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Bankruptcy Counsel for the Western Asbestos Settlement Trust

**UNITED STATES BANKRUPTCY COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

| | |
|---|---|
| In re:<br><br>WESTERN ASBESTOS COMPANY,<br><br>Debtor. | Case No. 13-31914 TC<br><br>Chapter 11<br><br>**TENTH ANNUAL REPORT AND ACCOUNTING, AUDITED FINANCIAL STATEMENTS, AND CLAIM REPORT**<br><br>Date: June 27, 2014<br>Time: 9:30 a.m.<br>Place: 235 Pine Street, 19th Floor<br>San Francisco, CA 94104 |

The Trustees of the Western Asbestos Settlement Trust by and through their counsel, Eve H. Karasik and Gabriel I. Glazer of Stutman, Treister & Glatt Professional Corporation, hereby file the Tenth Annual Report and Accounting, Audited Financial Statements, and Claim Report.

Respectfully submitted this 30th day of April, 2014.

By: //s// *Gabriel I. Glazer*
EVE H. KARASIK, and
GABRIEL I. GLAZER, Members of
STUTMAN, TREISTER & GLATT
PROFESSIONAL CORPORATION

Bankruptcy Counsel for the Western Asbestos Settlement Trust



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**TENTH ANNUAL REPORT AND ACCOUNTING OF WESTERN ASBESTOS SETTLEMENT TRUST**

The Trustees of the Western Asbestos Settlement Trust ("Trust") hereby submit this Tenth Annual Report and Accounting ("Annual Report") covering Trust activities occurring from January 1, 2013 to and including December 31, 2013 ("Accounting Period"), and certain activities of the Trust, specified below, that took place outside the Accounting Period. This Annual Report is submitted to the U.S. Bankruptcy Court for the Northern District of California, San Francisco Division (the "San Francisco Court"), *In Re Western Asbestos Company*, Case No. 13-31914 TC, in accordance with the *Second Amended Joint Plan of Reorganization* [Docket No. 1002] ("Plan");the January 27, 2004 *Order Confirming Second Amended Joint Plan of Reorganization and Granting Related Relief* [Docket No. 1205] ("Confirmation Order"); and the Trust Agreement, Bylaws, Trust Distribution Procedures, and Case Valuation Matrix, as amended from time to time, established pursuant to the Plan,[1] and pursuant to the laws of the State of Nevada, where the Trust is organized and where it resides. The Trust Agreement states in Section 7.11 that the Trust is governed by Nevada law. Section 164.015 of the Nevada Revised Statutes allows the Trust to render an accounting and seek approval for its past actions. The factual statements in this Annual Report are supported by the Declaration of Sara Beth Brown, Executive Director, in Support of Motion to Approve and Settle Western Asbestos Settlement Trust's Tenth Annual Report and Accounting, the Audited Financial Statements, and the Claim Report, as described in paragraphs 7, 8, and 9, *infra*. The factual statements contained in paragraph 23(b), *infra* and Exhibit C attached hereto are supported by the Declaration of Benjamin P. Smith in Support of Motion to Approve and Settle Western Asbestos Settlement Trust's Tenth Annual Report and Accounting, Audited Financial Statements, and Claim Report. Capitalized terms not defined herein are as defined in the Glossary of Terms for the Plan Documents. The Honorable Leslie Tchaikovsky of the United States Bankruptcy

[1]The Appendix includes the Plan; Confirmation Order; Tenth Amendment to and Complete Restatement of Western Asbestos Settlement Trust Agreement ("Trust Agreement"); Second Amendment to and Complete Restatement of Western Asbestos Settlement Trust Bylaws ("Trust Bylaws"); First Amendment to and Complete Restatement of Western Asbestos Settlement Trust Case Valuation Matrix ("Matrix"); First Amendment to and Complete Restatement of the Western Asbestos Company/Western Mac Arthur Co./Mac Arthur Co. Asbestos Personal Injury Settlement Trust Distribution Procedures ("TDP"); other controlling documents approved by the Court; and other documents as indicated.



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Court for the Northern District of California, Oakland Division (the "Oakland Court") approved each Annual Report beginning in 2005 until the Western Asbestos bankruptcy case was transferred to the Honorable Roger Efremsky of the Oakland Court. Judge Efremsky approved the 2010, 2011 and 2012 Annual Reports.

