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18 Asbestos Settlement Trust

19 UNITED STATES BANKRUPTCY COURT  
20 CENTRAL DISTRICT OF CALIFORNIA  
21 LOS ANGELES DIVISION

22 In re )  
23 J.T. THORPE, INC., )  
24 THORPE INSULATION COMPANY, )  
25 Debtors )

26 J.T. THORPE SETTLEMENT TRUST, )  
27 THORPE INSULATION COMPANY )  
28 ASBESTOS SETTLEMENT TRUST, )  
29 Plaintiffs, )

30 vs. )

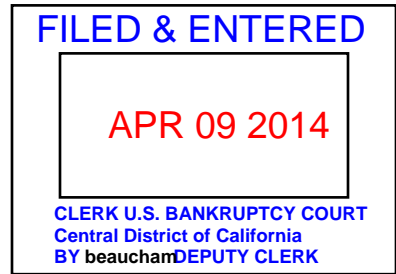
31 MICHAEL J. MANDELBROT and THE )  
32 MANDELBROT LAW FIRM, )  
33 Defendants. )

Chapter 11  
Case No. 02-14216-BB  
Adversary Case No. 2:12-ap-02182-BB  
Case No. 07-19271-BB  
Adversary Case No. 2:12-ap-02183-BB

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Trial Schedule

Date: January 21-23, 2014  
Time: 10:00 a.m.  
Place: Courtroom 1475  
255 E. Temple St., 14th Floor  
Los Angeles, CA 90012  
Judge: Honorable Sheri Bluebond



1 **I. INTRODUCTION**

2 The above-captioned adversary proceedings came before the Court for trial upon the J.T.  
3 Thorpe Settlement Trust's *First Amended Complaint for Declaratory Judgment* Case No. 2:12-ap-  
4 02182-BB [Adv. Docket No. 18], Thorpe Insulation Company Asbestos Settlement Trust's *First*  
5 *Amended Complaint for Declaratory Judgment and Equitable Relief* Case No. 2:12-ap-02183-BB  
6 [Adv. Docket No. 18]<sup>1</sup> and the Notice of Motion and Motion of the Trusts for Instructions  
7 Regarding (1) The Trusts' Audit Findings Regarding Mandelbrot and (2) The Trusts' Remedy (the  
8 "Motion for Instructions").<sup>2</sup> The J.T. Thorpe Settlement Trust (individually referred to as the "J.T.  
9 Thorpe Trust") and the Thorpe Insulation Company Asbestos Settlement Trust (individually  
10 referred to as the "Thorpe Insulation Trust") are referred to herein collectively as "Plaintiffs" or  
11 the "Thorpe Trusts."

12 The case was tried before the Court on January 21, 2014 and January 22, 2014, and further  
13 trial proceedings were scheduled when the agreement and stipulation detailed herein was reached  
14 between the parties on the morning of January 23, 2014 and read into the record. *See* January 23,  
15 2014 Transcript of Proceedings Before the Honorable Sheri Bluebond United States Bankruptcy  
16 Judge at 3:10-16:5.

17 Plaintiffs appeared in person through Stephen M. Snyder (Managing Trustee of the Thorpe  
18 Trusts, Western Asbestos Settlement Trust ("Western Trust"), and Plant Insulation Company  
19 Asbestos Settlement Trust ("Plant Trust")); Sara Beth Morgan Brown (Executive Director of the  
20 Thorpe Trusts, Western Trust, and Plant Trust); Jeanine Donohue (General Counsel of the Thorpe  
21 Trusts, Western Trust, and Plant Trust), and through counsel, Benjamin Smith and Matthew Poole  
22 of Morgan Lewis & Bockius LLP, Special Litigation Counsel for the Thorpe Trusts and Western  
23 Trust; Michael E. Molland of Molland Law, Special Litigation Counsel for the Thorpe Trusts and  
24 Western Trust; and Eve H. Karasik of Stutman Treister & Glatt, Bankruptcy Counsel for the  
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26 <sup>1</sup> These proceedings were consolidated for administrative purposes under Case No. 12-ap-02182.

27 <sup>2</sup> The Motion for Instructions was filed under seal, as noted below.

1 Thorpe Trusts, Western Trust, and Plant Trust. The Futures Representative of the Thorpe Trusts,  
2 Western Trust, and Plant Trust, the Honorable Charles Renfrew (Retired), an intervenor in both  
3 adversary proceedings, also appeared in person and through counsel, Gary S. Fergus of Fergus  
4 Legal. Defendants appeared in person and through counsel, Dennis D. Davis of Goldberg,  
5 Stinnett, Davis & Linchey, a professional corporation.

6 Upon consideration of the evidence, good cause appearing, and in light of the agreement of  
7 the parties, this Court hereby makes, pursuant to Rule 7052 of the Federal Rules of Bankruptcy  
8 Procedure, incorporating by reference, Rule 52 of the Federal Rules of Civil Procedure, the  
9 following Findings of Fact and Conclusions of Law.

