 the status quo during the time between Confirmation and the Effective Date. Notwithstanding any  
26 provision to the contrary contained in the Plan, all actions in the nature of those to be enjoined by  
27 the Injunctions shall be enjoined during the period between the Confirmation Date and the  
28 Effective Date.

1           **(b) Discharge and Release.**

2           (i) Effective on the Effective Date, except as provided in the Plan, Confirmation  
3 shall discharge Holdings and Technologies from any and all Claims, including Asbestos Related  
4 Claims, whether or not (A) a Proof of Claim based on such Claim was filed or deemed filed under  
5 section 501 of the Bankruptcy Code, or such Claim was listed on the Schedules of a Debtor, (B)  
6 such Claim is or was allowed under section 502 of the Bankruptcy Code, or (C) the holder of such  
7 Claim has voted on or accepted the Plan. All Asbestos Related Claims against the assets and  
8 properties of the Debtors shall be satisfied exclusively from the Trust.

9           (ii) Effective on the Effective Date, subject only to the terms of the respective  
10 settlement agreements with the Settling Asbestos Insurance Company, each Debtor (on its own  
11 behalf and on behalf of any person claiming by or through such Debtor) and the Confirmation  
12 Order shall and is deemed to release each Settling Asbestos Insurance Company in full from any  
13 and all claims, demands or obligations whatsoever (including, without limitation, any obligation  
14 for defense costs), past, present or future, known or unknown, arising out of, in connection with or  
15 relating to the Policies or any of the Settling Asbestos Insurance Companies' insuring relationship  
16 with any of the Debtors, whether for insurance coverage, bad faith or other extra-contractual  
17 liability or otherwise allegedly arising out of or relating to the Policies or any of the Settling  
18 Asbestos Insurance Companies' insuring relationship with any of the Debtors.

19           **(c) Discharge Injunction.**

20           Except as specifically provided in the Plan Documents to the contrary, the entry of the  
21 Confirmation Order shall also operate as to Holdings, Technologies and the Released Non-Debtor  
22 Parties as an injunction prohibiting and enjoining the commencement or continuation of any  
23 action, the employment of process or any act to collect, recover from, or offset from any of them  
24 (i) any Claim including an Asbestos Related Claim or Demand asserted by any Entity and (ii) any  
25 cause of action, whether known or unknown, arising out of or relating to any Asbestos Related  
26 Claim or Demand.

27           Subject to the applicable reservations contained in Section 9.4 of the Plan, all Entities that  
28 have held or asserted, that hold or assert, or that may in the future hold or assert any Claim,

1 Demand or cause of action (including, but not limited to, all Asbestos Related Claims and  
2 Demands in the nature of or sounding in tort, contract, warranty, bad faith, competition law, unfair  
3 or deceptive practices law, conspiracy, statute or any other body, theory or principle of law, equity  
4 or admiralty whatsoever or any Asbestos Related Claim or Demand or any claim or demand for or  
5 respecting any Trust Expense) against the Released Non-Debtor Parties, Holdings or Technologies  
6 (or any of them) arising out of or related to any Asbestos Related Claim or Demand, whenever and  
7 wherever arising or asserted shall be permanently stayed, restrained and enjoined from taking any  
8 action for the purpose of directly or indirectly collecting, recovering, or receiving payments,  
9 satisfaction, or recovery with respect to any such Asbestos Related Claim or Demand from or  
10 against Holdings, Technologies, any Released Non-Debtor Party or against the property of any of  
11 them, including, but not limited to:

12 (i) commencing or continuing in any manner any action or other proceeding of  
13 any kind with respect to any Asbestos Related Claim or Demand;

14 (ii) enforcing, attaching, collecting or recovering, by any manner or means, any  
15 judgment, award, decree or order with respect to any Asbestos Related Claim or Demand;

16 (iii) creating, perfecting or enforcing any Lien of any kind with respect to any  
17 Asbestos Related Claim or Demand;

18 (iv) asserting or accomplishing any setoff, right of subrogation, indemnity,  
19 contribution or recoupment of any kind against any obligation due with respect to any Asbestos  
20 Related Claim or Demand; and

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

24 (d) **The Channeling Injunction, the Supplemental Injunction and the Asbestos  
25 Insurance Company Injunction.**

26 1. **Channeling Injunction.** To preserve and promote the property of the  
27 Estates of the Debtors and settlements contemplated by and provided for in the Plan and  
28 agreements approved by the Bankruptcy Court and in the exercise of the equitable jurisdiction and



1 power of the Bankruptcy Court, and under sections 524(g) and/or 105(a) of the Bankruptcy Code,  
2 Asbestos Related Claims and Demands shall be channeled to, and paid solely from, the Trust.  
3 Subject to the applicable reservations contained in Section 9.4 of the Plan, all Entities that have  
4 held or asserted, that hold or assert, or that may in the future hold or assert any Asbestos Related  
5 Claim or Demand shall be permanently stayed, restrained and enjoined from taking any action for  
6 the purpose of directly or indirectly collecting, recovering or receiving payment or recovery with  
7 respect to any such Asbestos Related Claim or Demand from or against any Released Party,  
8 including, but not limited to:

9 (a) commencing or continuing in any manner any action or other  
10 proceeding of any kind with respect to any Asbestos Related Claim or Demand against any  
11 Released Party, or against the property of any Released Party, with respect to any such Asbestos  
12 Related Claim or Demand;

13 (b) enforcing, attaching, collecting or recovering, by any manner or  
14 means, any judgment, award, decree, or order against any Released Party, or against the property  
15 of any Released Party, with respect to any Asbestos Related Claim or Demand;

16 (c) creating, perfecting, or enforcing any Lien of any kind against any  
17 Released Party, or the property of any Released Party, with respect to any Asbestos Related Claim  
18 or Demand;

19 (d) asserting or accomplishing any setoff, right of subrogation,  
20 indemnity, contribution or recoupment of any kind against any obligation due any Released Party,  
21 or against the property of any Released Party, with respect to any Asbestos Related Claim or  
22 Demand; and

23 (e) taking any act, in any manner, in any place whatsoever, that does not  
24 conform to, or comply with, the provisions of the Plan Documents relating to any Asbestos  
25 Related Claim or Demand.

26 2. **The Supplemental Injunction.** To preserve and promote settlements  
27 contemplated by and provided by the Plan and agreements approved by the Bankruptcy Court and  
28 in the exercise of the equitable jurisdiction and power of the Bankruptcy Court under sections

1 524(g) and/or 105(a) of the Bankruptcy Code, subject to the applicable reservations contained in  
2 Section 9.4 of the Plan, all Entities shall be permanently stayed, restrained and enjoined from  
3 taking any action or making any demand against the Nationwide Parties, the Federal Parties and  
4 all other Settling Asbestos Insurance Companies (but in no circumstance any Other Insurer against  
5 whom the Debtors or the Trust have potential rights of recovery for Asbestos Related Claims and  
6 Demands, unless such other Insurer becomes a Settling Asbestos Insurance Company) and their  
7 present and future agents, for any claims, demands, Demands or obligations whatsoever  
8 (including, without limitation, any obligation for defense costs), past, present or future, known or  
9 unknown, arising out of, in connection with or relating to the Policies or any of the Settling  
10 Asbestos Insurance Companies' insuring relationship with any of the Debtors, including any claim  
11 for "bad faith" or extra-contractual liability, and further including but not limited to any claim  
12 under California Insurance Code Section 11580 or its subdivisions or related or similar statutes in  
13 any jurisdiction or any other claim by any person or entity for insurance coverage or damages,  
14 indemnity, contribution, defense, equitable relief or otherwise relating to the Policies, the  
15 Coverage Litigation, any Asbestos Related Claim or Demand, or any other matter or claim relating  
16 to the Policies by any party including any direct claim by a third-party against any Settling  
17 Asbestos Insurance Company arising out of or relating to the Policies or any Settling Asbestos  
18 Insurance Company's insuring relationship with any of the Debtors.

19 The actions so stayed, restrained and enjoined shall include, but are not limited to:

20 (a) commencing or continuing in any manner any action or other  
21 proceeding of any kind with respect to any such claim, demand or cause of action against any  
22 Settling Asbestos Insurance Company, or against the property of any Settling Asbestos Insurance  
23 Company, with respect to any Asbestos Related Claim or Demand;

24 (b) enforcing, attaching, collecting or recovering, by any manner or  
25 means, any judgment, award, decree or order against any Settling Asbestos Insurance Company,  
26 or against the property of any Settling Asbestos Insurance Company, with respect to any Asbestos  
27 Related Claim or Demand;

28

1 (c) creating, perfecting or enforcing any Lien of any kind against any  
2 Settling Asbestos Insurance Company, or the property of any Settling Asbestos Insurance  
3 Company, with respect to any Asbestos Related Claim or Demand;

4 (d) asserting or accomplishing any setoff, right of subrogation,  
5 indemnity, contribution or recoupment of any kind against any obligation due any Settling  
6 Asbestos Insurance Company, or against the property of any Settling Asbestos Insurance  
7 Company, with respect to any Asbestos Related Claim or Demand; and

8 (e) taking any act, in any manner, in any place, that does not conform  
9 to, or comply with, the provisions of the Plan Documents relating to any Asbestos Related Claim  
10 or Demand.

11 3. **Asbestos Insurance Company Injunction.** To preserve and promote the  
12 property of the Estate and the settlements contemplated by and provided for in the Plan, and to  
13 supplement, where necessary, the injunctive effect of the discharge and releases detailed herein,  
14 and pursuant to the exercise of the equitable jurisdiction and power of the court under sections  
15 524(g) and/or 105(a) of the Bankruptcy Code, subject to the applicable reservations contained in  
16 Section 9.4 of the Plan, all Entities that have held or asserted, that hold or assert, or that may in the  
17 future hold or assert any claim, demand, Demand or cause of action (including, but not limited to,  
18 any Asbestos Related Claim or Demand, or any claim or demand for or respecting any Trust  
19 Expense), against an Asbestos Insurance Company based on or relating to any Claim, Asbestos In-  
20 Place Insurance Coverage, or Asbestos Insurance Policy, whenever and wherever arisen or  
21 asserted (including, but not limited to, all Asbestos Related Claims and Demands in the nature of  
22 or sounding in tort, contract, warranty, or any other theory of law, equity or admiralty) shall, be  
23 permanently stayed, restrained and enjoined from taking any action for the purpose of directly or  
24 indirectly collecting, recovering or receiving payments, satisfaction or recovery with respect to  
25 any such claim, demand or cause of action, including, but not limited to:

26 (a) commencing or continuing in any manner any action or other  
27 proceeding of any kind with respect to any such claim, demand or cause of action against any  
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1 Asbestos Insurance Company, or against the property of any Asbestos Insurance Company, with  
2 respect to any Asbestos Related Claim or Demand;

3 (b) enforcing, attaching, collecting or recovering, by any manner or  
4 means, any judgment, award, decree or order against any Asbestos Insurance Company, or against  
5 the property of any Asbestos Insurance Company, with respect to any Asbestos Related Claim or  
6 Demand;

7 (c) creating, perfecting or enforcing any Lien of any kind against any  
8 Asbestos Insurance Company, or against the property of any Asbestos Insurance Company, with  
9 respect to any Asbestos Related Claim or Demand;

10 (d) asserting or accomplishing any setoff, right of subrogation,  
11 indemnity, contribution or recoupment of any kind against any obligation due any Asbestos  
12 Insurance Company, or against the property of any Asbestos Insurance Company, with respect to  
13 any Asbestos Related Claim or Demand; and taking any act, in any manner, in any place  
14 whatsoever, that does not conform to, or comply with, the provisions of the Plan Documents  
15 relating to any Asbestos Related Claim or Demand.

16 The Debtors believe that the Bankruptcy Court and the District Court have the jurisdiction  
17 and power under sections 105(a) and 524(g) of the Bankruptcy Code to enter the Injunctions.