1. Case Assignment: This matter, originally filed as a Chapter 11 bankruptcy case, was assigned for all purposes to United States Bankruptcy Judge Leslie Tchaikovsky of the Oakland Court. On September 1, 2010, the case was transferred to United States Bankruptcy Judge Roger Efremsky. On August 5, 2013, Judge Efremsky recused himself from the case [Docket No. 1782]. Thereafter, the case was assigned to United States Bankruptcy Judge William J. Lafferty, III, of the Oakland Court, who recused himself from the matter on August 16, 2013. The case and any adversary proceedings then were transferred to Chief United States Judge Alan Jaroslovsky for the Bankruptcy Court for the Northern District of California for further disposition [Docket No. 1784]. On August 21, 2013, the case and all adversary proceedings were transferred to United States Bankruptcy Judge Thomas E. Carlson of the San Francisco Court for all purposes [Docket No. 1786]. The original case number of 02-46284-WJL was changed to 13-31914-TC [Docket No. 1788].

2. Effective Date: In compliance with Sections 4.1 and 7.2 of the Plan, and the Glossary of Terms for the Plan Documents, the Effective Date of the Trust is April 22, 2004.

3. Appointment of Trustees: In its February 2, 2004 Order Approving Futures Representative's Motion for Approval of Appointment of Trustees for the Western Asbestos Settlement Trust [Docket No. 1262] the Oakland Court approved the appointment of Sandra R. Hernandez, M.D., John F. Luikart and Stephen M. Snyder as Trustees of the Trust, who have acted in that capacity since that time. Elected in 2004 by the other two Trustees, Stephen M. Snyder has continued to serve as Managing Trustee throughout the Accounting Period.

4. Appointment of Trust Advisory Committee ("TAC"): In the Confirmation Order, the Oakland Court approved the appointment of Alan Brayton, Jack Clapper, David M. McClain, Phil Harley, and Michael Sieben as the initial members of the TAC. Mr. Brayton has served as the Chair of TAC since the Effective Date of the Trust. Messrs. Clapper, McClain and


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Sieben have continued to serve as members of the TAC since the Effective Date of the Trust. Jerry Neil Paul's appointment to replace Phil Harley as a member of the TAC was approved by the Oakland Court in June 2009.

5. Appointment and Continuation of Futures Representative: The Honorable Charles B. Renfrew was appointed as the Futures Representative in the Western Asbestos cases on November 25, 2002, and his continued appointment as the Futures Representative of the Trust was approved by the Oakland Court in the Confirmation Order. Judge Renfrew has served as the Trust's Futures Representative since the Effective Date of the Trust.

6. Fiscal Year and Tax Obligations: The Trust is required by the Internal Revenue Code to account for and report on its activities for tax purposes on a calendar-year basis. Therefore, the Trust's fiscal year is the calendar year. Except where otherwise stated, all reports attached to this Annual Report cover the Accounting Period. Section 2.2(b) of the Trust Agreement requires the Trustees to file income tax and other returns and statements in a timely manner, and comply with all withholding obligations as legally required, including fulfilling requirements to maintain the Trust's status as a Qualified Settlement Fund. The Trust has complied with its tax obligations on a quarterly basis. The 2013 federal tax return will be filed by its extended due date of September 15, 2014. The Trust resides in Nevada, and Nevada has no state income tax. Although the Trust is not subject to tax in California, the Trustees file a tax return in California each year, attaching a copy of the Trust's federal tax return, but showing no California taxable income or state tax liability.

7. Annual Report: Section 2.2(c)(i) of the Trust Agreement provides in pertinent part:

> The Trustees shall cause to be prepared and filed with the Bankruptcy Court, as soon as available, and in any event within 120 days following the end of each fiscal year, an annual report containing financial statements of the Trust (including, without limitation, a statement of the net claimants' equity of the Trust as of the end of such fiscal year and a statement of changes in net claimants' equity for such fiscal year) audited by a firm of independent certified public accountants selected by the Trustees and accompanied by an opinion of such firm as to the fairness of the financial statements' presentation of the equity presently available to current and future claimants and as to the conformity of the financial statements with accounting principles generally accepted in the United States, except for the special-purpose accounting methods.


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The Trust's financial statements are prepared using special-purpose accounting methods that depart from Generally Accepted Accounting Principles (GAAP) in certain instances in order to better disclose the amount and changes in net claimants' equity.

8. Financial Report: In accordance with the requirements of Section 2.2(c)(i) of the Trust Agreement, the Trust has caused its financial statements to be audited by Grant Thornton LLP, the independent certified public accountants retained by the Trust to perform the annual audit of its financial statements. The Trust's audited financial statements ("Audited Financial Statements") are attached hereto as Exhibit "A." These include a Statement of Net Claimants' Equity, a Statement of Changes in Net Claimants' Equity, a Statement of Cash Flows and Explanatory Notes. The Statement of Net Claimants' Equity, which is the equivalent of a corporate balance sheet, reflects total assets of the Trust at market value and on the other comprehensive basis of accounting adopted by the Trust. These Audited Financial Statements show, among other things, that as of December 31, 2013, total Trust assets were $851,526,489, total liabilities were $68,677,809, and Net Claimants' Equity was $782,848,680.