10 **II. FINDINGS OF FACT**

11 1. Mr. Mandelbrot and the Mandelbrot Law Firm are referred to herein collectively as  
12 “Mandelbrot” or “Defendants.”

13 2. While not parties to the above captioned action, the Western Trust and the Plant  
14 Trust were present in the courtroom at trial on January 23, 2014 through the Managing Trustee and  
15 were represented by counsel. The counsel for the Futures Representative for the Western Trust  
16 and the Plant Trust was also present in the court room. The Western Trust, the Plant Trust, and the  
17 Futures Representative for those trusts agreed to the terms of the representations, agreements and  
18 stipulations insofar as they related to those trusts as set forth below in paragraph 3, subject only to  
19 approval by those trusts at a meeting where the trusts could act, which approval that was obtained  
20 the same day and communicated to Mandelbrot on January 29, 2014.

21 3. At trial on January 23, 2014, Mandelbrot, his counsel, the Thorpe Trusts, the  
22 Western Trust, the Plant Trust, the Futures Representative of those trusts, counsel for those trusts,  
23 and counsel for the Futures Representative represented, agreed and stipulated in open court on the  
24 record, subject only to approval by those trusts at a meeting where the trusts could act, which  
25 approval that was obtained and communicated to Mandelbrot on January 29, 2014, as follows:

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1 a. Mandelbrot agreed, that as of January 23, 2014, Mandelbrot will file no new claims  
2 and that he is permanently barred from filing claims with the J.T. Thorpe Trust, the Thorpe  
3 Insulation Trust, the Western Trust and the Plant Trust.

4 b. Mandelbrot agreed that as of January 23, 2014, he shall cease all activity, with  
5 respect to pending claims for the J.T. Thorpe Trust, the Thorpe Insulation Trust and the Western  
6 Trust and transfer those claims to an attorney who will take responsibility as if he or she were the  
7 attorney that originally filed the claim. Mandelbrot agreed that this provision means that any  
8 document submitted to any of the above described trusts with respect to any such claims that bears  
9 Mandelbrot's signature shall not be considered valid by any of the trusts. Mandelbrot agreed that  
10 the new lawyer must substitute in full for Mandelbrot and Mandelbrot cannot serve as co-counsel  
11 of record, and that pending claims will have to be withdrawn and refiled by new counsel. The J.T.  
12 Thorpe Trust, the Thorpe Insulation Trust, and the Western Trust have agreed that no new filing  
13 fee would be required and the original date of filing would also be applied so that beneficiaries  
14 would not be disadvantaged.

15 c. Mandelbrot agreed that Mandelbrot shall not receive any other payments from any  
16 of the above described trusts, for any reason, effective January 23, 2014, provided however, the  
17 J.T. Thorpe Trust, the Thorpe Insulation Trust and the Western Trust have agreed that if these  
18 trusts had valid releases in their possession as of January 23, 2014, or postmarked addressed to  
19 those trusts as of that date executed by Mandelbrot's clients, then those claims would be paid in  
20 the ordinary course through Mandelbrot.

21 d. Mandelbrot agreed that for past claims where Mandelbrot has represented claimants  
22 before the J.T. Thorpe Trust, the Thorpe Insulation Trust, and the Western Trust, those claims will  
23 also be transferred to a new attorney and Mandelbrot shall not be counsel of record for those  
24 claims. Mandelbrot agreed that Mandelbrot shall have no standing to challenge the fiduciary  
25 decisions or conduct of those trusts, with respect to any rights of those claimants to future  
26 payments for the J.T. Thorpe Trust, the Thorpe Insulation Trust and the Western Trust, such as  
27 decisions whether or not to change the payment percentage or funds received ratio.

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1 e. Mandelbrot agreed that as of January 23, 2014, Mandelbrot withdrew the  
2 opposition to the Motion for Instructions and joined the Motion for Instructions and agreed that the  
3 Court should find that with respect to the J.T. Thorpe Trust, The Thorpe Insulation Trust and the  
4 Western Trust, the conduct of all trust fiduciaries, trust staff, counsel for the fiduciaries and staff,  
5 and counsel for the trusts, and the three trusts themselves, in initiating, conducting and concluding  
6 the investigation and adversary proceeding, was in every respect, reasonable, not an abuse of  
7 discretion, and were authorized and appropriate.

8 f. Mandelbrot and the J.T. Thorpe Trust and the Thorpe Insulation Trust agreed that  
9 the Parties would jointly request that this Court enter findings of fact and conclusions of law as  
10 described herein; that they, together with the accompanying order of the court would be part of the  
11 public record and that the May 24th, 2013 letter from the J.T. Thorpe Trust, the Thorpe Insulation  
12 Trust and the Western Trust to Mandelbrot, Trial Exhibit 227, (“May 24<sup>th</sup> Letter”), without  
13 redaction, would be a public record and part of the findings of fact and conclusions of law.