18 4. **Reservations.** Notwithstanding any provision to the contrary in the Plan,  
19 neither the Discharge Injunction, the Channeling Injunction, the Supplemental Injunction nor the  
20 Asbestos Insurance Company Injunction shall enjoy (unless such reservation is expressly  
21 qualified below to apply only to a particular Injunction):

22 (a) the rights of Entities to the treatment accorded them under Articles 1  
23 and 3 of the Plan, as applicable;

24 (b) the rights of Entities to assert any Claim, debt, obligation or liability  
25 for payment of Trust Expenses against the Trust;

26 (c) the rights of the Trust and the Debtors, including the right of the  
27 Trust to prosecute a Direct Action as attorney in fact for a holder of an Asbestos Related Claim,  
28 and including the participation of such holder of an Asbestos Related Claim in such Direct Action

1 if and to the extent necessary to preserve rights against an insurer, to prosecute any Asbestos  
2 Insurance Action against an Asbestos Insurance Company that is not a Released Party;  
3 (d) with respect to the Discharge Injunction, the Channeling Injunction  
4 and the Supplemental Injunction only, the rights of Entities to assert any Claim, debt, obligation  
5 or liability for payment against an Asbestos Insurance Company that is not a Released Party,  
6 unless otherwise enjoined by order of the Bankruptcy Court or estopped by provision of the Plan;

7 (e) with respect to the Asbestos Insurance Company Injunction only,  
8 the rights of the Trust, the Debtors and the Asbestos Related Claimants in accordance with the  
9 TDP to assert any Claim, debt, obligation or liability for payment against an Asbestos Insurance  
10 Company that is not a Released Party unless otherwise enjoined by order of the Bankruptcy Court  
11 or estopped by provision of the Plan; and

12 (f) with respect to the Asbestos Insurance Company Injunction only,  
13 the rights of the Trust and the Debtors to assign a cause of action against an Asbestos Insurance  
14 Company that is not a Released Party to a claimant and for such claimant to assert any claim, debt,  
15 obligation or liability for payment against such Asbestos Insurance Company.

16 Notwithstanding any other provision of the Plan to the contrary, the satisfaction, release  
17 and discharge, and the Injunctions set forth in the Plan, shall not serve to satisfy, discharge, release  
18 or enjoin claims by any Entity against (i) the Trust for payment of Asbestos Related Claims and  
19 Demands in accordance with the TDP or (ii) the Trust for the payment of Trust Expenses.

20 **(e) Exoneration and Reliance.**

21 Subject to the limitations set forth in the Plan, neither the Plan Proponents nor any of their  
22 respective Agents shall be liable other than for willful misconduct to any holder of a Claim or  
23 Interest or any other Entity with respect to any action, omission, forbearance from action, decision  
24 or exercise of discretion taken at any time prior to the Effective Date in connection with: (a) the  
25 management or operation of the Debtors, or the discharge of their duties under the Bankruptcy  
26 Code; (b) the implementation of any of the transactions provided for, or contemplated in, the Plan  
27 Documents; (c) any action taken in connection with either the enforcement of any of the Debtors'  
28 rights against any Entities or the defense of Claims asserted against the Debtors with regard to the

1 Reorganization Cases; (d) any action taken in the negotiation, formulation, development, proposal,  
2 disclosure, Confirmation or implementation of the Plan Documents filed in the Reorganization  
3 Cases; or (e) the administration of the Plan or the Trust or the assets and property to be distributed  
4 pursuant to the Plan. The Plan Proponents, as well as their respective Agents, may reasonably rely  
5 upon the opinions of their respective counsel, accountants and other experts or professionals and  
6 such reliance, if reasonable, shall conclusively establish good faith and the absence of willful  
7 misconduct; provided, however, that a determination that such reliance is unreasonable shall not,  
8 by itself, constitute a determination or finding of bad faith or willful misconduct. The foregoing,  
9 however, shall not apply to pre-Petition Date activities except insofar as they relate to the  
10 negotiation and documentation of the Plan, the Plan documents, and the Disclosure Statement.  
11 Further, nothing contained in this section 8.4 shall be deemed to limit or otherwise impair the  
12 scope of the discharge and discharge injunction set forth in the Plan.

13 **4.8 Matters Incident to Plan Confirmation.**

14 **(a) No Successor Liability.**

15 Except as otherwise expressly provided in the Plan, the Plan Proponents and the TAC do  
16 not, pursuant to the Plan or otherwise, assume, agree to perform, pay or indemnify creditors or  
17 otherwise have any responsibilities for any liabilities or obligations of the Debtors relating to or  
18 arising out of the operations of or assets of the Debtors, whether arising prior to, on or after the  
19 Confirmation Date. Neither the Debtors nor the Trust shall have any successor or transferee  
20 liability of any kind or character, except that the Debtors and the Trust shall assume the  
21 obligations specified in the Plan and the Confirmation Order.

22 **(b) Asbestos Insurance Actions.**

23 Subject to the terms of the Plan, the Asbestos Insurance Actions (excluding any such  
24 actions against a Released Party) shall be preserved by the Debtors for prosecution by the Trust, at  
25 the direction and at the expense of the Trust. On or after the Effective Date, any compromise or  
26 settlement of any Asbestos Insurance Action shall require the consent of the Trust or, as  
27 applicable, the consent of the Futures Representative, the Committee and/or the TAC, as the case  
28 may be.

1           **(c) Institution and Maintenance of Legal and Other Proceedings.**

2           As of the Effective Date, the Trust shall be empowered to initiate, prosecute, defend and  
3 resolve all legal actions and other proceedings related to any asset, liability or responsibility of the  
4 Trust, except to the extent that any Settling Asbestos Insurance Company has been released. The  
5 Trust shall be empowered to initiate, prosecute, defend and resolve all such actions in the name of  
6 the Debtors if deemed necessary or appropriate by the Trustees. The Trust shall be responsible for  
7 the payment of all damages, awards, judgments, settlements, expenses, costs, fees and other  
8 charges incurred subsequent to Confirmation arising from or associated with any legal action or  
9 other proceeding and shall pay or reimburse all deductibles, retrospective premium adjustments or  
10 other charges that may arise from the receipt of insurance proceeds by the Trust. On the Effective  
11 Date, and except as otherwise provided in the Plan, the Trust shall have the right to enforce against  
12 any Entity any and all of the Debtors' causes of action, with the proceeds of the recovery of any  
13 such actions related to insurance for Asbestos Related Claims or Demands pending in the  
14 Bankruptcy Court to be paid to the Debtors subject to their obligations to the Trust under the  
15 Thorpe Business Loss Insurance Security and the Thorpe General Insurance Security and any  
16 contingency fee arrangements.

17           **(d) Revesting.**

18           Except as otherwise expressly provided in the Plan, on the Effective Date, each of the  
19 Debtors shall be revested with all of the assets and property of its former Estate, free and clear of  
20 all Claims, Liens, charges and other interests of holders of Claims or Demands, and may operate  
21 its business free of any restrictions imposed by the Bankruptcy Code, the Bankruptcy Court, or the  
22 guidelines of the Office of the U.S. Trustee. The Debtors may, subject to complying with  
23 applicable non-bankruptcy law, distribute to their shareholders after the Effective Date portions of  
24 the amounts received on account of the Thorpe Business Loss Security attributable to the Debtors;  
25 however, they shall, to the extent required by the Plan, retain sufficient cash in Technologies and  
26 Thorpe to continue to conduct their regular business. No distributions of cash necessary for  
27 operations (as defined by the Plan) shall be made to the Debtors' shareholders without prior notice  
28 to the Trust, the Futures Representative, the Committee and the TAC, with an opportunity to be

1 heard by such parties. If such parties object to a distribution, such objection shall be resolved by  
2 the Bankruptcy Court.

3 **(e) Preservation of Insurance Claims.**

4 Nothing in the terms of the Plan and the Plan Documents, the discharge of Holdings and  
5 Technologies, the Injunctions, and the Released Non-Debtor Parties' release, from all Asbestos  
6 Related Claims and Demands as provided in the Plan shall either diminish or impair the  
7 enforceability of any of the Asbestos Insurance Policies against a party that is not a Released  
8 Party. The Trust is, and shall be deemed to be, for all purposes, including but not limited to for  
9 purposes of insurance and indemnity, the successor to the Debtors in respect of Asbestos Related  
10 Claims and Demands. Each Allowed Asbestos Related Claim and Demand shall be, and be  
11 deemed to be, a judgment against the respective Debtor liable for such Claim and the Trust in the  
12 Allowed Amount of such Asbestos Related Claim or Demand, as the case may be, which Allowed  
13 Asbestos Related Claim and Demand as against the Debtor liable for such Claim shall be  
14 channeled to the Trust for payment and entitle the holder thereof solely to beneficiary status as  
15 against the Trust, and not to satisfaction of its Allowed Asbestos Related Claim or Demand  
16 against the properties or assets of the Debtors.

17 **(f) Assumption of Nationwide agreement.**

18 As of the Effective Date the Trust shall assume the Debtors' obligations to the Nationwide  
19 Parties under the Nationwide Settlement.

20 **4.9 Retention of Jurisdiction.**

21 Until the Reorganization Cases are closed, the Bankruptcy Court shall retain the fullest and  
22 most extensive jurisdiction permissible, including that necessary to ensure that the purposes and  
23 intent of the Plan are carried out.

24 Following Confirmation, the administration of the Reorganization Cases will continue at  
25 least until the completion of the transfers contemplated to be accomplished on the Effective Date.

26 Moreover, the Trust shall be subject to the continuing jurisdiction of the Bankruptcy Court in  
27 accordance with the requirements of the Treasury Regulations issued pursuant to section 468B of  
28 the IRC. The failure by the Debtors to object to, or examine, any Claim, for the purposes of



1 voting, shall not be deemed a waiver of the right of the Debtors or the Trust, as the case may be, to  
2 object to or re-examine such Claim in whole or part.

3 In addition to the foregoing, the Bankruptcy Court shall, where consistent with the Plan and as  
4 necessary, retain jurisdiction for the specific purposes after Confirmation as set forth in Section  
5 12.3 of the Plan.

6 **4.10 Miscellaneous Provisions.**

7 **(a) Corporate Existence on and after the Effective Date.**

8 Each of Thorpe, Technologies and Holdings shall continue to exist as a separate and  
9 distinct corporation.

10 Each of Thorpe, Technologies and Holdings shall continue to have all of the powers of a  
11 corporation under applicable law in the jurisdiction in which it is incorporated and pursuant to its  
12 articles or certificate of incorporation and bylaws in effect immediately prior to the Effective Date,  
13 including any right to terminate its existence under applicable law after the Effective Date, except  
14 to the extent such articles, certificate or bylaws are amended by the Plan.

15 Dissolved Thorpe shall continue to prosecute litigation against its insurance carriers and  
16 then continue to be wound up in accordance with the provisions of the Plan, the California  
17 Corporations Code and orders of the Superior Court of California for the County of Sacramento.

18 The directors of each of the Debtors immediately prior to the Effective Date shall continue  
19 to serve on and after the Effective Date in accordance with the articles or certificate of  
20 incorporation and bylaws of such Debtor, or in the case of Dissolved Thorpe pursuant to orders of  
21 the Superior Court.

22 The officers of Thorpe, Technologies and Holdings immediately prior to the Effective Date  
23 shall continue to serve on and after the Effective Date in accordance with any applicable  
24 employment agreement, the bylaws of such Debtor and applicable non-bankruptcy law.

25 The articles or certificate of incorporation and bylaws of each of Thorpe, Technologies and  
26 Holdings shall be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy  
27 Code, including, pursuant to section 1123(a)(6) of the Bankruptcy Code, adoption of a provision  
28

1 prohibiting the issuance of nonvoting equity securities, but only to the extent required by  
2 section 1123(a)(6) of the Bankruptcy Code.

3 **(b) Transfer Taxes.**

4 Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of  
5 any of the securities issued under, or the transfer of any other assets or property pursuant to or in  
6 connection with, the Plan or the making or delivery of an instrument of transfer under or in  
7 connection with the Plan shall not be taxed under any law imposing a stamp tax, transfer tax or  
8 other similar tax or governmental assessment. Confirmation of the Plan shall constitute a direction  
9 to state and local governmental officials and agents to forego collection of any such tax or  
10 assessment and to accept for filing and recordation any instruments or documents issued in  
11 connection with the Plan, without the payment of any tax or governmental assessment.

12 **(c) Recordable Order.**

13 Upon Confirmation of the Plan, the Confirmation Order shall be deemed to be in  
14 recordable form, and shall be accepted by any recording officer for filing and recording purposes  
15 without further or additional orders, certifications or other supporting documents.

16 **(d) Effectuating Documents and Further Transactions.**

17 The Chief Executive Officer, President or any Vice President of any of the Debtors or, in  
18 the case of Dissolved Thorpe, any of its directors, shall be authorized to execute such documents  
19 and take or direct such actions as may be necessary or appropriate to effectuate and further  
20 evidence the terms and conditions of the Plan.

21 **(e) The Committee and the Futures Representative.**

22 Except as otherwise provided in this Section, the Committee and the Futures Representative shall  
23 continue in existence until the Effective Date. The Committee and the Futures Representative  
24 shall continue to be paid the fees and expenses from the Debtors or their estates. After the  
25 Effective Date, the Futures Representative shall continue in existence, and the rights, duties and  
26 responsibilities of the Futures Representative shall be as set forth in the Trust Documents. After  
27 the Effective Date, the duties of the Committee shall be limited to the prosecution and defense of  
28 any adversary proceeding and appeals to which the Committee is a party on the Effective Date and

1 to present fee applications. For all other purposes, the Committee will, on the Effective Date, be  
2 dissolved and the members, attorneys, accountants and other professionals thereof shall be  
3 released and discharged of and from all further authority, duties, responsibilities, liabilities and  
4 obligations related to, or arising from, the Reorganization Cases.