9. Claim Report: Section 2.2(c)(ii) of the Trust Agreement provides that along with the Audited Financial Statements, the Trust shall file with the court a report containing a summary regarding the number and type of claims disposed of during the period covered by the financial statements. The Western Asbestos Settlement Trust Claim Report As Of December 31, 2013 ("Claim Report"), is attached hereto as Exhibit "B". During the Accounting Period, the Trust received 715 claims, paid 949 claims, and made settlement offers on 1,129 claims. Since the Trust received its first Trust Claim[2] on August 27, 2004, the Trust has received 11,321 Trust Claims, paid 8,168 Trust Claims, and 2,025 Trust Claims have been withdrawn.[3]

Section 5.4 of the TDP provides that the Trust shall pay Pre-Petition Default, Settlement, and Matrix Claims (hereafter "Pre-Petition Liquidated Claims")[4] "[as] soon as

[2] "Trust Claims" are any claims submitted to the Trust after the Effective Date.

[3] "Withdrawn Claims" include claims which are not qualified and/or claims with deficiencies that have not been cured beyond a certain time period, and/or claims that have remained on hold beyond a certain time period.

[4] See the Oakland Court's February 3, 2004 *Memorandum of Decision after Confirmation Hearing* [Docket No. 1265] included in the Appendix filed herewith.



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practicable after the Effective Date." The vast majority of these claims were paid in 2004, and by December 2005, the Trust had paid 99% of all Pre-Petition Liquidated Claims. During the Accounting Period, three (3) claims were paid in the amount of $28,904. An additional six (6) Pre-Petition Liquidated Claims have been withdrawn. The Trust has not yet received proper release documents for fifteen (15) remaining unpaid Pre-Petition Liquidated Claims in the total amount of $147,267.

10. Public Inspection: In compliance with Section 2.2(c) of the Trust Agreement, the Annual Report, including the Audited Financial Statements and Claim Report, has been sent to the Futures Representative, the TAC, the Debtors, and the Office of the United States Trustee with responsibility for the Northern District of California, and has been filed with the United States Bankruptcy Court for the Northern District of California. Accordingly, the Annual Report and attached and related documents have been made available for inspection by the public in accordance with procedures previously established.

11. Trustees' Meetings: Article II, Section 4 of the Trust Bylaws provides that the Trustees shall meet in Nevada, or a state other than California, at least four times per year, as close as practicable on a quarterly basis. The Trustees held four (4) meetings during the Accounting Period (February 7-8, 2013, April 15, 2013, September 11, 2013, and November 21, 2013). All meetings were held in Nevada.

12. Arbitrations: During the Accounting Period, one (1) Pro Bono Evaluation by Document was requested pursuant to Section 5.9 of the Trust Distribution Procedures. The claim had been assigned to a pro-bono evaluator and was proceeding according to the rules but currently awaits transfer to new counsel pursuant to the terms of the trial-court approved stipulation that concluded the Thorpe Adversary Proceeding (more fully described in paragraph 23(b), *infra*).

13. Payment Percentage: Section 4.2 of the TDP provides that, commencing on the first day of January, after the Plan has been confirmed and no less frequently than once every three years thereafter, the Trustees shall reconsider the Payment Percentage to assure that it is based on accurate current information and may, after such reconsideration, change the Payment Percentage if necessary with the consent of the TAC and the Futures Representative. In its April 14, 2004,


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"Order Under Fed. R. Bankr. P. 9019 Approving Compromises with Settling Insurers, "the Oakland Court approved a Payment Percentage to the Trust's claimants of 31.5%. The Payment Percentage was increased to 34.2% effective January 1, 2006, to 40% on July 24, 2007, and to 44% on February 18, 2010. On February 7, 2013, the Payment Percentage was again reviewed and remains at 44%.

14. Maximum Annual Payment: Section 2.4 of the TDP requires that the Trust calculate an annual payment limit for claims based upon a model of the amount of cash flow anticipated to be necessary over the entire life of the Trust (the "Maximum Annual Payment") to ensure that funds will be available to treat all present and future claimants as similarly as possible. At the November 21, 2013 meeting, the Maximum Annual Payment for 2014 was set at $61,718,968, plus the amount of $364,342,380 of excess funds carried over from prior years, which Section 2.5 of the TDP requires to be rolled over and remain dedicated to the respective "Disease Category" in the "Jurisdiction" (as such terms are described in the TDP) to which they were originally allocated.

