UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

In re:	**:**	**Chapter 11**
T H AGRICULTURE & NUTRITION, L.L.C.,	**:**	**Case No. 08-14692 (REG)**
Debtor.	**:**	

----------x

ANNUAL REPORT, FINANCIAL STATEMENTS AND RESULTS OF OPERATIONS OF THE T H AGRICULTURE & NUTRITION, L.L.C. ASBESTOS PERSONAL INJURY TRUST FOR FISCAL YEAR ENDED DECEMBER 31, 2019

T H Agriculture & Nutrition (THAN) Asbestos Trust Annual Reports, 2019 annual report
Published by AsbestosClaims.Law
ACL Doc 14462 · Page 1 of 9
asbestosclaims.law/library/14462/1

David F. Levi and Charles A. Koppelman (collectively, the "Trustees"), as Trustees of the T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust (the "Trust"), respectfully file this Annual Report, Financial Statements and Results of Operations for Fiscal Year Ended December 31, 2019 (the "Report"), pursuant to the First Amended Prepackaged Plan of Reorganization of T H Agriculture & Nutrition, L.L.C., Under Chapter 11 of the Bankruptcy Code (the "Plan") and the T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust Agreement (the "Trust Agreement").

I. General

On November 24, 2008, T H Agriculture & Nutrition, L.L.C. ("THAN" or the "Debtor") filed a petition for relief under Chapter 11 of the United States Bankruptcy Code. THAN's bankruptcy case is being administered under Case No. 08-14692. On May 28, 2009, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") confirmed the Plan, and on October 26, 2009, the United States District Court for the Southern District of New York (the "District Court") affirmed the Bankruptcy Court's decision (the "Confirmation Order").

To address the substantial asbestos-related liabilities of the Debtor, the Plan established the Trust in accordance with the Trust Agreement. On November 30, 2009, the Effective Date[1] of the Plan, the Trust was created and funded with $900 million in assets. *See* Plan, section 9.4(f). The Confirmation Order appointed Hon. Alfred M. Wolin, Ret., David F. Levi, and Charles A. Koppelman as trustees of the Trust. Judge Wolin's term as trustee expired on November 30, 2019. Judge Wolin decided not to ask for or accept reappointment. With the agreement of the Trust Advisory Committee (TAC") and the Future Claimants' Representative

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Plan.

Published by AsbestosClaims.Law
asbestosclaims.law/library/14462/2

("FCR"), the Trust will be operated by the remaining two Trustees. Judge Wolin has been retained by the Trust as a consultant.

Under the Trust Agreement, the TAC represents all holders of present Asbestos PI Claims, and the FCR represents the holders of future Asbestos PI Claims. *See* Trust Agreement, sections 6.2 and 7.2. The TAC members are Steven Kazan, Alan R. Brayton, John D. Cooney, Peter A. Kraus, Matthew Bergman, Steven T. Baron, Perry Weitz, and Perry J. Browder. The FCR is Samuel Issacharoff.

The Trust Agreement, at Section 2.2(g), requires that the Trust meet with the TAC and FCR no less often than quarterly. During 2019, the Trust held quarterly meetings with the TAC and the FCR on February 12, 2019, May 21, 2019, September 24, 2019, and November 19, 2019.

The Trustees generally held weekly Trustees' meetings throughout 2019 by telephone, beginning on January 7, 2019.

Charles A. Koppelman is the Managing Trustee of the Trust.

The Trust kept its principal office at 1105 North Market Street, Suite 1300, Wilmington, DE 19801. The administrative office of the Trust is c/o CAK Entertainment, Attn: Charles A. Koppelman, 1330 Avenue of the Americas, Suite 1800, New York, NY 10019.

In 2019, the Trust continued its retention of the following: Stutzman, Bromberg, Esserman & Plifka, A Professional Corporation (general counsel); CBIZ (accountants, claims forecasting, budget advisor and tax advisors); Verus Claims Services LLC ("Verus") (asbestos personal injury claims processing facility and claims administrator); Citi Private Bank and Bank of America Private Bank (financial consultants, money managers, custodian bank and other banking functions); BDO USA, LLP (independent auditor); AON Risk Services Central, Inc.

T H Agriculture & Nutrition (THAN) Asbestos Trust Annual Reports, 2019 annual report Published by AsbestosClaims.Law
ACL Doc 14462 · Page 3 of 9 **asbestosclaims.law/library/14462/3**

(insurance broker), and Ankura Consulting Group LLC (consulting and analytic services). The Trust retained local counsel and other consultants, as needed.