5 **(f) Modification of the Plan.**

6 The Plan Proponents may, under section 1127 of the Bankruptcy Code, propose  
7 amendments to or modifications of the Plan at any time prior to the Confirmation Date. After  
8 Confirmation, the Plan Proponents may remedy any defects or omissions or reconcile any  
9 inconsistencies in the Plan or the Confirmation Order or any other order entered for the purpose of  
10 implementing the Plan in such manner as may be necessary to carry out the purposes and intent of  
11 the Plan, so long as the interests of the holders of Claims, without such holder's consent, are not  
12 adversely affected relative to such holder's treatment under the Plan, and consistent with the terms  
13 of any Asbestos Insurance Settlement Agreement. Anything in the Plan or in any Plan Document  
14 to the contrary notwithstanding, following Confirmation and before "substantial consummation"  
15 of the Plan, no Plan Document shall be modified, supplemented, changed or amended in any  
16 material respect except with the written consent of the Plan Proponents (to the extent their  
17 appointment remains in effect). In the event of a conflict between the terms or provisions of the  
18 Plan and the Trust Documents, the terms of the Plan shall control over the terms of the Trust  
19 Documents.

20 **(g) Revocation of the Plan.**

21 The Plan Proponents each reserve the right to revoke and withdraw the Plan before the  
22 entry of the Confirmation Order. If any of the Plan Proponents revokes or withdraws the Plan, or  
23 if Confirmation does not occur, then, with respect to all parties in interest, the Plan shall be  
24 deemed null and void and nothing contained herein shall be deemed to constitute a waiver or  
25 release of any Claims by or against the Debtors or any other Entity or to prejudice in any manner  
26 the rights of the Debtors or such Entity in any further proceedings involving the Debtors.

27 //

28 //

1 SECTION 5.

2 CONFIRMATION OF THE PLAN

3 **5.1 Acceptance or Rejection of the Plan.**

4 **(a) Persons Entitled to Vote on the Plan.**

5 Pursuant to the provisions of the Bankruptcy Code, only Classes of Claims and Interests  
6 that are impaired under the terms and provisions of the Plan are entitled to vote to accept or reject  
7 the Plan. Generally speaking, under section 1124 of the Bankruptcy Code, a class of claims or  
8 interests is "impaired" under a plan of reorganization unless, with respect to each claim or interest  
9 in such class, the plan in question (i) leaves unaltered the legal, equitable and contractual rights to  
10 which such claim or interest entitles the holder of such claim or interest; or (ii) notwithstanding  
11 any contractual provision or applicable law that entitles the holder of such claim or interest to  
12 demand or receive accelerated payment of such claim or interest after the occurrence of a default,  
13 (a) cures any such default that occurred before or after the commencement of the case under the  
14 Bankruptcy Code, other than a default of the kind specified in section 365(b)(2) thereof,  
15 (b) reinstates the maturity of such claim or interest as such maturity existed before such default,  
16 (c) compensates the holder of such claim or interest for any damages incurred as a result of any  
17 reasonable reliance by such holder on such contractual provision or applicable law and (d) does  
18 not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles  
19 the holder of such claim or interest.

20 Under the Plan, Classes 1, 2, 3, 5-A and 5-C are unimpaired; therefore, the holders of  
21 Claims in such Classes are conclusively presumed pursuant to section 1126(f) of the Bankruptcy  
22 Code to have accepted the Plan. The Debtors will not solicit acceptances of the Plan from the  
23 holders of Claims in these Classes.

24 Classes 4, 5-B and 5-D are impaired. The holders of Claims in Class 4 and Interests in  
25 Class 5-D are entitled to vote to accept or reject the Plan. The Debtors believe that there are no  
26 holders of Class 5-B Interests. Further, in light of the fact that the Plan does not distribute any  
27 value to any class junior to Classes 5-B, the Plan can be confirmed without acceptance by the  
28 holders of Interests in Classes 5-B, under section 1129(b)(2)(c)(ii) of the Bankruptcy Code.

1 Therefore, the Debtors will not solicit the votes from the Class 5-B Interest Holders. Section  
2 524(g) of the Bankruptcy Code permits supplementary injunctions to be issued which channel all  
3 Asbestos Related Claims into a trust if, among other things, at least 75 percent of the holders of  
4 Asbestos Related Claims actually voting, vote in favor of the plan of reorganization. Because the  
5 Claims of Class 4 are to be channeled into and addressed by the Trust, the Debtors are soliciting  
6 acceptances of the Plan from holders of Claims in this Class of the magnitude required by section  
7 524(g). The votes of all holders of Asbestos Related Claims who submit a timely, valid ballot  
8 shall be counted. The dollar amount for voting purposes of unliquidated Asbestos Related Claims  
9 shall be determined as set out on the ballot for voting.

10 The Plan Proponents are also soliciting acceptances of the Plan from Class 5-D Interest  
11 Holders.

12 **(b) Voting Procedures.**

13 Holders of Asbestos Related Claims are encouraged to vote on the Plan.

14 Anyone who believes he or she has an Asbestos Related Claim against any of the Debtors  
15 and wishes to vote that claim in respect of the Plan may request a copy of a ballot from the Voting  
16 Agent, Nora Boghossian, Rutter Hobbs & Davidoff Incorporated 1901 Avenue of the Stars, Suite  
17 1700, Los Angeles, CA. 90067; Tel (310) 286-1700; Fax (310) 286-1728; email:  
18 nboghossian@rutterhobbs.com(the "Voting Agent").

19 **No proof of claim need be filed with the Bankruptcy Court to entitle a Class 4 Claim**  
20 **Holder to vote and voting is not a prerequisite to receiving a distribution on a Class 4 Claim**  
21 **from the Trust.**

22 **If one's name appears in the Schedules the Debtors filed with the Bankruptcy Court,**  
23 **one will receive a ballot even if he or she does not contact Ms.Boghossian. Such ballots shall**  
24 **be tabulated in the manner set forth therein.**

25 The Bankruptcy Court has set 5:00 p.m. prevailing Pacific Time on May 12, 2005 as the  
26 deadline for the Voting Agent to receive a ballot. All ballots received thereafter will not be  
27 tabulated in determining whether the Plan has been accepted or rejected.

28

1 Ballots must be submitted to the Voting Agent by the Voting Deadline by either hand-  
2 delivery, U.S. Mail or other delivery service. Ballots may not be submitted to the Voting Agent  
3 by facsimile or email, and any ballots submitted by facsimile or email will not be considered.

4 Either a claimant or his or her attorney or may sign a ballot. If an attorney signs a ballot  
5 for a client, that signature shall constitute a declaration under penalty of perjury that, as to any fact  
6 that is not within the attorney's personal knowledge, the attorney's file concerning the client  
7 contains reliable information that the fact stated is true and correct and that the attorney is  
8 authorized to sign the client's ballot.

9 A ballot must be by or on behalf of one claimant. Neither master ballots nor class ballots  
10 will be counted.

11 **(c) Class Acceptance Requirement.**

12 Chapter 11 of the Bankruptcy Code does not require that each holder of a Claim or Interest  
13 vote in favor of the Plan for it to be confirmed by the Bankruptcy Court. Instead, the Bankruptcy  
14 Code defines acceptance of the Plan by a Class of Claims as acceptance by holders of at least two-  
15 thirds in amount and more than one half in number of the Allowed Claims of that Class actually  
16 voting on the Plan, excluding any holders of Claims designated pursuant to section 1126(e) of the  
17 Bankruptcy Code. Acceptance by a Class of Interests is defined as acceptance by holders of at  
18 least two-thirds in amount of the Allowed Interests of that Class actually voting on the Plan,  
19 excluding any holders of Interests designated pursuant to section 1126(e) of the Bankruptcy Code.  
20 Section 1126(e) provides that a vote may be disregarded if the Bankruptcy Court determines, after  
21 notice and a hearing, that an entity's acceptance or rejection of the plan was not in good faith, or  
22 was not solicited or procured in good faith, or in accordance with the provisions of the Bankruptcy  
23 Code.

24 **(d) Acceptance Pursuant to Section 524(g) of the Bankruptcy Code.**

25 The Plan Proponents believe that the circumstances of these Reorganization Cases support  
26 the grant of relief under Bankruptcy Code section 524(g). However, the Plan may be confirmed  
27 even if relief pursuant to Bankruptcy Code section 524(g) is not granted.

28

1 In accordance with section 524(g)(2)(B)(ii)(IV)(bb) of the Bankruptcy Code,  
2 supplementary injunctions may be issued if, among other things, holders of at least 75 percent of  
3 Asbestos Related Claims actually voting on the Plan vote in favor of the Plan.

4 **5.2 Confirmation Hearing.**

5 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to  
6 hold a hearing on confirmation of a plan of reorganization. The hearing on confirmation of the  
7 Plan is scheduled for July 14, 2005 at 10:00 a.m. before the Honorable Sheri Bluebond, United  
8 States Bankruptcy Judge for the Central District of California, at 255 E. Temple St., Courtroom  
9 1475, Los Angeles, California 90012. The Confirmation Hearing may be adjourned from time to  
10 time by the Bankruptcy Court without further notice except for an announcement of the adjourned  
11 date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

12 Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to  
13 confirmation of a plan of reorganization. Any objection to confirmation of the Plan must be in  
14 writing, must conform to the Bankruptcy Rules, must set forth the name of the objecting party, the  
15 nature and amount of Claims or Interests held or asserted by the objecting party against a Debtor  
16 or property, the basis for the objection and the specific grounds therefor, and must be filed with  
17 the Bankruptcy Court, together with proof of service thereof, and served upon (i) Rutter Hobbs &  
18 Davidoff Incorporated, 1901 Avenue of the Stars, Suite 1700, Los Angeles, CA 90067; Attn:  
19 Jeanne C. Wanlass, Esq.; (ii) Morgan Lewis & Bockius LLP, 300 South Grand Avenue, Los  
20 Angeles, California 90071-3132, Attn. Michel Y. Horton, Esq.; (iii) Sheppard, Mullin, Richter &  
21 Hampton, 4 Embarcadero Center, Suite 1700, San Francisco, CA 94111-2519, Attention: Michael  
22 H. Ahrens, Esq.; (iv) Fergus, a law firm, 595 Market Street, Suite 2430, San Francisco, CA 94105,  
23 Attn: Gary S. Fergus, Esq.; and (v) Office of the United States Trustee, 725 South Figueroa  
24 Street, 26<sup>th</sup> Floor, Los Angeles, CA 90017; so as to be received no later than the date and time for  
25 service of objections, as designated in the notice of the Confirmation Hearing.

26 //

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1 **5.3 Requirements for Confirmation.**

2 **(a) Consensual Confirmation under Section 1129(a) of the Bankruptcy Code.**

3 At the Confirmation Hearing, the Bankruptcy Court will determine whether the  
4 requirements of Section 1129(a) of the Bankruptcy Code have been satisfied, in which event the  
5 Bankruptcy Court will issue and the District Court will affirm the Confirmation Order. Such  
6 requirements include, among others, that:

- 7 (i) the Plan complies with applicable provisions of the Bankruptcy Code;
- 8 (ii) the Debtors have complied with applicable provisions of the Bankruptcy  
9 Code;
- 10 (iii) the Plan has been proposed in good faith and not by any means forbidden  
11 by law;
- 12 (iv) any payment made or promised by the Debtors to any Person for services,  
13 costs or expenses in or in connection with the Reorganization Cases or the Plan has been approved  
14 by or is subject to approval by the Bankruptcy Court as reasonable;
- 15 (v) the Debtors have disclosed the identity and affiliations of any individual  
16 proposed to serve as a director or an officer of the Debtors after Confirmation of the Plan, and the  
17 appointment to, or continuance in, such office by such individual is consistent with the interests of  
18 the holders of Claims and Interests and with public policy;
- 19 (vi) the Plan is in the best interests of the holders of Claims and Interests; that is,  
20 each holder of an Allowed Claim or Allowed Interest either has accepted the Plan or will receive  
21 or retain on account of its Claim or Interest property of a value, as of the Effective Date, that is not  
22 less than the amount that such holder would receive or retain if the Debtors were liquidated under  
23 Chapter 7 of the Bankruptcy Code on the Effective Date;
- 24 (vii) each Class of Claims or Interests either has accepted the Plan or is not  
25 impaired under the Plan;
- 26 (viii) except to the extent that the holder of a particular Claim has agreed to a  
27 different treatment of such Claim, the Plan provides that Administrative Expenses will be paid in  
28 full on the Effective Date and that Priority Tax Claims either will be paid in full on the Effective



1 Date or will receive on account of such Claims deferred cash payments, over a period not  
2 exceeding six years after the date of assessment of such Claims, of a value, as of the Effective  
3 Date, equal to the Allowed Amount of such Claims;

4 (ix) at least one impaired Class of Claims has accepted the Plan, without regard  
5 to the votes of any insiders;

6 (x) the Plan is feasible; that is, Confirmation is not likely to be followed by the  
7 need for liquidation or further reorganization of the Debtor;

8 (xi) all fees payable under Section 1930 of title 28 of the United States Code  
9 have been paid on or prior to the Effective Date; and

10 (xii) the Plan provides for the continuation after the Effective Date of payment of  
11 all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, without  
12 modification by the Plan, thereby complying with section 1114 of the Bankruptcy Code.