15. Inflation Adjustment: The original Payment Percentage approved by the Oakland Court was based upon projections of future claims payments adjusted annually for inflation. Beginning in 2006, all claims payments made during a calendar year include a cost of living adjustment based upon the Federal Bureau of Labor Statistics' *Consumer Price Index for Urban Wage Earners and Clerical Workers* (CPI-W) announced in January each year. At the November 21, 2013 meeting, the CPI-W to be published in January 2014 was approved for use by the Trust in making the 2014 cost of living adjustment for claims payments. The CPI-W of 1.5% was issued on January 16, 2014. Consequently, all claims payments made during the 2014 calendar year will have a compounded inflation rate of 23.33% added to the payment amount.

16. Budget and Cash Flow Projections: Section 2.2(d) of the Trust Agreement requires the Trustees to cause to be prepared a budget and cash flow projections prior to the commencement of each fiscal year covering such fiscal year and the succeeding four fiscal years. The Trustees approved the 2014 budget and the required four-year budget and cash flow projections


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on November 21, 2013. Pursuant to the Trust Agreement, these were provided to the Futures Representative and TAC. The budget for operating expenses in 2014 totals $2,604,000.[5]

17. J.T. Thorpe Settlement Trust, Thorpe Insulation Company Asbestos Settlement Trust, and Plant Insulation Company Asbestos Settlement Trust Administration: As initially described in the Trust's Third Annual Report and Accounting, the Trust and J.T. Thorpe Settlement Trust ("J.T. Thorpe Trust") entered into a Trust Facilities and Services Sharing Agreement. The J.T. Thorpe Trust agreed to pay a negotiated monthly amount. Such arrangement was approved by the Oakland Court in the order approving the Trust's Third Annual Report. Pursuant to the annual reconciliation of fees presented at the February 7, 2013 meeting, the advance payments were set at $26,000 per month for 2013. Additionally, at the February 7, 2013 meeting, the Trustees approved the Fourth Amendment to and Complete Restatement of the Trust Facilities and Services Sharing Agreement between the Trust and J.T. Thorpe Trust. The annual reconciliation presented on February 20, 2014 set the advance payments at $29,000 per month for 2014 and the total amount paid to the Trust by the J.T. Thorpe Trust, after accounts were reconciled for 2013, was $368,360.

As initially described in the Trust's Seventh Annual Report and Accounting, the Trust and Thorpe Insulation Company Asbestos Settlement Trust ("Thorpe Insulation Trust") entered into a Trust Facilities and Services Sharing Agreement. The Thorpe Insulation Trust agreed to pay a negotiated monthly amount. Such arrangement was approved by the Oakland Court in the order approving the Trust's Seventh Annual Report. Pursuant to the annual reconciliation of fees presented at the February 7, 2013 meeting, the advance payments were set at $29,000 per month for 2013. Additionally, at the February 7, 2013 meeting, the Trustees approved the Second Amendment to and Complete Restatement of Facilities and Services Sharing Agreement between the Trust and Thorpe Insulation Trust. The annual reconciliation presented on February 20, 2014 set the advance

[5] This figure is net of facilities sharing payments which are budgeted for $912,000, net of claimant payments which are budgeted for $61,718,968, net of extraordinary legal fees which are budgeted for $3,075,000, and net of income tax payments which are budgeted for $4,000,000.



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payments at $32,000 per month for 2014 and the total amount paid to the Trust by the Thorpe Insulation Trust, after accounts were reconciled for 2013, was $416,955.

The Trust was requested to share its resources to administer and process the Plant Insulation Company Asbestos Settlement Trust ("Plant Trust"). The Trustees concluded that sharing resources as proposed would result in a more efficient and economical operation for the benefit of both the current and future claimants of each of the Trusts, and would enable the Trust to retain full use of its existing resources, without imposing additional burdens that might slow the processing of Trust claims. The Trustees also concluded that entering into a resources sharing agreement with the Plant Trust would be in the best interests of the Trust's beneficiaries and that doing so was permitted by Trust documents and Nevada law. The Trust Facilities and Services Sharing Agreement approved on February 7, 2013, with the consent of the Approving Entities, provides:

(i) for the Plant Trust to pay a monthly amount, subject to the annual adjustment, of $15,000 to the Trust for processing and its share of fixed costs.

(ii) for the sharing of the Trust employees.

(iii) for an annual accounting each year to identify and adjust actual costs as shared to insure that each trust is paying its proportionate share of the expenses.

Pursuant to the annual reconciliation of fees presented on February 20, 2014, it was decided that the advance payments shall remain at $15,000 per month for 2014 and the total amount paid to the Trust by the Plant Trust, after accounts were reconciled for 2013, was $184,183.

18. Operating Fund: The Operating Fund was established at Wells Fargo Bank, N.A. as described in all the Trust's Annual Reports. During the Accounting Period, transfers were made from the Settlement Fund to the Operating Fund to pay anticipated operating expenses of the Trust.