14 g. Mandelbrot agreed that the J.T. Thorpe Trust’s, the Thorpe Insulation Trust’s and  
15 the Western Trust’s determinations stated in the May 24th letter, including the determination by all  
16 three trusts that Mandelbrot, the person and the firm, are unreliable and with respect to the J.T.  
17 Thorpe Trust and Thorpe Insulation Trusts specifically, have engaged in a pattern and practice of  
18 filing unreliable evidence and support claims filed with those two trusts, are reasonable in light of  
19 the evidence assessed in connection with the audit.

20 h. Mandelbrot agreed that the remedy imposed by the J.T. Thorpe Trust and the  
21 Thorpe Insulation Trust in the May 24th letter providing for the disallowance of all further  
22 evidentiary submissions by Mandelbrot is authorized under the Trust Distribution Procedures of  
23 each trust, and is reasonable in light of the Trusts’ audit and investigative findings.

24 i. Mandelbrot agreed that the investigation of Mandelbrot - by the J.T. Thorpe Trust,  
25 the Thorpe Insulation Trust and the Western Trust - and the determinations and the remedy  
26 imposed were reasonable, not based upon improper interpretations of the terms of the three trusts,  
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1 were and are consistent with the trusts' fiduciary duties, were conducted pursuant to a valid trust  
2 purpose, were not done in bad faith and were not an abuse of discretion.

3 j. Mandelbrot agreed that if the J.T. Thorpe Trust, the Thorpe Insulation Trust, and  
4 the Western Trust have not received a substitution of counsel within six months, these trusts are  
5 authorized by this Court to deem those claims withdrawn without any further approval of the  
6 Court. Mandelbrot agreed to use his best efforts to notify all claimants he represents that  
7 substitutions of counsel must be filed with the J.T. Thorpe Trust, the Thorpe Insulation Trust and  
8 the Western Trust. Mandelbrot agreed to provide the J.T. Thorpe Trust, the Thorpe Insulation  
9 Trust and the Western Trust the last known address for all claimants where no substitution of  
10 counsel has been provided.

11 k. Mandelbrot agreed that if Mandelbrot violates any of the terms set forth on the  
12 record, the J.T. Thorpe Trust and the Thorpe Insulation Trust shall have the right to bring such  
13 violations to the attention of this Court and that the Western Trust and the Plant Trust shall have  
14 the right to bring such violations to the attention of this Court or their supervising bankruptcy  
15 courts and seek relief. Mandelbrot agreed that the doctrine set forth in *Barton v. Barbour*, 104  
16 U.S. 126, 127, (1881), (the "Barton Doctrine") applies to any dispute between the four trusts and  
17 Mandelbrot, and the only appropriate jurisdiction is the supervising bankruptcy court that  
18 appointed the trust fiduciaries for each particular trust.

19 l. Mandelbrot represented that Mandelbrot understood and agreed that the order,  
20 findings of fact, and conclusions of law, will be part of the public record, as will the May 24th  
21 letter, unredacted.

22 m. Mandelbrot agreed and the J.T. Thorpe Trust and the Thorpe Insulation Trust have  
23 agreed that each party shall bear its own costs and attorney's fees in this matter.

24 4. The Thorpe Trusts, the Western Trust, and the Plant Trust have represented to the  
25 Court that each of those trusts approved the stipulation and that the Thorpe Trusts and Western  
26 Trust have made a determination and agreed that, in light of the binding stipulation among the  
27 trusts and Mandelbrot, it would not be in the best interests to present and future claimants to  
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1 pursue Mandelbrot for economic damages related to claims filed by Mandelbrot with these three  
2 trusts.

3           5.       The J.T. Thorpe Trust and the Thorpe Insulation Trust have represented to the  
4 Court that they informed Mandelbrot on or about January 29, 2014 that each of these Trusts  
5 agreed, subject to a final order of this Court with respect to the Motion for Instructions, to dismiss  
6 Count II of their adversary proceeding complaint for equitable relief in the form of an accounting,  
7 constructive trust, and/or restitution against Mandelbrot. The Western Trust represented to the  
8 Court that it informed Mandelbrot on or about January 29, 2014 that it has agreed, subject to a  
9 final order of this Court with respect to the Motion for Instructions, to file a dismissal with  
10 prejudice of Count II of its adversary proceeding complaint against Mandelbrot that has already  
11 been dismissed without prejudice.

12           6.       The Western Trust administers pursuant to contract the claims for the J.T. Thorpe  
13 Trust, the Thorpe Insulation Trust and the Plant Trust.

14           7.       On or about September 2011, and pursuant to Section 5.7(a) of their respective  
15 Trust Distribution Procedures (“TDPs”), approved by the J.T. Thorpe Confirmation Order and the  
16 Thorpe Insulation Confirmation Order, respectively, the J.T. Thorpe Trust, the Thorpe Insulation  
17 Trust and the Western Trust initiated audits of Mandelbrot and claims submitted by Mandelbrot  
18 against the Trusts. Mandelbrot was advised of these audits on or about December 5, 2011. Events  
19 and details regarding these audits are contained in the Court’s record and were admitted into  
20 evidence during the trial.