13 The Plan is the product of extensive arms-length negotiations and has been proposed in  
14 good faith. The Plan Proponents believe that the Plan satisfies all applicable requirements of  
15 section 1129(a) of the Bankruptcy Code. A discussion of the reasons the Plan Proponents believe  
16 the Plan satisfies certain of such requirements is set forth below, and the satisfaction of the  
17 remaining requirements of section 1129(a) of the Bankruptcy Code is, in the Plan Proponents'  
18 belief, self-explanatory and will be set out in the Plan Proponents' memorandum of points and  
19 authorities filed in support of Confirmation of the Plan.

20 **(1) Best Interests Test.**

21 Under the best interests test, the Plan may be confirmed if, with respect to each impaired  
22 Class of Claims or Interests, each holder of an allowed Claim or allowed Interest in such Class  
23 either (A) has accepted the Plan or (B) will receive or retain under the Plan, on account of its  
24 Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount  
25 such holder would receive or retain if the Debtors were liquidated under Chapter 7 of the  
26 Bankruptcy Code.

27 To determine what the holders in each Class of Claims or Interests would receive if the  
28 Debtors were to be liquidated, the Bankruptcy Court must estimate the dollar amount that would

1 be generated from the liquidation of the Debtors' assets and properties in the context of a  
2 Chapter 7 liquidation case. The cash amount that would be available for satisfaction of the  
3 allowed Claims and allowed Interests of the Debtors would consist of the proceeds resulting from  
4 the disposition of the assets of the Debtors (including recovery of any voidable transfers net of  
5 litigation costs), augmented by the cash held by the Debtors at the time of the commencement of  
6 the Chapter 7 case. Such cash amount would be reduced by the costs and expenses of the  
7 liquidation and by any additional Administrative Claims and Priority Claims that would result  
8 from the termination of the Debtors' business and the use of a Chapter 7 proceeding for the  
9 purposes of liquidation.

10 Since the holders of all Claims, other than Asbestos Related Claims, will be paid in full on  
11 Plan Confirmation or paid as required by their agreement, or after an order allowing such Claim,  
12 by definition, the holders of such Claims will not receive less under the Plan than they would  
13 receive in a Chapter 7 liquidation.

14 As to Asbestos Related Claims, the non-insurance assets of the Debtors are but a small  
15 fragment of the amount of funds under just the Nationwide Settlement and the Federal Settlement,  
16 let alone in comparison to their other likely insurance coverage.

17 The Debtors believe that the distributions that would be made in a Chapter 7 case would be  
18 substantially smaller than the distributions contemplated by the Plan for two reasons. The key  
19 factor is that, in a Chapter 7 case, the Nationwide Parties, the Federal Parties and any other  
20 Settling Asbestos Insurance Companies would not get the benefit of the section 524(g) and/or  
21 § 105 injunctions or a plan provision, binding on the Trust, waiving claims against Federal, which  
22 would, at this point, result in the forfeiture of a \$500,000 payment from Nationwide and no  
23 settlement with Federal. Moreover, with the Trust funded as contemplated by the Plan, the  
24 Trustees will be in a position to pursue Asbestos Insurance Actions against carriers that have not  
25 settled.

26 The Plan Proponents therefore believe that the Plan is in the best interests of all holders of  
27 Claims and Interests.

28

1                                   **(2) Feasibility of the Plan.**

2                   For the Plan to be confirmed, the Bankruptcy Court also must determine that the Plan is  
3 feasible – that is, that the need for further reorganization or a subsequent liquidation of the Debtors  
4 is not likely to result following Confirmation of the Plan.

5                   Under the Plan, Holdings and Technologies will be discharged from Claims, and the  
6 Debtors will receive an injunction against further prosecution of Claims against them, including  
7 Asbestos Related Claims, and their operations will otherwise continue after Confirmation of the  
8 Plan undisturbed by the Reorganization Cases. The only operations of Dissolved Thorpe after the  
9 Effective Date shall be to continue to prosecute the Asbestos Insurance Actions, as requested by  
10 the Trust, and the expenses for which shall be paid for by the Trust. The operations of Thorpe  
11 after the Effective Date shall be to continue to prosecute the Asbestos Insurance Actions as  
12 requested by the Trust, and to assist the Trust as requested in carrying out its duties, the expenses  
13 for which shall be paid for by the Trust. The costs and expenses for post-Effective Date  
14 Operations of Holdings shall be paid for by Technologies. Technologies shall after the Effective  
15 Date continue in operation of its current business. Technologies’ ongoing obligations under the  
16 Plan are: (i) to convey to the Trust any Insurance Action Recoveries for Asbestos Related Claims  
17 as set forth in the Plan; (ii) to permit the Class 3(b) Claimant to proceed against Technologies’  
18 insurance policies; (iii) the payment of trade claims incurred in the ordinary course of business,  
19 which are paid as they become due; (iv) payment of the \$900,000 note to Global, or the assignee  
20 thereof, over thirty six months in the event that the Court does not approve the APA to Global as  
21 set forth in Section 3.3 hereof; and (v) the obligations of Technologies and Holdings to pay the  
22 Holdings Note of \$500,000 promissory note to the Trust at the rate of \$100,000 per annum  
23 together with interest at the prime rate from time to time. Attached hereto as Exhibit 10 are  
24 projections of Technologies establishing that in the event that the Court does not approve the  
25 APA, Technologies should be able to pay the Global note as well as the Holdings Note.

26                   The Debtors therefore believe that the Plan is feasible.

27 //

28 //

1           **(b) Nonconsensual Confirmation under Section 1129(b) of the Bankruptcy Code.**

2           Although Section 1129(a)(8) of the Bankruptcy Code requires that a plan of reorganization  
3 be accepted by each class that is impaired by such plan, Section 1129(b) of the Bankruptcy Code  
4 provides that the Bankruptcy Court may still confirm the Plan at the request of the Debtors if all  
5 the requirements of Section 1129(a) other than Section 1129(a)(8) are met and if, with respect to  
6 each Class of Claims or Interests that is impaired under the Plan and has not voted to accept the  
7 Plan, the Plan “does not discriminate unfairly” and is “fair and equitable.” A plan confirmed on  
8 the basis of this provision is commonly referred to as a “cramdown” plan. A cramdown plan is  
9 only available pursuant to Section 1129(a)(10) of the Bankruptcy Code if at least one impaired  
10 class of claims accepts the plan.

11           In this case, the Debtors will not attempt to “cramdown” the Plan if it is not accepted by  
12 Class 4. The Debtors believe that there are no holders of Class 5-B Interests, and therefore, the  
13 Debtors will not attempt to obtain acceptances of the Plan from this Class and will “cramdown”  
14 the Plan with regard to this Class. The Debtors are certain that the holders of Class 5-D Interests  
15 will accept the Plan. Thus, further discussion of the cramdown requirements are not necessary.

16           **(c) Injunctions.**

17           Section 524(g) of the Bankruptcy Code authorizes the Bankruptcy Court to enjoin Entities  
18 from taking action to collect, recover or receive payment or recovery with respect to any Claim or  
19 Demand that is to be paid in whole or in part by a trust created by a plan of reorganization that  
20 satisfies the requirements of the Code. The injunction may also bar any action based on such  
21 Claims or Demands against the Debtors that is directed at third parties.

22           To obtain the injunction, a trust must be established that (i) assumes the Debtors’ Asbestos  
23 Related Claims, (ii) is funded in whole or in part by securities of one or more of the Debtors and  
24 with an obligation by such Debtors to make future payments, (iii) owns, or is entitled to own if  
25 specific contingencies occur, a majority of the voting shares of each Debtor or the parent  
26 corporation of each Debtor, and (iv) uses its assets or income to satisfy claims and demands.

27           As a requirement before issuing an injunction under section 524(g) of the Bankruptcy  
28 Code, the Bankruptcy Court must determine that (i) the Debtors are likely to be subject to

1 substantial Demands for payment arising out of the same or similar conduct or events that gave  
2 rise to the Asbestos Related Claims that are addressed by the injunction, (ii) the actual amounts,  
3 numbers and timing of such Demands cannot be determined, (iii) pursuit of such Demands outside  
4 the procedures prescribed by the Plan is likely to threaten the Plan's purpose to deal equitably with  
5 Claims and Demands, and (iv) the Trust will operate through mechanisms such as structural,  
6 periodic or supplemental payments, pro rata distributions, matrices or periodic reviews of  
7 estimates of the numbers and values of Claims and Demands, or other comparable mechanisms  
8 that provide reasonable assurance that the Trust will value, and be in a financial position to pay,  
9 Claims and Demands that involve similar Claims in substantially the same manner.

10       The Bankruptcy Court must also insure that the terms of any proposed section 524(g)  
11 injunction are set forth in the Plan and Disclosure Statement and that 75 percent of the Asbestos  
12 Related Claimants actually voting vote to approve the Plan. Moreover, the injunction will be valid  
13 and enforceable as to future claimants only if a legal representative is appointed to protect their  
14 rights in the proceedings and if the court determines that applying the injunction to future  
15 claimants in favor of the beneficiaries of the injunction would be fair and equitable with respect to  
16 the Persons that might subsequently assert such Demands, in light of the benefits provided, or to  
17 be provided, to the trust on behalf of the Debtors or a beneficiary of the third-party injunction.

18       The order confirming the Plan must be issued or affirmed by the United States District  
19 Court for the Central District of California, which has jurisdiction over the Reorganization Cases.  
20 After expiration of the time for appeal of the order, the injunction will become valid and  
21 enforceable.

22       The Debtors believe that they will be able to satisfy the requirements of section 524(g) of  
23 the Bankruptcy Code, so long as the requisite number of Asbestos Related Claimants vote in favor  
24 of the Plan.

25       Under the jurisdictional scheme applicable to bankruptcy courts, jurisdiction over  
26 bankruptcy cases and proceedings arising under the Bankruptcy Code or arising in or related to  
27 bankruptcy cases is vested in the United States District Courts. However, the District Courts may  
28

1 refer them to the bankruptcy judges of the district. In most districts, the District Court has entered  
2 a standing order referring all such matters to the bankruptcy judges.

3 In the Central District of California, the District Court has a standing order referring all  
4 bankruptcy cases to the Bankruptcy Court. Because section 524(g) requires, however, that any  
5 confirmation order containing a supplemental injunction must be issued or affirmed by the District  
6 Court, the bankruptcy judge can conduct the Confirmation Hearing and enter the Confirmation  
7 Order, but the section 524(g) injunctions will not be enforceable until the Confirmation Order is  
8 affirmed by a district judge.

9 Section 105(a) of the Bankruptcy Code provides that the court may issue any order,  
10 process or judgment necessary or appropriate to carry out provisions of the Bankruptcy Code. The  
11 Injunctions will issue under section 105(a) as supplemental and additional to the court's power  
12 under section 524(g).