19. Set Aside Funds: The Trust continues to maintain separate funds for the defense and indemnification of Ordway and Milwaukee, Van Packer, Mac Arthur and Western Mac Arthur, and ERC as required by the Trust Documents and/or settlement agreements. These accounts hold the legally required amounts in cash and securities for certain indemnification obligations. During the Accounting Period, no claims were made against and nothing was paid from this fund.



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20. Indemnity Fund (Self-Insured Retention): Section 4.6 of the Trust Agreement provides that the Trust shall indemnify the Trustees, the Trust's officers and employees, the Futures Representative, the TAC and each of their respective agents. The Trustees, the Futures Representative, the TAC and their respective agents have a first priority lien upon the Trust's assets to secure the payment of any amounts payable to them pursuant to Section 4.6.

In 2004, the Trust established an indemnity fund in the amount of $40,000,000, as described in all the Trust's Annual Reports. All interest earned by the fund is returned to the Trust quarterly. During the Accounting Period, no claims were made against the indemnity fund and nothing was paid from the indemnity fund.

21. Special Budget Fund: A Special Budget Fund was approved in the Oakland Court's May 18, *2005 Order to Approve and Settle Western Asbestos Settlement Trust's Annual Report and Accounting, Audited Financial Statements, and Claim Report; and to Approve Resolution Regarding the FAIR Act* [Docket No. 1595].There has been no change in this fund during the Accounting Period.

22. Settlement Fund Control Account and Control Agreements: Section 4.7 of the Trust Agreement grants to the Trustees, the Futures Representative and the TAC, a security interest in all of the assets of the Trust to secure the indemnification obligations of the Trust to such parties. The Trustees, the TAC, the Futures Representative and their agents have a security interest in the assets of the Trust. The Trust entered into five separate Control Agreements in 2005 as described in detail in the Trust's Second Annual Report and Accounting. There has been no change in these Control Agreements during the Accounting Period.

23. Legal Disputes:

a. *Home and CNA insurance coverage-related litigation.*

i. *Western Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co.*, et al., San Francisco Sup.Ct., Case No. CGC04-436181, November 9, 2004 *(*the"*Zurich* case" and the "*Zurich* Court"*):* This is an insurance coverage action against Zurich Insurance Company and several Zurich-related subsidiaries ("Zurich") seeking recovery for asbestos bodily injury liabilities under primary level insurance policies issued by the Home Insurance


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Company ("Home") for the period 1976 to 1983. This action seeks to hold Zurich responsible for the insuring obligations of Home, which is now in liquidation and unable to pay its policy obligations in full. The Trust timely submitted a claim in the Home insolvency proceedings in 2004 and, after substantial negotiations with the Home liquidator, reached a settlement that provided for an allowed claim in the liquidation proceedings in the amount of $242.5 million. Because of its insolvency, it is not expected that Home will be able to pay the entire allowed amount, but instead will pay a portion of the allowed amount over a period of several years. The action against Zurich, which directly or indirectly acquired substantial Home assets and liabilities in a series of transactions commencing in the decade of the 1990's, seeks to recover amounts that will not be paid by Home as a result of its insolvency, including but not limited to the deficit between the allowed amount ($242.5 million) and the amount that is ultimately paid by Home. The action asserts various claims, as follows: constructive and intentional fraudulent transfer, violation of unfair competition laws, alter ego, respondeat superior, negligent and intentional interference with prospective economic advantage, and declaratory relief and breach claims relating to the Home coverage.

Morgan, Lewis &Bockius LLP ("Morgan Lewis") represents the Trust – as well as several co-plaintiffs -- in the Zurich litigation. Morgan Lewis's hourly fees to the Trust are capped monthly and also provide for a success fee based on the amount of any final recovery.

In December, 2013, after a phase I bench trial of specified issues the trial Court ruled that the Trust's fraudulent conveyance claims were barred by a seven year statute of repose. The Zurich Court also ruled that the findings made by the New Hampshire Insurance Department and the California Insurance Department in their approvals of the Recapitalization are binding as a matter of collateral estoppel. Further, Home's Liquidator, and not the Plaintiffs, has standing to bring claims in the Zurich Court with respect to the alleged fraudulent transfer.