21           8.       Plaintiffs commenced these adversary proceedings by filing complaints on  
22 September 19, 2012 [Adv. Dockets Nos. 1]. Plaintiffs’ original complaints sought a declaratory  
23 judgment against Mandelbrot that the audits initiated by the trusts regarding Mandelbrot were  
24 authorized by law and appropriate under the circumstances.

25           9.       On October 24, 2012, the J.T. Thorpe Trust filed its *First Amended Complaint for*  
26 *Declaratory Judgment* Case No. 12-ap-02182 [Adv. Docket No. 18] and the Thorpe Insulation  
27 Trust filed its *First Amended Complaint for Declaratory Judgment and Equitable Relief* Case No.  
28

1 12-ap-02183 [Adv. Docket No. 18]. Plaintiffs' First Amended Complaints sought the same  
2 declaratory relief as that contained in the original complaints (Count I), as well as equitable relief  
3 (Count II) against Mandelbrot. Through Count II, the Trusts requested that, to the extent the audits  
4 performed by the Trusts revealed improper payments made to Mandelbrot, equitable relief in the  
5 form of a constructive trust, accounting, and/or restitution be allowed.

6 10. On January 31, 2013, Defendants filed answers to the First Amended Complaints.  
7 [Adv. Docket No. 76]. On February 1, 2013, Defendants filed a First Amended Answer to the  
8 Complaint of the Thorpe Insulation Trust. [Adv. Docket No. 77]. In their answers, Defendants  
9 asserted as affirmative defenses (1) unclean hands, (2) accord and satisfaction, (3) failure to  
10 mitigate damages, (4) waiver and estoppel, (5) statute of limitations, (6) laches, and (7) failure to  
11 name indispensable parties. Mandelbrot alleged, among other things, that the Trusts: (1) failed to  
12 treat Mandelbrot clients equally with all other claimants; (2) created unique barriers to Mandelbrot  
13 clients; and (3) conspired with other competing claimants counsel to treat Mandelbrot clients  
14 unfairly and punish them for complaints made by Mandelbrot concerning improprieties of Trust  
15 personnel and Trust fiduciaries. The defenses asserted by Mandelbrot, and the evidence  
16 introduced by all the parties at trial, included contentions, argument, and evidence relating to the  
17 activities of all four trusts, which share common trustees, futures representatives, claims handling  
18 and accounting resources, and staff support.

19 11. On or about May 24, 2013, the Managing Trustee of both Trusts, Stephen M.  
20 Snyder, wrote a letter to Mandelbrot advising Mandelbrot of the Trusts' audit findings and  
21 conclusions. A copy of this letter, which was marked as **Trial Exhibit 227**, is attached hereto.  
22 The May 24th letter notified Mandelbrot of the following findings and conclusions, among others:  
23 (1) "Mandelbrot (i.e., the firm and its principal) each are unreliable under the 'person' or 'entity'  
24 requirement of section 5.7(a);" and (2) "Mandelbrot has submitted unreliable evidence to each of  
25 the Trusts<sup>3</sup> and, with regard to the J.T. Thorpe Trust and Thorpe Insulation Trust specifically, has

26 \_\_\_\_\_  
27 <sup>3</sup> The term "Trusts," as used in the May 24th letter, includes both Trusts as well as the Western  
28 Trust. The Western Trust also conducted an audit of Mandelbrot under section 5.7(a) of its TDP  
and initiated an adversary proceeding against Mandelbrot in the Northern District, Adversary Case



1 done so in a pattern revealed by the practices that have been the focus of this investigation. The  
2 pattern revealed by the investigation has been exacerbated by a lack of cooperation with the  
3 Trusts' audit efforts.”

4 12. The Trusts filed an initial Motion for Instructions with respect to their audit of  
5 Mandelbrot in August 2013 [Adv. Docket No. 132]. Thereafter the Court set this matter for an  
6 evidentiary hearing in this Court's October 2, 2013 Order Setting Trial Date and Establishing  
7 Procedures for Conduct of Court Trial (the “Scheduling Order”) [Adv. Docket No. 140]. The  
8 Trusts presented the testimony of all of their witnesses through declarations of said witnesses by  
9 December 3, 2013. In connection with the Trusts' December 3, 2013, submissions, this Court  
10 considered the following pleadings, testimony and exhibits:<sup>4</sup>

- 11 a. The Trusts' Motion for Instructions Regarding (1) the Trusts' Audit Findings  
12 Regarding Michael J. Mandelbrot and the Mandelbrot Law Firm, and (2) the Trusts'  
13 Remedy
- 14 b. Declaration of Laura Paul – Exhibits 1-62<sup>5</sup>
- 15 c. Declaration of Michael Molland – Exhibits 63-135
- 16 d. Declaration of Benjamin P. Smith – Exhibits 136-162
- 17 e. Declaration of Sara Beth Brown – Exhibits 163-178
- 18 f. Declaration of Hon. Charles Renfrew (Ret.) – No Exhibits
- 19 g. Declaration of Steven B. Sacks – No Exhibits
- 20 h. Expert Report and Declaration of Roger B. Horne Jr. RADM USN (Ret.) with  
21 Exhibits 1-7 to report attached.
- 22 i. Expert Report and Declaration of Richard D. Hepburn, Captain, U.S. Navy, (Ret.)  
23 with Exhibits A-D to report attached.
- 24 j. Rebuttal Report and Declaration of Peter R. Moenter – No Exhibits

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24 No. 12-04190.