13 **5.4 Conditions to Confirmation and Conditions for Effective Date.**

14 **(a) Conditions to Confirmation.**

15 Subject to the fact that any of the following conditions may be waived, in writing, by all of  
16 the Plan Proponents, Confirmation of the Plan shall not occur unless:

17 (1) the Bankruptcy Court shall make such findings, determinations and orders,  
18 among others, in substantially the following form:

19 (i) the Channeling Injunction, the Supplemental Injunction and the  
20 Asbestos Insurance Company Injunction are to be implemented in connection with the Trust;

21 (ii) as of the Thorpe Petition Date, Thorpe had been named as a  
22 defendant in personal injury or wrongful death actions seeking recovery for damages allegedly  
23 caused by the presence of, or exposure to, asbestos or asbestos-containing products or operations  
24 and as of the Other Debtors Petition Date, each of Dissolved Thorpe, Technologies and Holdings  
25 had been named as a defendant in personal injury or wrongful death actions seeking recovery for  
26 damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing  
27 products or operations;

28

1 (iii) the Trust shall be funded by whole or in part by the securities of one  
2 or more of the Debtors and the obligation of one or more of such Debtors to make future  
3 payments;

4 (iv) the Trust, upon the Effective Date, shall assume the liabilities of  
5 each of the Debtors with respect to Asbestos Related Claims;

6 (v) the Trust, on the Effective Date, will own all of the voting shares of  
7 Dissolved Thorpe and, upon the occurrence of specified contingencies, shall be entitled to own 51  
8 percent of the shares of Holdings;

9 (vi) the Trust is to use its assets and income to pay Asbestos Related  
10 Claims and to perform any and all other Trust duties and obligations as set forth in the Plan and in  
11 the Trust Agreement;

12 (vii) each of the Debtors is likely to be subject to substantial future  
13 Demands for payment arising out of the same or similar conduct or events that gave rise to the  
14 Asbestos Related Claims, which are addressed by the Injunctions;

15 (viii) the actual amounts, numbers and timing of future Demands cannot  
16 be determined;

17 (ix) pursuit of Demands outside the procedures prescribed by the Plan is  
18 likely to threaten the Plan's purpose to deal equitably with Claims and future Demands;

19 (x) the terms of the Injunctions, including any provisions barring  
20 actions against third parties, are set out in the Plan and in the Disclosure Statement;

21 (xi) pursuant to court orders or otherwise, the Trust shall operate through  
22 mechanisms such as structured, periodic or supplemental payments, pro rata distributions,  
23 matrices or periodic review of estimates of the numbers and values of Asbestos Related Claims  
24 and Demands or other comparable mechanisms, that provide reasonable assurance that the Trust  
25 shall value, and be in a financial position to pay, Asbestos Related Claims and Demands that  
26 involve similar Asbestos Related Claims and Demands in substantially the same manner;

27 (xii) the Futures Representative was appointed by the Bankruptcy Court  
28 as part of the proceedings leading to the issuance of the Injunctions for the purpose of protecting

1 the rights of persons who might assert Demands of the kind described as Asbestos Related Claims,  
2 which are to be paid by the Trust subsequent to Confirmation of the Plan and which are addressed  
3 in the Injunctions;

4 (xiii) in light of the benefits provided, or to be provided, to the Trust on  
5 behalf of each Released Party, the Channeling Injunction is fair and equitable with respect to the  
6 persons who might subsequently assert Demands against any Released Party;

7 (xiv) in light of the benefits provided, or to be provided, to the Trust on  
8 behalf of each Settling Asbestos Insurance Company, the Supplemental Injunction is fair and  
9 equitable with respect to the persons who might subsequently assert Demands against any Settling  
10 Asbestos Insurance Company;

11 (xv) in relation to the grant of the Injunctions, there are appropriately  
12 unusual circumstances relevant to the Bankruptcy Court's exercise of power under Bankruptcy  
13 Code section 105(a), namely, (i) there is an identity of interests between the Debtors and the  
14 Settling Asbestos Insurance Companies, such that any suit against the latter is, in essence, a suit  
15 against the Debtors or could deplete the assets of the Estate; (ii) the Settling Asbestos Insurance  
16 Companies have contributed substantial assets to the reorganization; (iii) the release of, and  
17 injunction in respect of, the Settling Asbestos Insurance Companies are essential to reorganization,  
18 namely, the reorganization hinges on the Debtors being free from indirect suits against the Settling  
19 Asbestos Insurance Companies (who would not otherwise have made the contributions made to  
20 the Trust and, thus, the Estate); (iv) the impacted Asbestos Related Claimants have voted by a  
21 requisite majority to accept the Plan; and (v) the Plan provides an opportunity for those Asbestos  
22 Related Claimants who choose to submit to non-binding arbitration after rejecting the Trust's  
23 proposed liquidation of their Claims and then choose to resort to the tort system to liquidate their  
24 Claims after not being satisfied by the arbitrator's award, with the liquidated amount provided by  
25 the tort system to be paid to the extent, in the manner and subject to the caps and collars provided  
26 for in the TDP or, alternatively, choose to accept a reduced partial payment from the Trust and  
27 liquidate their Claims through the tort system to be paid to the extent, in the manner and subject to  
28 the caps and collars provided for in the TDP;



1 (xvi) The Confirmation Order shall contain a release of the Nationwide  
2 Parties and the Federal Parties as set forth in the Plan ; and

3 (xvii) the Plan otherwise complies with section 524(g) of the Bankruptcy  
4 Code; or

5 (2) the Bankruptcy Court shall issue a Confirmation Order which contains:

6 (i) a Channeling Injunction, a Supplemental Injunction and an Asbestos  
7 Insurance Company Injunction pursuant to Bankruptcy Code section 524(g) in favor of the Federal  
8 Parties substantially in the same terms as Section 9.3 of the Plan; or

9 (ii) a Channeling Injunction, a Supplemental Injunction and an Asbestos  
10 Insurance Company Injunction pursuant to Bankruptcy Code section 105 in favor of the Federal  
11 Parties substantially in the same terms as Section 9.3 of the Plan; or

12 (iii) a provision that the Debtors' waiver (which waiver shall be executed  
13 by the Debtors) of all contractual, extra contractual and other claims that they may have against  
14 the Federal Parties, which waiver shall include a waiver of all claims to be released in accordance  
15 with the Federal Settlement, is binding upon the Trust.

16 (b) **Conditions to Effectiveness.**

17 Notwithstanding any other provision of the Plan or the Confirmation Order, the Effective  
18 Date of the Plan shall not occur unless and until each of the following conditions has been  
19 satisfied or, with respect to subsections (1), (2) and (4) below, waived, in writing, by each of the  
20 Plan Proponents.

21 (1) **Confirmation Order.**

22 The Confirmation Order shall have been issued or affirmed by the District Court, and the  
23 Confirmation Order is not stayed pending appeal.

24 (2) **Plan Documents.**

25 The Plan Documents necessary or appropriate to implement the Plan shall have been  
26 executed, delivered and, where applicable, filed with the appropriate Governmental Unit.

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1                   **(3) United States Trustee’s Fees.**

2                   The fees of the United States Trustee then owing by the Debtors shall have been paid in  
3 full.

4                   **(4) Qualified Settlement Fund.**

5                   The Debtors shall have obtained an opinion of counsel that the Trust will be a “qualified  
6 settlement fund” within the meaning of the Treasury Regulations issued pursuant to  
7 section 468(B) of the IRC, deemed satisfactory to each of the Plan Proponents.

8 **5.5 Effect of Confirmation.**

9                   Upon the Bankruptcy Court’s entry of the Confirmation Order (and the affirmation thereof  
10 by the District Court as required by section 524(g) of the Bankruptcy Code, but, only to the extent  
11 that the Bankruptcy Court grants relief pursuant to section 524(g)), and assuming the Effective  
12 Date occurs, the Plan will be binding upon the Debtors, all holders of Claims and Interests and all  
13 other parties in interest, regardless of whether they have accepted the Plan.

14 **5.6 Post-Confirmation Management**

15                   Following confirmation, John Allen and Thomas Carpenter will continue as the directors  
16 and officers of Thorpe, Technologies and Holdings. John Allen will continue as a director of  
17 Dissolved Thorpe.

18                   John Allen received his AB, BE and MBA degrees from Dartmouth College. He is a  
19 Registered Professional Engineer and holds a California General Engineering Contracting License.  
20 He has been associated with the Debtors since 1970 and has worked as a Project Manager, Sales  
21 Engineer, and Vice President of Dissolved Thorpe as well as President of Technologies and Chief  
22 Executive Officer and Chairman of the Board of Holdings. Mr. Allen also owns a 51% interest in  
23 Holdings.

24                   Thomas Carpenter received his BA from Brigham Young University. He is currently employed  
25 by Technologies as its Controller, Treasurer and serves as its Secretary/Treasurer. He previously  
26 was employed by the State of California Board of Equalization as a Sales Tax Auditor, by Diehl  
27 Evans as a Senior Auditor, by Cummins Diesel Engines as an Internal Auditor and by Trust Joist  
28 as Controller. Mr. Carpenter owns a 22% interest in Holdings.

1 **5.7 Closing And Reopening Of Reorganization Cases.**

2 The Reorganization Cases may be closed notwithstanding the continuing reservation of  
3 jurisdiction over certain issues arising under the Trust. Upon closure of the Reorganization Cases,  
4 all quarterly and annual reports that are to be filed with the Bankruptcy Court under the terms of  
5 the Trust Agreement shall instead be filed with the Office of the United States Trustee.

6  
7 **SECTION 6.**

8 **TRUST AND ASBESTOS RELATED CLAIMS RESOLUTION MATTERS**

9 THE FOLLOWING IS A SUMMARY OF CERTAIN SIGNIFICANT FEATURES OF  
10 THE TRUST. THIS SUMMARY IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO  
11 THE COMPLETE TEXT OF THE TRUST DOCUMENTS AND THE PLAN.

12 **6.1 Establishment and Purpose of the Trust.**

13 On the Effective Date, the Trust shall be established in accordance with the Plan  
14 Documents. Prior to the Effective Date, the Trustees shall decide on the principal office and the  
15 jurisdiction of organization for the Trust. The Trust shall be a “qualified settlement fund” within  
16 the meaning of the Treasury Regulations issued pursuant to section 468B of the IRC. The purpose  
17 of the Trust shall be, among other things, to (a) liquidate, resolve, pay, and satisfy all Asbestos  
18 Related Claims in accordance with the Plan, the TDP and the Confirmation Order; (b) preserve,  
19 hold, manage and maximize the Trust Assets for use in paying and satisfying Allowed Asbestos  
20 Related Claims; (c) prosecute, settle and manage the disposition of the Asbestos In-Place  
21 Insurance Coverage; and (d) prosecute, settle and manage Asbestos Insurance Actions. The TDP  
22 shall provide for the liquidation and payment or the outright rejection or denial of Asbestos  
23 Related Claims in accordance with the terms of the Plan Documents.

24 Asbestos Insurance Claimants claim to have direct claims as to some of the Debtors or  
25 derivative claims as to others of the Debtors. A single Trust will minimize the expenses of Trust  
26 administration and make certain that similarly situated Asbestos Related Claimants will be treated  
27 in a substantially similar manner. The single Trust structure has been used in other confirmed and  
28

1 court approved asbestos related bankruptcies. The Plan Proponents believe that a single Trust is in  
2 the best interests of present and future Asbestos Related Claimants.

3 **6.2 Receipt of Trust Assets.**

4 On the Effective Date, all Trust Assets shall be transferred to, vested in and assumed by  
5 the Trust; provided, however, that to the extent that certain Trust Assets, because of their nature or  
6 because they will accrue subsequent to the Effective Date, cannot be transferred to, vested in and  
7 assumed by the Trust on the Effective Date, such Trust Assets shall be transferred to, vested in and  
8 assumed by the Trust as soon as practicable after the Effective Date.

9 **6.3 Discharge of Liabilities to Holders of Asbestos Related Claims.**

10 Except as provided in the Plan Documents and Confirmation Order, the transfer to, vesting  
11 in, and assumption by the Trust of the Trust Assets as contemplated by the Plan, among other  
12 things, shall discharge Holdings and Technologies, enjoin further proceedings against the Debtors  
13 and release the Released Parties other than the Debtors from and in respect of all Asbestos Related  
14 Claims. The Trust shall assume the Debtors' liabilities for all Asbestos Related Claims.

15 **6.4 Excess Trust Assets.**

16 To the extent there are any Trust Assets remaining after the payment, in full, of all  
17 Allowed Asbestos Related Claims and the payment, in full, of all Trust Expenses, such excess  
18 Trust Assets shall be transferred, in accordance with Section 7.2(b) of the Trust Agreement, to  
19 such charitable purposes as the Trustees, in their reasonable discretion, shall determine; provided,  
20 however, that such charitable purposes, if practicable, shall be related to the treatment of, research  
21 regarding or contributions to another trust responsible for the payment of claims related to  
22 asbestos-caused disorders.

23 **6.5 Trust Expenses.**

24 The Trust shall pay all Trust Expenses and Professional Fees from the Trust Assets. None  
25 of the Released Parties shall have any obligation to pay any Trust Expenses or Professional Fees.

26 **6.6 Selection of the Initial Trustees.**

27 The three initial Trustees of the Trust shall be selected by the Committee and the Futures  
28 Representative (with the Futures Representative at all times having veto power with respect to any

1 proposed initial Trustee) on or before the Effective Date. If the Committee and the Futures  
2 Representative cannot agree on the three initial Trustees of the Trust, the Bankruptcy Court shall  
3 resolve any dispute. All successor Trustees shall be appointed in accordance with the terms of the  
4 Trust Agreement.

5 **6.7 The Futures Representative.**

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

10 **6.8 Trust Advisory Committee.**

11 The five-member TAC shall have the functions and rights provided in the Trust  
12 Documents. On or before the Confirmation Date, the TAC shall be selected by the Committee and  
13 appointed to serve from and after the Effective Date pursuant to the terms of the Plan Documents  
14 and the Confirmation Order.