The Zurich Court has stated that it will render a decision on the remaining issues and set a further status conference to determine next steps in the case. Meanwhile, the *Zurich* case remains stayed.

ii. In February 2013, the Trust filed a lawsuit against the California Insurance Guarantee Association ("CIGA") in the Alameda Superior Court, captioned *Stephen M.*


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*Snyder, et al. v. California Insurance Guarantee Association*, Civil Case No. RG13666656. This action seeks recovery from CIGA for asbestos bodily injury liabilities that would otherwise be covered by the Home under its policies issued from 1976 to 1983, to the extent that Home is unable to pay as a result of its insolvency and if Zurich is found not to be responsible for Home's obligations. CIGA is a state-regulated organization that provides insurance coverage, under certain circumstances, for insurance companies that have become insolvent and unable to pay their claims. CIGA was previously a defendant in the Zurich case in a declaratory relief count, but was dismissed without prejudice in 2012 as a condition of the settlement with Home on the allowed claim.

The action in Alameda County was designated "complex" and was assigned to the complex court. CIGA filed a demurrer to the Trust's complaint on various grounds, including that the suit was barred by a three-year statute of limitations. On June 28, 2013, the Judge in this matter sustained the demurrer without leave to amend, finding that the action was untimely, inasmuch as CIGA had been previously sued for declaratory relief in the Zurich case and that the statute of limitations had run.

The Trust filed a timely appeal of the ruling sustaining the demurrer without leave to amend on July 19, 2013. The appellate briefing is complete.

iii. In the Zurich case, the Trust also sued Continental Casualty Company ("CNA") in connection with an insurance policy that appears to have been issued to Bay Cities Asbestos Company, Western's corporate predecessor, for the period 1946-1949. The policy has never been located, but there is secondary evidence reflecting its existence. A bench trial was held in 2006 and 2007, over a period of seven weeks, as to whether the existence and material terms of the policy could be proven. The Trust contends that the evidence supports the existence and material terms of the policy and that there are no aggregate limits applicable to asbestos claims. CNA contends that the evidence is insufficient to prove the existence of the policy and, alternatively, the policy would not provide coverage for the Bay Cities asbestos liabilities on various grounds, even if proven. To date, the court has not rendered a decision on the issues.


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b. *Western Asbestos Settlement Trust v. Michael J. Mandelbrot and Mandelbrot Law Firm*, Adversary Proceeding No. 13-03205 United States Bankruptcy Court for the Northern District of California, San Francisco Division.

On January 23, 2014, the Trustees entered into an agreement with the Mandelbrot Law Firm and its principal, Michael J. Mandelbrot (herein "Mandelbrot"), requiring that Mandelbrot transfer all its pending claims to other counsel and cease "immediately" further claims-filing activity with the Trust. This agreement was made on the record during a bench trial of the Thorpe adversary proceedings (*J.T. Thorpe Settlement Trust and Thorpe Insulation Company Asbestos Settlement Trust*, U.S. Bankruptcy Court for the Central District of California Case No. 2:12-ap-02182BB) presided over by the Honorable Sheri Bluebond. Earlier, in October 2013, this court dismissed without prejudice a similar adversary proceeding instituted by the Trust as not ripe for declaratory relief after the Trustees had investigated the claims filing practices of Mandelbrot and, in May 2013, found them to be unreliable within the meaning of Trust Distribution Procedures Section 5.7(a), but, for reasons spelled out in a May 24, 2013 letter to Mandelbrot, decided to continue to monitor closely claims submitted to this trust rather than to withdraw Mandelbrot's claims filing privileges.

Investigating claims submitted to the Thorpe Trusts, in the same May letter, the Thorpe Trusts spelled out reasons why they would decline to accept further evidence or claims from Mandelbrot. Those proceedings continued to trial. The evidence produced during pre-trial discovery, and in the trial before Judge Bluebond this January, caused the Trustees of this Trust to conclude that it was appropriate to stop accepting further evidence from Mr. Mandelbrot, i.e., to impose the same limitation with regard to this Trust that the Thorpe Trusts had imposed on Mandlebrot in mid-2013. By entering into the agreement and stipulation in January, Mandelbrot avoided a potentially harsher result had the trial continued. In the stipulation, Mandelbrot agreed, among other things, that the Thorpe Trusts decision to stop accepting further evidence from Mandelbrot in 2013 was reasonable and, further, that it was reasonable for this Trust to take similar action now. Accordingly, this Trust joined the stipulation and since has acted in conformity with its terms.


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However, since making the stipulation, Mandelbrot's trial counsel was substituted out as counsel, and Mandelbrot has disavowed the agreement and unsuccessfully challenged its validity in Judge Bluebond's court. After further hearings, Judge Bluebond entered judgment reaffirming the validity and enforceability of the agreement. This is described in greater detail in Exhibit C.