25 <sup>4</sup> The bulk of the Trusts' evidence was submitted under seal pursuant to an order entered by this  
26 Court dated January 13, 2014. [Adv. Docket Nos. 152-161, 182].

27 <sup>5</sup> On December 12, 2013, the Trusts filed an Errata to the Declaration of Laura Paul correcting  
28 Exhibit 34. [Adv. Docket No. 163].

- 1 k. Designation of Deposition Testimony of Marilyn Rodi with Exhibit 3 marked at deposition.
- 2 l. Designation of Deposition Testimony of Michael Mandelbrot with Confidential Exhibit B marked at deposition.
- 3
- 4 m. Designation of Deposition Testimony of Michael Dunning with Exhibits 2, 4, and 6-12 marked at deposition.
- 5 n. Designation of Deposition Testimony of Stephen Snyder – No Exhibits.
- 6 o. Designation of Deposition Testimony of Captain Francis Burger with Exhibits 1-4 marked at deposition.
- 7
- 8 p. Designation of Deposition Testimony of Paul Genthner with Exhibits 3 and 4 marked at deposition.

9 13. On December 17, 2013, Mandelbrot submitted the following pleadings, testimony  
10 and exhibits for consideration by this Court:<sup>6</sup>

- 11 a. Trial Declaration of Michael J. Mandelbrot – Exhibits A-Z<sup>7</sup>
- 12 b. Mandelbrot’s Opposition to the Trusts’ Motion for Instructions Regarding (1) the Trusts’ Audit Findings Regarding Michael J. Mandelbrot and the Mandelbrot Law Firm, and (2) the Trusts’ Remedy (the “Opposition”)
- 13
- 14 c. Designation of Deposition Testimony of Whitney Lauren
- 15 d. Designation of Deposition Testimony of Barbara Malm Wilson
- 16 e. Report and Declaration of Captain Francis Burner, USN (Ret.)
- 17 f. Affidavit of Paul Eldbridge Genthner

18 As of January 23, 2014, Mandelbrot withdrew Mandelbrot’s Opposition by agreement and  
19 stipulation on the record.

20 14. On January 7, 2014, the Trusts submitted the following pleadings, testimony and  
21 exhibits for consideration by this Court:<sup>8</sup>

- 22
- 23 a. Reply Brief Re: Motion for the Trusts for Instructions Regarding (1) The Trusts’ Audit Findings Regarding Mandelbrot and (2) The Trusts’ Remedy

24 \_\_\_\_\_  
25 <sup>6</sup> [Adv. Docket Nos. 168-173].

26 <sup>7</sup> The Court sustained the Trusts’ Evidentiary Objections filed on January 7, 2014 striking Exhibit Y to the Trial Declaration of Michael J. Mandelbrot.

27 <sup>8</sup> [Adv. Docket Nos. 174-175].

- 1 b. Further Designation of Deposition Testimony of Michael Dunning
- 2 c. Designation of Deposition Testimony of Whitney Lauren
- 3 d. Declaration of Laura Paul – Exhibits 179-188<sup>9</sup>
- 4 e. Declaration of Benjamin P. Smith – Exhibits 189-200<sup>10</sup>
- 5 f. Objections to Portions of the Trial Declaration of Michael Mandelbrot and Exhibit
- 6 Y

7 15. This Court also considered the live testimony of the following witnesses over the  
8 course of two days during the Trial:

- 9 a. Stephen Snyder
- 10 b. Hon. Charles Renfrew (Ret.)
- 11 c. Steve Sacks
- 12 d. Peter Moenter
- 13 e. Laura Paul
- 14 f. Sara Beth Morgan Brown

15 16. During the course of the Trial, the Court admitted the following exhibits into  
16 evidence:

- 17 a. Trusts’ Trial Exhibits 1; 2<sup>11</sup>; 3-200; 244-245

18 17. At the trial held on January 21, 2014, and prior to Mandelbrot’s withdrawal of  
19 Mandelbrot’s opposition, this Court issued the following tentative rulings (“Tentative Rulings”):

- 20 a. Ruling on Legal Issues:

21  
22 <sup>9</sup> On January 15, 2014, the Trusts filed an Errata to the Declaration of Laura Paul. [Adv. Docket  
23 No. 184].

24 <sup>10</sup> On January 14, 2014 Mandelbrot filed Objections to Plaintiffs’ Reply Evidence. [Adv. Docket  
25 No. 183]. The Court deemed Mandelbrot’s objections waived pursuant to Local Bankruptcy Rule  
26 9013-1(i)(2) for failure to cite to the specific Federal Rules of Evidence upon which they rely.  
27 Thus, the Court overruled Mandelbrot’s objections in their entirety.