15 **6.9 Trust Obligations to Assist Defense of the Injunctions.**

16 The Trust and, to the extent necessary for the Trust to act, the Trustees, shall cooperate as  
17 set forth in the Plan with and assist any Released Party, at the request of any such Released Party,  
18 to resist and oppose any Entity claiming a right against any Released Party in violation of any of  
19 the Injunctions.

20 **6.10 Assumption of Liabilities by the Trust.**

21 Pursuant to Section 1.4 of the Trust Agreement, on the Effective Date, the Trustees on  
22 behalf of the Trust will expressly assume all liability arising from or related to Asbestos Related  
23 Claims and all other obligations owed by the Debtors or their respective successors under  
24 applicable law or under any agreement related to any Asbestos Related Claim.

25 **6.11 Indemnification of the Debtors by the Trust.**

26 Each Debtor, its successors in interest and its Affiliates shall be entitled to indemnification  
27 from the Trust for any expenses, costs and fees (including attorneys' fees and costs but excluding  
28 any such expenses, costs and fees incurred prior to that Debtor's respective Petition Date),

1 judgments, settlements or other liabilities arising from or incurred in connection with any action  
2 related to an Asbestos Related Claim, including, but not limited to, indemnification or contribution  
3 for Asbestos Related Claims prosecuted against the Debtor.

4 **6.12 Assignment of Direct Actions to the Trust.**

5 Each holder of an Asbestos Related Claim shall be deemed to have assigned to the Trust,  
6 to the extent possible without diminishing or impairing any part of such Direct Actions, and the  
7 Trust shall be deemed such holder's sole attorney in fact, as may be appropriate, to prosecute, at  
8 the Trust's sole discretion, any Direct Action, other than against a Released Party. If any part of a  
9 Direct Action cannot be assigned to the Trust without diminishing or impairing rights against  
10 insurers, the holder of such a Direct Action will retain whatever rights are necessary to preserve  
11 Direct Actions against an insurer that is not a Settling Asbestos Insurance Company and agrees to  
12 cooperate with the Trust as such holder's sole attorney in fact to prosecute in the Trust's sole  
13 discretion, any Direct Action, other than against a Released Party. In the event that the Trust  
14 prosecutes a Direct Action as attorney in fact on behalf of a holder of an Asbestos Related Claim,  
15 any proceeds of such Direct Action will be assigned to the Trust. The Trust may reassign such  
16 Direct Action or the proceeds of such Direct Action, other than any Direct Action against a  
17 Released Party, to such holder at any time so long as (a) the Trustees, with the consent of the  
18 Futures Representative, determine in their reasonable discretion that reassignment of such Direct  
19 Action or proceeds provides a substantial benefit to the Trust as a whole, and not merely a benefit  
20 to the holder of the Asbestos Related Claim, (b) the retention of all or part of the benefit by the  
21 holder of the Asbestos Related Claim of any settlement or judgment arising from the Direct Action  
22 is subsequently approved by the Bankruptcy Court as reasonable and appropriate in light of all of  
23 the circumstances, including the benefit actually received by the Trust as a result of the activities  
24 of the holder of the Asbestos Related Claim in the Direct Action, and (c) the Trust retains any  
25 residual benefits from such Direct Action.

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1 **6.13 Distributions pursuant to the TDP.**

2 **(a) Trust Goals.**

3 The goal of the Trust is to pay all claimants the same percentage of their liquidated  
4 Asbestos Related Claims, whether the Asbestos Related Claims were liquidated before the  
5 Effective Date or will be liquidated after the Effective Date. The TDP, attached to the Plan as  
6 Exhibit 4, furthers that goal by setting forth procedures for processing and paying claims generally  
7 on an impartial, first-in-first-out (“FIFO”) basis, with the intention of paying all claimants over  
8 time as equivalent a share as possible of the value of their claims based on historical values for  
9 substantially similar claims in the tort system. To this end, the TDP establishes for unliquidated  
10 claims in the Case Valuation Matrix (the “Matrix”), attached to the Plan as Exhibit 5 a schedule of  
11 five asbestos-related diseases (the “Compensable Diseases”), which have presumptive medical and  
12 exposure requirements (the “Medical/Exposure Criteria”), criteria for establishing liquidated  
13 values (the “Matrix Values”), anticipated average values (the “Average Values”), and caps on  
14 liquidated values (“Maximum Values”). The Compensable Diseases, Medical/Exposure Criteria,  
15 Matrix Values, Average Values and Maximum Values, which are set forth in the Matrix, have all  
16 been selected and derived with the intention of achieving a fair allocation of the Trust funds as  
17 among claimants suffering from different disease processes in light of the best available  
18 information, considering the settlement history of the Debtors and the rights claimants would have  
19 in the tort system absent the bankruptcy.

20 These disease criteria have been used in another confirmed and court approved asbestos  
21 related bankruptcy. *In re Western Asbestos, 2004 WL 1944792 (N.D.Cal.)*. They generally reflect  
22 the disease categories and criteria that exist in the tort system as asbestos cases that have been  
23 settled and tried in California. Because the asbestos victims have direct claims against some of the  
24 debtors and derivative claims against other debtors arising from the same exposure, using the same  
25 disease criteria and values for all claimants assures more evenhanded treatment among claimants  
26 past and future. The tort system results do not reflect material differences between direct and  
27 derivative claims for the same exposures. There is some historical data for settlements with  
28 Thorpe. Dr. Peterson has used that data in his estimation of aggregate liability. (See Section 7.2

1 below). Because the historical settlement data does not reflect current settlement values, these  
2 values had to be adjusted by Plan Proponents based upon current trends in settlements for  
3 refractory defendants. Thorpe filed for Bankruptcy in 2002 and the only settlements that exist pre-  
4 date the filing. The pre-filing settlements were adjusted by settlement values and trends for other  
5 defendants that occurred in 2002 and thereafter.

6 The Plan Proponents reserve the right to change the terms of the TDP and the Matrix at  
7 anytime prior to the conclusion of the Confirmation Hearing. In connection with the Confirmation  
8 Hearing, to the extent there are any modifications, the Plan Proponents will file with the Court the  
9 modified TDP and/or modified Matrix and will request that the Court approve such documents as  
10 part of the plan confirmation process. A copy of the current version of the TDP is attached as  
11 Exhibit 4 to the Plan. The Trust Agreement is attached as Exhibit 2 to the Plan. A copy of the  
12 current version of the Matrix is attached to the Plan as Exhibit 5. In addition to the TDP and  
13 Matrix, the Plan Proponents reserve a similar right with respect to each of the Plan Documents.

14 The Matrix was designed to yield average values for current and future cases that matched  
15 the historical averages for a given disease in the jurisdictions in which the Debtors historically had  
16 been sued. The TDP also provides mechanisms for the treatment and payment of Pre-  
17 Confirmation Liquidated Claims (defined in Section 4.7 above). Claims that have not been  
18 liquidated pursuant to the Pre-Confirmation Claims Process will be valued in accordance with the  
19 Matrix Values of the TDP. The Average Values contained in the matrices of the TDP range in  
20 value from \$150,000 to \$3,000. All claims must be liquidated before they can be paid. The Plan  
21 contemplates payments to holders of Pre-Confirmation Liquidated Claims shortly after the  
22 Effective Date. Unliquidated Claims cannot be paid until after the Trust established by the Plan  
23 has determined a liquidated value for those claims. Some of the Insurers assert that the TDP may  
24 violate the insurers' contractual right to investigate claims and participate in or control the defense  
25 of claims, and, as a result, these insurers assert that the Insurers may have no obligation to pay  
26 claims that are liquidated pursuant to the TDP.

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1           **(b) Trust Claim Liquidation Procedures.**

2           Claims not liquidated prior to the Effective Date cannot be paid until after the Trust  
3 established by the Plan has determined a liquidated value for those claims. A Trust claim form  
4 will be created with the consent of the TAC and Futures Representative. Section VI of the TDP  
5 outlines the process by which the Trust claim form materials will be created and establishes  
6 minimum requirements for the claim form to ensure conformity with the manner and requirements  
7 used to liquidate Pre-Confirmation Liquidated Claims. The Trust claim form will require certain  
8 information including: the information contained in standard interrogatory answers to establish  
9 personal data, smoking history and occupational history; medical reports and/or death certificates  
10 to establish diagnosis of the asbestos related disease; economic reports to establish the level of  
11 wage and pension loss; medical bills; the face page of the complaint or equivalent proof of  
12 commencement of litigation; and social security records to verify work history. All claimants the  
13 Trust is aware of as of the Effective Date who allege that they have an Asbestos Related Claim or  
14 Demand against the Debtors will be sent such a claim form by the Trust and will be invited to  
15 complete the claim form and submit it to the Trust.

16           The Trust will order all submitted unliquidated Trust claims for processing purposes on a  
17 first-in-first-out (i.e., FIFO) basis except as otherwise provided in the TDP (the “FIFO Processing  
18 Queue”). For all claims filed on or before the date six months after the Effective Date (the “Initial  
19 Claims Filing Date”), a claimant’s position in the FIFO Processing Queue shall be determined as  
20 of the earlier of: (i) the date prior to the Thorpe Petition Date that the specific claim was either  
21 served or filed against Thorpe in a court in which Thorpe could properly have been sued; (ii) the  
22 date prior to the Thorpe Petition Date that a claim was filed or served against another defendant in  
23 the tort system if at the time the claim was subject to a tolling agreement with Thorpe; (iii) the  
24 date after the Thorpe Petition Date but before the Effective Date that the claim was filed or served  
25 against another defendant in a court in which Thorpe could properly have been sued; or (iv) the  
26 date after the Effective Date but on or before the Initial Claims Filing Date that the claim was filed  
27 with the Trust. Following the Initial Claims Filing Date, the claimant’s position in the FIFO  
28 Processing Queue shall be determined by the date the claim was served or filed with the Trust. For

1 all claims filed on the same date, the claimant's position in the FIFO Processing Queue shall be  
2 determined by the date of the diagnosis of the asbestos-related disease.

3 The information and documentation required to be provided in the Trust claim form will  
4 permit the Trust to determine whether a submitted claim meets the presumptive Medical/Exposure  
5 Criteria required under the Matrix. The Trust shall liquidate all claims submitted to the Trust that  
6 meet the presumptive Medical/Exposure Criteria in accordance with the Matrix, and shall reject all  
7 claims that do not meet such requirements, subject to the Trust's Individual Review Process  
8 described in the Matrix.

9 As set forth in the prior section of this Disclosure Statement, the Plan Proponents reserve  
10 the right to change the terms of the TDP and the Matrix at any time prior to the conclusion of the  
11 Confirmation Hearing. [See, Disclosure Statement, paragraph 6.13(a)] One of the changes that  
12 may be made to the Matrix by the Plan Proponents is to lessen the exposure criteria contained in  
13 the present draft of the Matrix attached to the Plan. Paragraph VII(d) of the Matrix sets forth the  
14 Minimum Exposure Criteria. The Plan Proponents may change the Exposure Criteria as follows:

15 (a) an Injured Person filing a claim as a Mesothelioma case must establish that the Injured  
16 Person's asbestos exposure at approved Thorpe sites totals at least one month or at least 10% of  
17 the Injured Person's total asbestos exposure, as opposed to the three months requirement in the  
18 existing Matrix; and, (b) an Injured Person filing any other Compensable Disease category must  
19 establish that the Injured Person's asbestos exposure at approved Thorpe sites totals at least three  
20 months or at least 25% of the Injured Person's total asbestos exposure, as opposed to the one year  
21 requirement in the existing Matrix.

22 The Matrix is designed to produce an average allowed value for claims with each disease  
23 in each state that closely approximates the historic average values of claims against the Debtors of  
24 year 2002 (*i.e.*, the year Thorpe filed its bankruptcy petition), which Average Values are reported  
25 in the table below:

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Settlement Average by Disease	
Mesothelioma	\$150,000
Lung Cancer	\$40,000
Other Cancer	\$25,000
Pleural Disease	\$10,000
Asbestosis	\$3,000

These Average Values are derived from Thorpe's actual settlements, primarily among settlements reached prior to 2002. Because the values of asbestos settlements have increased markedly generally among asbestos defendants since 2002, Thorpe's pre-2002 settlements have been adjusted to reflect this increase. Thorpe's historic averages were increased by the rate at which settlements among other refractory contractors increased from the period prior to the 2002 period. The resulting Average Values, which are reported on the table above, are the expected amounts that Thorpe would have paid on average in 2002 to settle the various asbestos disease claims.