As a result of the stipulation, and consistent with its terms, the Trust is not processing Mandelbrot claims submitted to this Trust (or the Thorpe Trusts) pending Mandelbrot's transfer of those claims to new counsel. All trusts also are ordered to notify all affected claimants of the need to complete these transfers within the time limits specified in the stipulation and agreement in order to avoid withdrawal of their claims and possible forfeiture of their filing fees.

c. Resolution Regarding Default Judgments: Mandelbrot's defense in all the adversary proceedings included allegations of trust corruption and of bias against Mandelbrot claims in retaliation for Mandelbrot's disclosures that Western had improperly paid a liquidated pre-petition claim arising out of a default judgment fraudulently obtained against Western MacArthur by a client (the estate and family of Harry Kananian) of one of the members of the Trust Advisory Committee. In light of this allegation, the Trustees, among other things, retained independent counsel to investigate these allegations and to provide legal advice to the Trustees. The Trustees also requested the Trust Advisory Committee and the Futures Representative provide their views with respect to what the Trustees should do in response to the allegations about the Kananian default judgment.

The Trustees learned that in the course of seeking confirmation of the Western plan of reorganization, the Western Companies and other plan proponents entered into a Default Judgment Settlement[6] with individuals, including the Kananians, who held pre-bankruptcy default judgments. The Default Judgment Settlement resolved objections of non-settling casualty insurance companies—companies that had issued insurance policies to the Western Companies and therefore were potentially obligated to pay the judgments—to the allowance of approximately 1,900 default

[6]Section 5.4 of the TDP to the Second Amended Joint Plan of Reorganization (Docket No. 1002) as defined by the Court in its Order Confirming 2nd Amended Plan at ¶K.48 [Docket No. 1205].


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judgment claims after the Bankruptcy Court ("Court") overruled those objections.[7] The Court's Memorandum of Decision after the Confirmation Hearing [Docket no. 1265] recognized that the Default Judgment Settlement conferred a "substantial" benefit, particularly given the "substantial impediments" under federal and California law to setting aside final state court judgments. Accordingly, the Court's order confirming the plan approved the Default Judgment Settlement and provided that "[a]ll Asbestos Related Claims shall be paid in accordance with … the [Trust Distribution Procedures]."[8] In turn, the Trust Distribution Procedures required (and still require) that "the Trust shall pay all Trust Claims that were liquidated by … a default judgment." Further, the Court made clear that "[t]he Default Judgment Settlement eliminate[d] the ability of the Debtors or the Trust to contest the liability evidenced by the California Default Judgments under applicable state law."[9]

The Trustees have concluded that incurring the expense of pursuing this matter further—or investigating other default judgments—would not benefit the Trust's beneficiaries. Such a further investigation would require extensive effort and expense that is not warranted, particularly in light of the fact that the Trust is responsible for paying, and therefore would be undertaking to investigate, approximately 1,900 default judgments. (For example, it is not at all clear what such an investigation would have shown with regard to the Kananian claim. Although the Kananians' 2002 default judgment "prove-up" to the California Superior Court contained an incorrect factual assertion regarding decedent's Western Mac Arthur asbestos exposure, the evidence available at that time appears also to have included adequate and readily available alternative proof of exposure to Western MacArthur.) Relief from this burden of investigating 1,900 default judgment claims was the very issue that the Court resolved in favor of plan proponents

[7]See e.g. Opposition By Hartford Accident and Indemnity Company to Plan Proponents' Motion for Summary Judgment and Counter-Motion to Disallow Claims; Memorandum of Points and Authorities in Support Thereof [Docket No. 367]; Reply of Hartford Accident and Indemnity Company in Support of Hartford's Counter-Motion to Disallow Claims [Docket No. 398]; Objection by Defendant Hartford Accident and Indemnity Company to Claims Under 11 U.S.C. §§502(b)(1), 365(e), and 541(c)(1); Memorandum of Points and Authorities in Support Thereof [Docket No. 677].

[8]See ¶K.48 of the Order Confirming Second Amended Joint Plan of Reorganization and Granting Related Relief [Docket No. 1205].

[9]See Memorandum of Decision after the Confirmation Hearing [Docket no. 1265] p.47-49.


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during the bankruptcy when it approved the Default Judgment Settlement. The court's order confirming the plan of reorganization and memorandum of decision after the confirmation hearing expressly eliminated the possibility of pursuing such an enterprise.

Based on this investigation, the Trustees resolved to take no further action and to report these conclusions to this Court.

24. Amendments to the Trust Documents: There were no amendments to Trust Documents during the Accounting Period. However, the Western Asbestos Settlement Trust Bylaws and Trust Agreement were amended on February 20, 2014, and the Trust Distribution Procedures and Matrix were amended on March 25, 2014. Copies of the Third Amendment to and Complete Restatement of the Western Asbestos Settlement Trust Bylaws, Eleventh Amendment to and Complete Restatement of Western Asbestos Settlement Trust Agreement, Second Amendment to and Complete Restatement of the Western Asbestos Company/Western Mac Arthur Co./Mac Arthur Co. Asbestos Personal Injury Settlement Trust Distribution Procedures, and Second Amendment to and Complete Restatement of Western Asbestos Settlement Trust Case Valuation Matrix are included in the Appendix filed herewith.