28 <sup>11</sup> Plaintiff’s Exhibit 2, the ARPC Report, was admitted at trial not for the truth of the matter  
asserted but for the fact that it was received by the Trusts and relied upon in initiating an audit  
under TDP Section 5.7(a) to investigated Mandelbrot.

1 Mandelbrot cannot claim that his “due process” rights have been  
2 violated if the trust acted in accordance with the TDP.  
3 Representatives of future and existing asbestos claimants were well  
4 - represented in the plan negotiations and drafting that produced the  
5 TDP. If any claimants believed that the trust procedures failed to  
6 provide them with due process, they had the opportunity to raise  
7 these objections during the course of the plan confirmation process.  
8 The Court ultimately confirmed the plan and approved the related  
9 trust procedures. All appeals related thereto have been resolved. The  
10 plan is therefore enforceable in accordance with its terms, which  
11 terms include the TDP. Thus, the only issue is whether the trusts  
12 have acted in accordance with the TDP. Stated differently, the trusts  
13 seek a finding that, in exercising rights under section 5.7(a) of the  
14 TDP, their actions were reasonable and appropriate and not the result  
15 of, or motivated by, bad faith or other improper motive or an abuse  
16 of discretion. “Due process” does not impose any additional  
17 requirements above and beyond those necessary to comply with the  
18 procedures outlined in the TDP, regardless of the impact that this  
19 may have on defendant’s business, which apparently consists  
20 entirely of submitting claims to asbestos trusts. Activities of the trust  
21 cannot be described as government action subject to due process  
22 requirements.

23 \* \* \*

24 The trusts’ investigation and audit continued over the course of an  
25 extended period, throughout which there were numerous  
26 communications between the parties as to the nature of the trusts’  
27 concerns and the types of claims that the trusts considered the most  
28 problematic. See, for example, Exhibit A to the First Amended  
Complaint, which is a letter to Mandelbrot dated September 19, 2012  
and refers to meetings and discussions that had already occurred  
between the parties prior to that date.

Moreover, it is clear that the trusts are not required to arbitrate or  
litigate any claim to determine its validity whenever factual issues  
exist as to its validity. Section 5.7(a) of the TDP creates a procedure  
designed to permit the trust to investigate/audit the reliability of  
evidence submitted and the reliability of individuals and entities  
participating in the submission of claims and to bar unreliable parties  
from continuing to submit claims precisely so that the trusts are not  
required to expend exorbitant amounts litigating or arbitrating the  
merits of unreliable claims. The question is merely whether the trusts  
were reasonable in invoking these procedures in the instant case.

Court agrees with the trustees that it is appropriate, not only under  
applicable NV statutes, but under general trust law, for a trustee to  
apply to the court under whose auspices the trust was established for  
instructions and that the appropriate standard of review for the court  
to apply in instances in which the trustee is given the right to  
exercise its discretion is an abuse of discretion standard. (And the  
concept of an abuse of discretion includes taking action based on  
bias or improper motive or acting in bad faith. Such practices would  
be abuses of discretion.)

\* \* \*

1  
2 Exclude any evidence or argument intended to prove that plaintiffs  
3 breached a duty of care by failing to warn defendants about [John]  
Lynch's background or activities.

\* \* \*

4  
5 It seems that defendants are [c]ontending that, but for bias on  
6 plaintiffs' part, no investigation or audit of defendants' claims would  
7 have been commenced. None of the evidence offered by defendants  
8 has any tendency to suggest that such bias existed, but, even if  
9 defendants were able to establish that plaintiffs were motivated by  
bias in commencing the audit/investigation, hopefully, defendants  
recognize that, if the claims they have submitted are fraudulent or  
unreliable, the fact that plaintiffs might not have found out about  
defendants' submission of false claims in the absence of bias would  
not be a defense.

10 b. Rulings on Evidentiary Objections:

11 Trusts' Objections to Mandelbrot Trial Declaration:

12 Sustain objection to introduction of Exhibit Y. Defendant does not  
13 attest to the accuracy of the information contained in the exhibit and  
14 does not provide proper foundation to explain how he would have  
15 personal knowledge of the factual assertions contained in the  
16 document. Court agrees that it is not admissible as a summary under  
17 Rule 1006 or as expert testimony. There is also a best evidence rule  
18 problem with the document, in that Exhibit Y is replete with  
19 descriptions of the contents of documents that Mandelbrot claims  
20 confirm or corroborate the claimant's position. Having sustained the  
21 general objection and excluded Exhibit Y, Court need not reach  
22 specific objections to portions of Exhibit Y.

18 Defendants' Objection to Reply Declarations:

19 Pursuant to LBR 9013-1(i)(2), defendants' evidentiary objections are  
20 deemed waived as they fail to cite the specific Federal Rules of  
21 Evidence upon which they rely. Moreover, they are difficult to  
follow and analyze, as they do not quote the allegedly objectionable  
material. Overrule objections.

22 18. On January 21, 2014, the Court heard oral argument from the Parties regarding the  
23 Court's Tentative Ruling.