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

All unresolved disputes over a claimant's medical condition, exposure history and/or the liquidated value of the claim shall be subject to binding or non-binding arbitration, at the election of the claimant, under the Arbitration Rules. Disputes with the Trust that cannot be resolved by non-binding arbitration may enter the tort system as provided in Section 5.10 and 7.3 of the TDP. However, if and when such a claimant obtains a judgment in the tort system, the judgment will be payable (subject to the Payment Percentage, Maximum Annual Payment and Claims Payment

1 Ratio provisions set forth below) as provided in Section 7.4 of the TDP. Similarly, a holder of an  
2 Asbestos Related Claim may pursue such claim in the tort system pursuant to Section 5.11 of the  
3 TDP without first having pursued non-binding arbitration, with such holder to be paid to the  
4 extent, in the manner and subject to the caps and collars provided for in the TDP.

5 **(c) Trust Application of the Payment Percentage.**

6 After the liquidated value of a Trust Claim is determined, the claimant will ultimately  
7 receive a pro-rata share of that value based on a Payment Percentage calculated as described in  
8 Section 4.2 of the TDP. The estimated Initial Payment Percentage is calculated taking into  
9 account the assets available to the Trust as a result of the Nationwide Settlement and the Federal  
10 Settlement less estimates for the cost of Trust administration, claims administration and  
11 contingencies as well as assumptions about interest rates and the rate of inflation, such that similar  
12 claims are treated in substantially the same manner. The Initial Payment Percentage will be set  
13 prior to the Confirmation Date by agreement between the Committee and the Futures  
14 Representative, and if no agreement is reached, by the Bankruptcy Court. Any determination by  
15 the Bankruptcy Court will be on a motion by the Committee, the Futures Representative or the  
16 Debtors, to be heard either before or concurrent with the Confirmation Hearing. The Payment  
17 Percentage may be adjusted upwards or downwards from time to time by the Trust with the  
18 consent of the TAC and the Futures Representative to reflect then current estimates of the Trust's  
19 assets and its liabilities, as well as the estimated value of then pending and future claims. The  
20 Payment Percentage will be reviewed in the first year of the Trust to ascertain whether the Initial  
21 Payment Percentage is still accurate. Thereafter, no less frequently than every three years, or  
22 sooner if requested by the TAC or the Futures Representative, the then current Payment  
23 Percentage will be reviewed to ascertain whether in light of current information any adjustment  
24 should be made. However, any adjustment to the Payment Percentage shall be made only  
25 pursuant to Section 4.2 of the TDP. If the Payment Percentage is increased over time, claimants  
26 who have previously been paid by the Trust will receive a proportional additional payment unless  
27 the Trust with consent of the TAC and the Futures Representative concludes that the amount is so  
28 modest and the administrative costs and burdens are so great in comparison to the benefits to

1 claimants that such additional payments shall be omitted or deferred. A claimant may only  
2 participate in such additional payments which have been approved pursuant to Section 4.2 of the  
3 TDP on or before the later of the following dates: (i) the fifteenth anniversary of the Trust's first  
4 payment to the claimant; or (ii) the tenth anniversary of the resolution of the Coverage Litigation.  
5 If it becomes relevant, the date of resolution of the Coverage Litigation will be determined by the  
6 Trust with the consent of the Futures Representative.

7 As set forth above, the Initial Payment Percentage will be determined at the time of the  
8 Confirmation Hearing either by agreement of the Committee and the Futures Representative or by  
9 a Court order if those parties cannot agree. An estimate at this time of the actual Initial Payment  
10 Percentage is difficult as it is not possible to know now the exact amount of assets available for  
11 distribution on the Effective Date of the Plan. Also, it is not possible now to calculate the total  
12 amount of asbestos related liabilities, an amount that eventually will be determined by the court  
13 after expert testimony. [See Section 7.2 of this Disclosure Statement]

14 At this time it is known that the remaining assets from the Federal Settlement and the  
15 Nationwide Settlement will be available for distribution. However, from these assets must be  
16 deducted further costs of administration as well as certain amounts needed to pay to the Debtors as  
17 part of the distribution under the Thorpe Business Loss Security. As set forth elsewhere in this  
18 Disclosure Statement, various other insurers have been sued. [See Section 2.3 of this Disclosure  
19 Statement] It is impossible to determine if further settlements will be entered prior to the  
20 Confirmation Hearing or the Effective Date of the Plan, which would increase amounts available  
21 for distribution. As the amounts available for distribution increase the Initial Payment Percentage  
22 should increase as more assets will be available for distribution on the Effective Date of the Plan.

23 At this time it is also unknown what the Court will determine as the total amount of  
24 asbestos related liabilities of the Debtors. It is possible that this number could be as high as \$500  
25 million. [See Section 7.2] However, it is not yet known what final number the Committee's  
26 expert, Dr. Peterson, will determine as his opinion of the final amount of the asbestos liabilities of  
27 the Debtors. Furthermore, it is not known if there will be any objection to that final determination  
28 of Dr. Peterson, and what amount the Court will determine is the number of such liabilities. As

1 the finding of the amount of the total asbestos liabilities increases, the Initial Payment Percentage  
2 should decrease to take into consideration a reserve for all claims.

3 While it is impossible to determine at this time the Initial Payment Percentage, under  
4 certain analysis it is possible that the Initial Payment Percentage will be only 1%. But, if certain  
5 things occur, as discussed herein, the Initial Payment Percentage could be significantly higher.

6 **(d) Trust's Determination of the Maximum Annual Payment.**

7 The Trust shall estimate or model the amount of cash flow anticipated to be necessary over  
8 its entire life to ensure that funds will be available to treat all present and future claimants as  
9 similarly as possible. In each year, the Trust will be empowered to pay out all of the interest  
10 earned during the year, together with a portion of its principal, calculated so that the application of  
11 Trust Assets over its life shall correspond with the needs created by the anticipated flow of claims  
12 (the "Maximum Annual Payment"). The Trust's distributions to claimants for that year shall not  
13 exceed the Maximum Annual Payment determined for that year; provided, however, that the  
14 Maximum Annual Payment limitation shall not apply to any Pre-Confirmation Liquidated Claims.

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

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

25 **(e) Trust Claims Payment Ratio.**

26 Based upon the Debtors' claim settlement history and analysis of present and future  
27 claims, a Claims Payment Ratio has been determined, relating to the category of disease claim  
28 against the Debtors (the "Disease Categories").

1 The Disease Category Claim Payment Ratio will be set prior to the Confirmation Date by  
2 the Committee and the Futures Representative at a certain percentage (the “Category A  
3 Percentage”) for “Category A” claims, which consist of Trust Claims involving malignant claims  
4 that were unliquidated as of the Confirmation Date, and a certain percentage for “Category B”  
5 claims (the “Category B Percentage”), which are Trust Claims involving non-malignant claims  
6 that were similarly unliquidated as of the Confirmation Date. If the Committee and the Futures  
7 Representative cannot agree on such ratios, the matter will be decided by the Bankruptcy Judge.  
8 In each year, after the determination of the Maximum Annual Payment, the Category A  
9 Percentage of that amount will be available to pay liquidated Category A claims and the Category  
10 B Percentage will be available to pay liquidated Category B claims that have been liquidated since  
11 the Confirmation Date.

12 In the event there are insufficient funds in any year to pay the liquidated claims against the  
13 Debtors within either or both of the Disease Categories, the available funds within the particular  
14 Disease Category shall be paid to the maximum extent to claimants in the particular Disease  
15 Category based on their place in the FIFO Payment Queue. Claims for which there are  
16 insufficient funds will be carried to the next year where they will be placed at the head of the FIFO  
17 Payment Queue. If there are excess funds in either or both Disease Categories, because there was  
18 an insufficient amount of liquidated claims to exhaust the respective Maximum Annual Payment  
19 amount for that Disease Category, then the excess funds for either or both Disease Categories will  
20 be rolled over and remain dedicated to the respective Disease Category to which they were  
21 originally allocated.

22 The Disease Category Claims Payment Ratio and its rollover provision shall be continued  
23 absent circumstances, such as a significant change in law or medicine, necessitating amendment to  
24 avoid a manifest injustice. The accumulation, rollover and subsequent delay of claims resulting  
25 from the application of the Claims Payment Ratios, shall not, in and of itself, constitute such  
26 circumstances. Nor may an increase in the numbers of Disease Category B claims beyond those  
27 predicted or expected be considered as a factor in deciding whether to reduce the percentage  
28 allocated to Disease Category A. In considering whether to make any amendments to the Disease

1 Category Claims Payment Ratio and/or its rollover provisions, the Trustees are directed by the  
2 TDP also to consider the reasons for which the Disease Category Claims Payment Ratio and its  
3 rollover provisions were adopted, the settlement history that gave rise to its calculation, and the  
4 foreseeability or lack of foreseeability of the reasons why there would be any need to make an  
5 amendment. In that regard, the Trustees are directed by the TDP also to keep in mind the interplay  
6 between the Payment Percentage and the Disease Category Claims Payment Ratios as it affects the  
7 net cash actually paid to claimants. In any event, no amendment to the Disease Category Claims  
8 Payment Ratio may be made without the consent of the TAC and the Futures Representative  
9 pursuant to the consent process set forth in Section 2.2(f) of the Trust Agreement. However, the  
10 Trustees may offer the option of a reduced payment percentage to either Disease Category in  
11 return for prompter payment (the “Reduced Payment Option”), after first obtaining the consent of  
12 the TAC and Futures Representative.

13 **(f) Payment of Pre-Confirmation Liquidated Claims.**

14 As soon as practicable after the Effective Date, the Trust shall make an initial distribution  
15 on all Trust Claims that were liquidated by (i) a settlement agreement entered into prior to the  
16 Petition Date for the particular claim or (ii) pursuant to the Pre-Confirmation Claims Liquidation  
17 Process (collectively, the “Pre-Confirmation Liquidated Claims”). The liquidated value of a Pre-  
18 Confirmation Liquidated Claim shall be the amount agreed to in the binding settlement agreement,  
19 without interest, or the amount at which the claim is liquidated pursuant to the Pre-Confirmation  
20 Claims Liquidation Process, as applicable. Moreover, to the extent that a claim is the subject of a  
21 written settlement agreement executed prior to the Petition Date, the holder of that claim shall  
22 have the option of (i) having the liquidated value be the amount agreed to in the binding settlement  
23 agreement, without interest, or (ii) having his or her claim re-liquidated pursuant to the Pre-  
24 Confirmation Liquidated Process and having the liquidated value be the amount at which the  
25 claim is liquidated pursuant to the Pre-Confirmation Liquidated Process. Notwithstanding  
26 anything to the contrary pursuant to Section 7.2 of the TDP, the liquidation value of a Pre-  
27 Confirmation Liquidated Claim shall not include any punitive or exemplary damages.

28



1 Pre-Confirmation Liquidated Claims shall be processed and paid within 90 days of the  
2 Effective Date, if feasible, or as soon thereafter as possible. The amounts payable with respect to  
3 such claims shall not be subject to or taken into account in consideration of the Maximum Annual  
4 Payment or Disease Category Claims, but shall be subject to the Payment Percentage provisions  
5 set forth in Section 4.2 of the TDP.

6 **(g) Payment of Claims That Are Liquidated Post-Effective Date.**

7 The Plan's proposed claims procedures are intended to pay all anticipated Asbestos  
8 Related Claims (forecasted based upon historical claims filing data and projections and available  
9 scientific data, as more fully discussed in Section 7 below) in a timely manner-as such claims are  
10 filed with the Trust and thereafter liquidated.

11 The claims procedures proposed for the Trust are designed to provide equivalent treatment  
12 of all Asbestos Related Claims and Demands both with regard to the percent of their claims that  
13 are paid and the timing of their payments. The parties expect that the claims procedures will  
14 provide such equivalent treatment even if the Trust receives an unexpectedly large number of  
15 future claims.

16 The claims procedures apply the same pro rata payment process for all Asbestos Related  
17 Claims and Demands. Whether a claim was liquidated by application of the Matrix either before  
18 or after the Effective Date, the Trust's payment for every claimant will be determined by  
19 multiplying the allowed value of the claim times the Payment Percentage.

20 The parties have not yet agreed on the amount of the Initial Payment Percentage under the Plan.  
21 The Initial Payment Percentage will be agreed upon by the Committee and the Futures  
22 Representative at a time on or prior to the Confirmation Date. If they cannot agree on the Initial  
23 Payment Percentage, then the Bankruptcy Court will decide the dispute between them as to the  
24 amount of the Initial Payment Percentage. The Initial Payment Percentage will be determined by  
25 determining the percent of liquidated values that can be paid after taking into account the costs of  
26 Trust administration using the Trust's assets and the highest reasonable forecast of liabilities  
27 provided by the expert consultant to the Committee as reviewed by the expert consultant to the  
28

1 Futures Representative. The expert for the Committee is Dr. Mark Peterson and the expert for the  
2 Futures Representative is Dr. Francine Rabinovitz. [See Section 7 of this Disclosure Statement].