The TAC continued its retention of FrankGecker LLP as its counsel and Legal Analysis Systems as its claims forecasting advisor. The FCR continued his retention of Sher Tremonte LLP as his counsel and retained Nathan Associates as his claims forecasting advisor and consultant.

In 2019, the Trust: (i) invested and managed its assets; (ii) continued paying approved Qualified Asbestos PI Claims, if any, as set forth in more detail in Article II below; (iii) paid Asbestos PI Claims with the Trustees providing directions to the claims facility for the liquidation of the Asbestos PI Claims; (iv) monitored the methodology for liquidating Asbestos PI Claims under the Individual Review procedures of the TDP; (v) maintained the Trust's website, www.thanasbestostrust.com, and posted notices to the website as appropriate; (vi) reviewed issues relating to the processing of claims in the queue and the payment percentage; (vii) conducted audits of certain claims under the Trust's claims audit program; (viii) conducted due diligence reviews of operations regarding Trust business at Verus, Bank of America Private Bank and Citi Private Bank; (ix) worked on ADR Procedures; (x) worked on and adopted the budget for 2020; (xi) monitored Reorganized THAN's financial health and performance and monitored the T H Agriculture & Nutrition, L.L.C. Parent Trust and the receipt of funds from that trust; (xii) renewed liability insurance policies from Ironshore Indemnity Inc., XL Specialty Insurance Company and Nationwide and renewed Cyber Security Insurance from AXIS Insurance Company; (xiii) oversaw any litigation affecting the Trust; (xiv) performed all functions required for Trust governance, including maintaining the Trust's books and records and responding to subpoenas for information and other processes; (xv) addressed subpoenas and

T H Agriculture & Nutrition (THAN) Asbestos Trust Annual Reports, 2019 annual report
Published by AsbestosClaims.Law
ACL Doc 14462 · Page 4 of 9
asbestosclaims.law/library/14462/4

discovery requests to produce information as appropriate, including a Civil Investigative Demand from the United States Department of Justice seeking information with respect to the Medicare Secondary Payer Act.; (xvi) with the consent of the TAC and FCR amended the bylaws of the Trust and the Trust Agreement in light of the reduction in number of trustees from three to two; and (xvii) with the consent of the TAC and FCR implemented cost of living adjustments to the compensation of the Trustees.

The process for reviewing and liquidating Asbestos PI Claims is governed by the Trust Distribution Procedures ("TDP"), a Plan Document adopted pursuant to the Confirmation Order. *See* T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust Distribution Procedures, Docket No. 425. The TDP recognizes that estimates of liabilities and the value of assets fluctuate over time and, accordingly, applies a "Payment Percentage" to the liquidated value of allowed Asbestos PI Claims. *See* TDP, § 2.3. The TDP directs the Trustees to periodically "reconsider the then-applicable Payment Percentage to assure that it is based on accurate, current information," and to adjust the Payment Percentage upward or downward if necessary with the consent of the TAC and the FCR. *Id.* at § 4.2. In making this determination, the Trustees are directed to "base their determination of the Payment Percentage on current estimates of the number, types, and values of present and future Asbestos PI Claims, the value of the assets then available to the Asbestos PI Trust for their payment, all anticipated administrative and legal expenses, and any other material matters that are reasonably likely to affect the sufficiency of funds to pay a comparable percentage of full value to all present and future holders of Asbestos PI Claims." *Id.* The Trustees are further directed to "exercise common sense and flexibly evaluate all relevant factors." *Id.* The Payment Percentage for 2019 was 23%.

The Trust designated its counsel, Stutzman, Bromberg, Esserman & Plifka, as the custodian of Trust records.

II. Asbestos PI Claims

Pursuant to the Plan, the Trust is to pay Qualified Asbestos PI Claims, in the aggregate amount of $396,229,330 as soon as practicable. In prior years, the Trust paid $392,612,530 in Qualified Asbestos PI Claims. In 2019, pursuant to the Trust's review process for payment of remaining Qualified Asbestos PI Claims, the Trust paid one Qualified Asbestos PI Claim in the amount of $150,000.