24 19. On and after January 31, 2014, Mandelbrot raised objections to the parties'  
25 agreement, prompting the Thorpe Trusts to file a Motion to Enforce the Agreement, and seeking  
26 sanctions, on March 6, 2014. After consideration of Mandelbrot's written objections to the  
27 agreement, including by way of objecting to Plaintiffs' Proposed Findings of Fact and Conclusions  
28

1 of Law, as well as all briefing and arguments submitted in connection with the Motion to Enforce  
2 the Agreement and at the hearing held on that motion on March 27, 2014, the Court found the  
3 Agreement valid, binding, and enforceable. The Court finds that the agreement announced in  
4 Court on January 23, 2014 contains all material terms of the agreement reached by the parties on  
5 that date, and was affirmed by Mr. Mandelbrot and his counsel on the record on January 23, 2014.

6 **III. CONCLUSIONS OF LAW<sup>12</sup>**

7 The Court concludes, and the Trustees of the Trusts are instructed that:

8 1. The Court has jurisdiction over these proceeding under 28 U.S.C. §§ 157(a) and  
9 1334, and pursuant to the J.T. Thorpe Confirmation Order and the Thorpe Insulation Confirmation  
10 Order.

11 2. This Court has jurisdiction to conclude and hereby concludes that Mandelbrot and  
12 the J.T. Thorpe Trust, the Thorpe Insulation Trust, the Western Trust and the Plant Trust entered  
13 into a valid and enforceable stipulation and agreement on the record in open court during trial on  
14 January 23, 2014 as set forth in the above findings of fact (the “Agreement”) which the Court  
15 approved in the concurrently entered order.

16 3. This Court has jurisdiction to issue the orders included herein with respect to the  
17 Western Trust and the Plant Trust based upon the Agreement, and further has jurisdiction to issue  
18 the order associated with the Motion to Enforce the Agreement, provided however, any further  
19 enforcement of the Agreement with respect to the Western Trust and the Plant Trust shall be  
20 brought before the supervising bankruptcy courts of those trusts.

21 4. The activities of the Trusts cannot be described as government action subject to due  
22 process requirements. Thus, Mandelbrot cannot claim that his “due process” rights have been  
23 violated if the trusts acted in accordance with their Trust Distribution Procedures. The appropriate  
24 standard of review for the Court to apply here where the trustees are given the right to exercise  
25 their discretion is an abuse of discretion standard.

26 \_\_\_\_\_  
27 <sup>12</sup> Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law, and  
28 conclusions of law shall be construed as findings of fact, when appropriate.

1           5.       Applying the foregoing standard of review and based upon the evidence presented,  
2 the above findings of fact and, as described herein, the Agreement, the Court reaches the following  
3 conclusions of law set forth in paragraphs 6 through 11 below.

4           6.       The Court has jurisdiction to order and it is appropriate to order the following:

- 5                   a.       Mandelbrot is permanently barred, effective immediately, from filing new  
6                   claims with the J.T. Thorpe Trust, the Thorpe Insulation Trust, the Plant  
7                   Trust and the Western Trust.
- 8                   b.       Effective immediately, Mandelbrot shall cease all activity with respect to  
9                   claims (“Pending Claims”) for the J.T. Thorpe Trust, the Thorpe Insulation  
10                  Trust, and the Western Trust and shall transfer each Pending Claim to an  
11                  attorney who will take responsibility as if he or she were the attorney that  
12                  originally filed the Pending Claim. Any document submitted to the any of  
13                  these trusts with respect to Pending Claims that bears Mandelbrot’s  
14                  signature shall not be considered valid by the any of the trusts. The new  
15                  attorney must substitute in full for Mandelbrot and Mandelbrot cannot serve  
16                  as co-counsel of record with respect to Pending Claims. All Pending Claims  
17                  shall be withdrawn and refiled by the new attorney, but no additional filing  
18                  fee will be assessed and the original date of filing will be preserved.  
19                  Effective immediately, Mandelbrot shall not receive any payments from any  
20                  of these trusts for any reason. The trusts will pay submitted claims that have  
21                  valid releases bearing a post-mark of prior to and including January 23,  
22                  2014.
- 23                  c.       For all claims resolved prior to the date of this Order for which Mandelbrot  
24                  has represented claimants with the J.T. Thorpe Trust, the Thorpe Insulation  
25                  Trust, and the Western Trust, those claims will also be transferred to a new  
26                  attorney and Mandelbrot shall not be counsel of record nor serve as co-  
27                  counsel of record with respect to such claims. For example, Mandelbrot

1 shall have no standing to challenge the fiduciary decisions or conduct of  
2 those trusts, with respect to any rights of those claimants to future payments  
3 for the J.T. Thorpe Trust, the Thorpe Insulation Trust and the Western Trust,  
4 such as decisions whether or not to change the payment percentage or funds  
5 received ratio.