3 In establishing the Initial Payment Percentage the Plan Proponents assume that all present  
4 and future claimants will be paid solely from the presently available cash or cash equivalents.  
5 Because the Initial Payment Percentage does not assume any additional insurance settlements or  
6 receipt of any other asset by the Trust, no claimant bears a risk that the Initial Payment Percentage  
7 would be reduced due to the unavailability or reduced value of a future asset. Rather, should the  
8 Trust receive additional settlements, then the payment percentage would be recalculated and  
9 increased.

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

18 Due in part because the Debtors and many of the claimants' lawyers will have experience  
19 in using the claims liquidation Matrix from their experience in liquidating numerous claims under  
20 the Pre-Confirmation Claims Liquidation Process and/or under similar matrices in other cases or  
21 actions, the Plan Proponents expect that the Trust will be able to quickly establish its claims  
22 liquidation procedures and liquidate and pay existing unliquidated claims and newly arising claims  
23 within a year of filing.

24 The proposed claims procedures include provisions that would allow the Trust to continue  
25 to allow and pay claims even if it were overwhelmed with an unexpectedly large number of future  
26 claims. In such circumstances, the Trustees are required to reconsider and, if necessary, adjust the  
27 Payment Percentage to provide equivalent treatment of then pending and future claimants.

28

1 The claims procedures provide a process to control the Trust's payments to claimants  
2 should the Trust be faced with unexpectedly high volumes of claims filings, so that the Trust can  
3 reexamine its claims forecast in an orderly fashion, avoiding unanticipated increases in claims  
4 payment. The claims procedures require that the Trust pay claims in numbers that are no greater  
5 than those forecasted by the claims projections that are used in the Trust's then current  
6 calculations of its Payment Percentages. This means that the volume of payments will always be  
7 consistent with the assumptions underlying the Payment Percentage calculation. Should actual  
8 claim filings materially exceed the forecast, then the Trust must reconsider and adjust its Payment  
9 Percentage using new and larger forecasts based on this increased volume of claims. Upon such  
10 reconsideration, the Trust will then increase the volume of its claim payments to reflect this  
11 increased volume of filings. This process may impose a short term delay on some claims filed  
12 during any period of unanticipated increases in claims filings in order to assure that the Trust can  
13 adjust to such increases in an informed and orderly manner.

14 **(h) Trust Indemnity and Contribution Claims.**

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

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**SECTION 7.**

20

**ESTIMATED ASBESTOS RELATED CLAIMS**

21

**7.1 General.**

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The Committee retained Dr. Mark Peterson of Legal Analysis Systems as its expert consultant to estimate the total amount of the Debtors' liabilities for present and future Asbestos Related Claims. Dr. Peterson, an attorney and social scientist, is a nationally recognized expert in forecasting asbestos liabilities and has been a consultant and expert in asbestos and other mass tort litigation for over twenty years. Dr. Peterson was a founding member of the RAND Institute for Civil Justice, where he has conducted research and published a number of scholarly papers on issues of civil justice, particularly mass tort litigation.

1 **7.2 Total Amount of the Debtors' Liability.**

2 The total amount of the Debtors' liabilities for present and future Asbestos Related Claims  
3 cannot be determined with certainty, but reasonable, accepted methods have been used to forecast  
4 this amount. These methods draw upon: (a) scientific epidemiological forecasts of the incidence  
5 of asbestos-related diseases; (b) established social science research and methods that study and  
6 predict claiming behavior among potential tort litigants; and (c) substantial data about the Debtors'  
7 asbestos claims and resolutions provided by the Debtors and the Committee and substantial data  
8 about the claims and resolution experience of other similar asbestos defendants. These forecast  
9 methods have been the basis for estimations of asbestos liabilities in many bankruptcy cases and  
10 other litigation.

11 The Committee has hired a well known expert in determining the value of present and  
12 future asbestos claims, Dr. Mark Peterson. Dr. Peterson arrives at his estimates based on the  
13 history of Asbestos Related Claims asserted against the Debtors, historic average settlement values  
14 by disease type and other generally accepted epidemiological forecasts. Dr. Peterson's  
15 methodologies have been approved by the courts. *See In re Johns-Manville Corp.*, 830 F. Supp  
16 686 (S.D.N.Y. 1993); *In re Eagle Picher*, 189 B.R. 681 (1995).

17 Dr. Peterson performed certain preliminary projections that indicated that the value of all  
18 present and future California based Asbestos Related Claims appeared to be \$190 million.  
19 However, the Plan Proponents recognize that this is a preliminary number and will be larger due to  
20 a number of factors. The Committee has asked Dr. Peterson to review his numbers and calculate  
21 the current amount of all of the Debtors' asbestos liabilities, both present and future, and both  
22 from California Asbestos Related Claimants and Asbestos Related Claimants outside of  
23 California. There is a possibility that the final amount of all Asbestos Related Claims could be as  
24 high as \$500 million. The reason that the final determination of the amount of all present and  
25 future Asbestos Related Claims will exceed the former calculations of Dr. Peterson are as follows:

26 First, Dr. Peterson's original numbers only included California asbestos defendants. The  
27 Debtors' exposure was not limited to California cases and there will be a significant increase in  
28 Asbestos Related Claims due to out of state claims. For instance, there were significant asbestos-

1 related operations conducted on ships, and over five hundred jobs performed outside of the state of  
2 California.

3 Second, there has been an increase in the values attributed to Asbestos Related Claims  
4 since Dr. Peterson's original estimates. Dr. Peterson is gathering information concerning such  
5 values, and a final report will be rendered.

6 Third, the Debtors not only had significant land based exposure but also had exposure from  
7 installation of asbestos containing refractory products on numerous ships, and this will increase  
8 the claims.

9 Fourth, Southern California has traditionally been a sleepy backwater for asbestos  
10 litigation. Filings per capita in Southern California have traditionally been much lower than  
11 Northern California, and other areas of the country, but there is no evidence that the true Asbestos  
12 Related Claims are any smaller. Thousand of workers that could have sued in the tort system only  
13 resorted to workers compensation claims. Because of California statutes, most of these cases are  
14 not statute barred. Counsel in southern California now are expected to pursue these claims on  
15 behalf of Asbestos Related Claimants.

16 In summary, the Plan Proponents expect that the final estimates to be presented of total  
17 liability of the Debtors for asbestos injuries will be significantly higher than Dr. Peterson's earlier  
18 estimates.

19  
20 **SECTION 8.**

21 **RISKS OF THE PLAN**

22 **8.1 General.**

23 The following is intended as a summary of certain risks associated with the Plan, but is not  
24 exhaustive and must be supplemented by analysis and evaluation of the Plan and this Disclosure  
25 Statement as a whole by each holder of a Claim or Interest with such holder's own counsel and  
26 other advisors.

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1 **8.2 Payment of the Holdings Note.**

2 The Trust will be funded in part with the Holdings Note in the principal amount of  
3 \$500,000. This amount is appropriate in light of the net worth of the Debtors, based on financial  
4 statements provided by Technologies, which is wholly owned by Holdings. It is possible that  
5 Technologies and Holdings will fail to pay the Holdings Note in full. However, the Holdings  
6 Note will be secured by a first-priority, perfected security interest in 51% of the common stock of  
7 Holdings, and the Debtors believe that the fair market value of this stock exceeds the principal  
8 amount of the note.

9 The Holdings Note and the Holdings Pledge Agreement will be in a form that is similar to  
10 the Note and Holdings Pledge Agreement used in the Western Asbestos case and approved by the  
11 Court in that case. The actual final form of such Holdings Note and Pledge Agreement need not  
12 be filed with the Court in this case until a period that is two weeks prior to the commencement of  
13 the Confirmation hearing; however, any party desiring a draft of such Holdings Note or Pledge  
14 Agreement may request such current draft from counsel for the Debtors and it will be provided.

15 **8.3 Insurance Coverage for Asbestos Related Claims.**

16 The Trust will also be funded substantially with the Thorpe Business Loss Insurance  
17 Security and the Thorpe General Insurance Security.

18 As described above in Section 3.3, Asbestos Related Claimants have claims either directly  
19 against some Debtors or derivatively against other Debtors. A single Trust will minimize the  
20 expenses of Trust Administration and make certain that similarly situated Asbestos Related  
21 Claimants will be treated substantially similar. The single Trust structure has been used in other  
22 confirmed and court approved asbestos related bankruptcies. The Plan Proponents believe that a  
23 single Trust is in the best interests of present and future Asbestos Related Claimants.

24 The Thorpe General Insurance Security is a security to be issued on the Effective Date by  
25 each of the Debtors. It will entitle the Trust to receive all of the Debtors' Asbestos Insurance  
26 Action Recoveries, except for the portion of the business loss claims that the Debtors may have  
27 that is retained under the Thorpe Business Loss Security.

28

1           The Thorpe Business Loss Insurance Security is a security to be issued on the Effective  
2 Date of the Plan by each of the Debtors. It will entitle the Trust to receive all of the Debtors'  
3 Asbestos Insurance Action Recoveries attributable to any lost business opportunities, interruption  
4 of their businesses, loss or damage to the Debtors' business and any punitive damages based on or  
5 related to such matters (a "Business Loss"); provided that the Debtors retain a certain defined  
6 portion of the Business Loss. The amount of the payments to the Trust or to the Debtors on  
7 account of the Thorpe Business Loss cannot be determined at this time as the claims for a  
8 Business Loss have not been finalized against all of the Asbestos Insurance Companies. The Plan  
9 Proponents have agreed, for instance, that the Business Loss allocable to the recovery of \$45  
10 million from Federal shall be \$5 million, and of this amount \$3.5 million is allocable to the portion  
11 to be paid to the Trust and \$1.5 million is allocable to the Debtors. The final amount of the  
12 Business Loss is not capable of determination. In any event, the Debtors' Portion of the Business  
13 Loss shall not exceed \$4.5 million. If the Debtors are paid \$4.5 million on account of the Business  
14 Loss, all excess recovery is paid to the Trust.

15           The Proponents believe that the Business Loss claims against various Asbestos Insurance  
16 Companies are significant and substantial. Even after filing of these bankruptcy cases the Insurers  
17 have still denied coverage, forced the filing of this Plan, forced the Debtors and the Asbestos  
18 Related Claimants to hire counsel, and have delayed the recoveries by innocent victims. The non-  
19 contractual Business Loss claims are significant and substantial. The contribution by the Debtors  
20 of these claims under the Thorpe Business Loss Security to the Trust is a very substantial and  
21 significant contribution.

22           The Thorpe General Insurance Security and the Thorpe Business Loss Insurance Security  
23 will be in a form that is similar to the general insurance security and the business loss insurance  
24 security filed in the Western Asbestos case. In that case the Western Asbestos Court approved  
25 such securities as being a significant contribution and found that they met the requirements of the  
26 Bankruptcy Code. The final form of the Thorpe General Insurance Security and the Thorpe  
27 Business Loss Security need not be filed with the Court in this case until two weeks prior to the  
28 Confirmation Hearing; however, any party desiring a draft of such securities as they exist in their

1 current draft form may request such current draft from counsel for the Debtors and they will be  
2 provided.

3 As described in Section 2.3 and 3.7 above, certain of the Debtors have been in discussions  
4 with their insurers about insurance coverage for Asbestos Related Claims for some time. Certain  
5 of the Debtors have also been in litigation with certain insurers since the beginning of 2004.  
6 Because of the risks involved with respect to the effects of various potential rulings by the  
7 Bankruptcy Court or an appeal thereof, as well as the uncertainty in the resolution of any present  
8 or future Asbestos Insurance Actions, the ultimate value of the Asbestos Action Insurance  
9 Recoveries is uncertain. Moreover, the possibility that one or more of the Asbestos Insurance  
10 Companies may become insolvent in the future may impact the value of the Debtors' Asbestos  
11 Action Insurance Recoveries, and thus the value of the Trust Assets.

12 **8.4 Aggregate Amount of Asbestos Related Claims.**

13 Payments that will be made on Asbestos Related Claims shall be determined under the  
14 TDP and shall be based, on the one hand, on estimates of the number, types and amount of present  
15 and expected future Asbestos Related Claims and, on the other hand, on the value of the Trust  
16 Assets, the liquidity of the Trust Assets, the Trust's expected future expenses and income, as well  
17 as other material matters that are reasonable and likely to affect the sufficiency of funds to pay all  
18 holders of Asbestos Related Claims. There can be no certainty as to the precise amounts that will  
19 be distributed by the Trust in any particular time period or when Asbestos Related Claims will be  
20 paid by the Trust.

21

22

**SECTION 9.**

23

**ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

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If the Plan is not confirmed and consummated, alternatives to the Plan include (i) dismissal  
of these Reorganization Cases; (ii) liquidation of the Debtors under Chapter 7 of the Bankruptcy  
Code; and (iii) an alternative plan of reorganization.

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