The Trust, through Verus, its claims processing facility, accepted unliquidated Asbestos PI Claims throughout 2019. Specifically, 267,191 Asbestos PI Claims have been submitted to the Trust to date, including 11,977 Asbestos PI Claims submitted in 2019, as follows:

Disease Level	Claims to date	Claims in 2019
Other Asbestos Disease (Level I)	9,789	80
Asbestosis/Pleural Disease (Level II)	112,288	3,735
Asbestosis/Pleural Disease (Level III)	60,983	2,423
Severe Asbestosis (Level IV)	4,975	187
Other Cancer (Level V)	9,215	673
Lung Cancer 2 (Level VI)	6,228	259
Lung Cancer 1 (Level VII)	34,027	2,585
Mesothelioma (Level VIII)	21,121	1,463
Unknown	8,565	572
Total:	**267,191**	**11,977**

Of the 11,977 Asbestos PI Claims submitted to the Trust in 2019, 677 have been withdrawn, 7,791 have been deferred, and 23 have been approved for payment. In 2019, the Trust paid 2,093 Asbestos PI Claims, totaling $29,475,809 after application of the Payment Percentage. From inception through December 31, 2019, the Trust has paid a total of $392,762,530 on account of Qualified Asbestos PI Claims pursuant to section 5.2 of the TDP,

Published by AsbestosClaims.Law
asbestosclaims.law/library/14462/6

and $343,394,710 on account of Asbestos PI Claims liquidated pursuant to section 5.3 of the TDP.

Under Section 4.3 of the Trust Agreement, the Trust reports payments for Asbestos PI Trust Expenses. The Trust's operating expenses are listed in the Supplemental Information to the attached audited financial statements as addressed below.

III. Compensation and Expenses of Trustees, TAC, and FCR

Under Section 5.5(c) of the Trust Agreement, the Trust reports the amount of compensation and expenses paid to the Trustees. The Trustees have received, on an accrual basis, compensation and reimbursement for out-of-pocket costs and expenses from January 1, 2019, through the end of the fiscal year on December 31, 2019, as follows:

Trustees (3)	$1,018,734.76
Delaware Trustee	$3,000.00

Under Section 6.6 of the Trust Agreement, the Trust reports to the Bankruptcy Court the amount of compensation and expenses paid to the TAC. The TAC has received, on an accrual basis, compensation and reimbursement for fees and expenses, including counsel, during the fiscal year ending December 31, 2019, as follows:

TAC	$134,307.74

Under Section 7.6 of the Trust Agreement, the Trust reports to the Bankruptcy Court the amount of compensation and expenses paid to the FCR. The FCR has received, on an accrual basis, compensation and reimbursement for fees and expenses, including counsel, during the fiscal year ending December 31, 2019, as follows:

FCR	$57,102.80

Published by AsbestosClaims.Law
asbestosclaims.law/library/14462/7

IV. Financial Statements

A copy of the Trust's audited financial statements for the year ending December 31, 2019, including a balance sheet as of December 31, 2019, and a statement of operations for 2019, is attached hereto as Exhibit A. Exhibit A also includes BDO USA, LLP's opinion as to the fairness of the financial statements' presentation of the cash and investments available for the payment of claims and as to the conformity of the financial statements with special purpose accounting methods.

The Asbestos Trust provided copies to the TAC and FCR on April 27, 2020.

V. Certification

The Trustees certify that they have performed pursuant to and in compliance with the Plan, the Trust Agreement, the Trust Distribution Procedures, the Confirmation Order, and such other Plan documents and Bankruptcy Court orders pertaining to the operation of the Trust during the fiscal year ended December 31, 2019.

TRUSTEES:

/s/ David F. Levi
DAVID F. LEVI

/s/ Charles A. Koppelman
CHARLES A. KOPPELMAN

Published by AsbestosClaims.Law
asbestosclaims.law/library/14462/8

Respectfully submitted this 30th day of April 2020,

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA,

A PROFESSIONAL CORPORATION

By: */s/ Peter C. D'Apice*
Sander L. Esserman (Admitted *pro hac vice*)
Texas Bar No. 06671500
Steven A. Felsenthal (Admitted *pro hac vice*)
Texas Bar No. 06889900
Peter C. D'Apice (Admitted)
Texas Bar No. 05377783

2323 Bryan Street, Suite 2200
Dallas, Texas 75201-2689
Telephone: (214) 969-4900
Facsimile: (214) 969-4999

ATTORNEYS FOR THE T H AGRICULTURE & NUTRITION, L.L.C. ASBESTOS PERSONAL INJURY TRUST

CERTIFICATE OF SERVICE

The undersigned certifies that on this 30th day of April 2020, the foregoing ANNUAL REPORT, FINANCIAL STATEMENTS AND RESULTS OF OPERATIONS OF THE T H AGRICULTURE & NUTRITION, L.L.C. ASBESTOS PERSONAL INJURY TRUST FOR FISCAL YEAR ENDED DECEMBER 31, 2019, was served via ECF on all those parties receiving such notice through the Court's CM/ECF system.

/s/ Peter C. D'Apice
Peter C. D'Apice