6 7. The Court has jurisdiction to conclude, it is appropriate to conclude and the Court  
7 concludes the following:

- 8 a. the J.T. Thorpe Trust's, the Thorpe Insulation Trust's, the Western Trust's  
9 determinations stated in the May 24th letter, including the trusts'  
10 determinations that Mandelbrot the person and the entity are unreliable, and  
11 have engaged in a pattern and practice of filing unreliable evidence in  
12 support of claims filed with the J.T. Thorpe Trust and the Thorpe Insulation  
13 Trust, are reasonable in light of the evidence assessed in connection with the  
14 audit.
- 15 b. Mandelbrot's Opposition to the Motion for Instructions has been withdrawn  
16 and Mandelbrot has joined the Trusts' Motion for Instructions.
- 17 c. With respect to the J.T. Thorpe Trust, the Thorpe Insulation Trust and the  
18 Western Trust, the conduct of all trust fiduciaries, trust staff, counsel for the  
19 fiduciaries and staff, and counsel for the trusts, and the three trusts  
20 themselves, in initiating, conducting and concluding the joint investigation  
21 and adversary proceeding, was in every respect, reasonable, not an abuse of  
22 discretion, and was authorized and appropriate.
- 23 d. The remedy imposed by the J.T. Thorpe Trust and the Thorpe Insulation  
24 Trust in the May 24th letter – the disallowance of all further evidentiary  
25 submissions by Mandelbrot – is authorized under the Trust Distribution  
26 Procedures of each trust and found reasonable in light of the trusts' audit  
27 and investigative findings.

28



1 e. The J.T. Thorpe Trust's, the Thorpe Insulation Trust's and the Western  
2 Trust's joint investigation of Mandelbrot and the determinations and the  
3 remedy imposed on Mandelbrot were reasonable and not based upon  
4 improper interpretation of the terms of the three trusts' governing  
5 documents, including the Trust Distribution Procedures and that the three  
6 trusts' joint investigation of Mandelbrot and the determinations and the  
7 remedy imposed on Mandelbrot were and are consistent with the trusts'  
8 fiduciary duties, conducted pursuant to a valid trust purpose, not done in bad  
9 faith, and not an abuse of discretion.

10 8. The court has jurisdiction to order and it is appropriate to order the following:

11 a. If the J.T. Thorpe Trust and the Thorpe Insulation Trust have not received a  
12 notice of substitution of counsel by July 23, 2014, for any claim submitted  
13 by Mandelbrot, then the J.T. Thorpe Trust, and the Thorpe Insulation Trust  
14 are authorized by this Court to deem those claims withdrawn without any  
15 further approval of this Court. Mandelbrot agreed in the Agreement that the  
16 Western Trust may also deem as withdrawn those claims filed by  
17 Mandelbrot for which the Western Trust has not received a notice of  
18 substitution of counsel by July 23, 2014. Mandelbrot has agreed to and  
19 shall use best efforts to notify all claimants he represents that substitutions  
20 of counsel must be filed with the J.T. Thorpe Trust, and the Thorpe  
21 Insulation Trust, and the Western Trust, respectively. By June 23, 2014,  
22 Mandelbrot shall provide the last known contact information for any  
23 claimant which has not yet submitted a notice of substitution of counsel to  
24 these three trusts.

25 b. If Mandelbrot violates any of terms set forth herein, the J.T. Thorpe Trust  
26 and the Thorpe Insulation Trust shall have the right to bring such violations  
27 to the attention of this Court. The Agreement provides that the Western  
28

1 Trust and the Plant Trust shall have the right to bring such violations to the  
2 attention of this Court or their supervising bankruptcy courts.

3 9. This Court concludes that the *Barton* doctrine applies to any disputes between  
4 Mandelbrot, on the one hand, and any of the trust fiduciaries for the J.T. Thorpe Trust and the  
5 Thorpe Insulation Trust, on the other hand, and therefore this Court has exclusive jurisdiction over  
6 any and all such disputes. Following this Court's ruling and order on the Thorpe Trusts' Motion to  
7 Enforce the Agreement, this Court also concludes that the Agreement provides that the *Barton*  
8 doctrine applies to any additional disputes between Mandelbrot, on the one hand, and any of the  
9 trust fiduciaries for the Western Trust, and the Plant Trust, on the other hand, and therefore the  
10 supervising United States Bankruptcy Court that appointed those trust's fiduciaries has jurisdiction  
11 over any and all such disputes.

12 10. These Findings of Fact and Conclusions of Law, as well as the unredacted May 24,  
13 2013 letter of Mr. Stephen Snyder, will become a part of the public record.

14 11. The court adopts its Tentative Rulings identified above in paragraph 17 of the  
15 Findings of Fact as its final rulings on those matters.

16 12. Each party shall bear its own costs and attorney's fees in this matter.

17 PREPARED AND SUBMITTED BY:  
18 STUTMAN, TREISTER & GLATT

19 /s/ Gabriel I. Glazer  
20 GABRIEL I. GLAZER, Members of  
21 STUTMAN, TREISTER & GLATT  
22 PROFESSIONAL CORPORATION  
23 Attorneys for J.T. Thorpe Settlement Trust and  
24 Thorpe Insulation Company Asbestos Settlement Trust

25 ###

26 Date: April 9, 2014



27 Sheri Bluebond  
28 United States Bankruptcy Judge