25. Notifications to Beneficiaries: During the Accounting Period and, additionally, from January 1, 2014 to and including April 17, 2014, the following notifications were placed on the Trust's Web site:

a. Notice of review of Western Asbestos Payment Percentage (posted February 20, 2013);

b. Notice of hearing on the Trust's Ninth Annual Report and Accounting (posted on May 1, 2013);

c. Notice of modifications to the Western Ships Built and Western Ships Repaired Lists(posted on October 1, 2013);

d. Notice of Suspension of Pro Bono Evaluation Procedures (posted January 14, 2014);

e. Notice of settlement of Mandelbrot adversary proceeding (posted January 31, 2014);


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f. Notice of claims processing FTP server maintenance (posted February 18, 2014);

g. Notice of computer system incursion (posted February 21, 2014);

h. Notice/update regarding computer system incursion (posted March 6, 2014);

i. Notice regarding submission of claims in paper form (posted March 14, 2014); and

j. Notice/update regarding settlement of Mandelbrot adversary proceeding (posted April 16, 2014).

26. Attempt to Place False Claim in Database: The Trust discovered on February 18, 2014, that an attempt had been made to place a fictitious claim within the Trust database on or about February 15, 2014. The system was taken off-line on February 18, 2014, and a cyber-security firm was hired to conduct a forensic investigation. The Trust also has hired a law firm that specializes in the legal requirements, if any, related to the false claim placement. The investigation is ongoing. Claims are being submitted in paper or digital form until such time as the system can be safely placed back on line.

27. System Development: The Trust has been working to develop an updated system and anticipates that it will contract with an outside vendor and move to a new platform within 2014.

28. Filing Fee: Pursuant to Section 6.4 of the TDP, the filing fee was reviewed at the September 11, 2013 meeting and there were no recommended changes to the existing $250.00 fee during the Accounting Period or as of the date hereof.

29. Trustees' Compensation: Section 4.5(c) of the Trust Agreement requires the Trust to report the amounts paid to the Trustees for compensation and expenses. During the Accounting Period, the Trustees each received per annum compensation in the amount of $70,000 paid in quarterly installments. The total paid to all Trustees for hourly compensation was $185,092 and $6,159 was the total amount of expenses incurred by all Trustees.



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30. Significant Vendors: Although the Trust has many vendors, those who were paid more than $100,000 during the Accounting Period are listed alphabetically below.

a. Analysis Research Planning Corporation ("ARPC"): Provides monthly maintenance of the Trust's current claims processing system. Dr. Vasquez of ARPC acts as the expert professional with whom the Trustees consult;

b. Anthem Blue Cross Blue Shield: Trust employee health insurance plan carrier;

c. BlackRock Financial Management: One of eight investment managers for the Trust described in paragraph 31,*infra*;

d. Eagle Capital Management, LLC: One of eight investment managers for the Trust described in paragraph 31,*infra;*

e. Fennemore Craig Jones Vargas: Law firm that acts as Nevada counsel responsible for legal administration of the Trust;

f. Fergus, a Law Office: Counsel to the Honorable Charles Renfrew, Futures Representative;

g. Harding Loevner, LP: One of eight investment managers for the Trust described in paragraph 31, *infra*;

h. Keker& Van Nest LLP: Law firm hired to investigate the matter described in paragraph 23(c), *supra*;

i. Charles W. LaGrave: Claims and legal consultant to the Trust;

j. Molland Law: Co-counsel for the Mandelbrot adversary proceeding as described in paragraph 23(b), *supra*;

k. Morgan Lewis &Bockius: Counsel to the Trust in the Zurich litigation, and the Mandelbrot investigation and adversary proceeding described in paragraphs 23(a) and 23(b), *supra*;

l. Segall Bryant & Hamill: One of eight investment managers for the Trust described in paragraph 31, *infra*;



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m. Sheppard Mullin Richter & Hampton LLP: Counsel to the Trust Advisory Committee;

n. Silvercrest Asset Management Group LLC: One of eight investment managers for the Trust described in paragraph 31, *infra*;

o. Standish Mellon Asset Management Company: One of eight investment managers for the Trust described in paragraph 31, *infra*;

p. State Street Global Advisors: One of eight investment managers for the Trust described in paragraph 31, *infra*;

q. Stutman, Treister & Glatt P.C.: Bankruptcy Counsel to the Trust; and

r. Westwood Management Corporation: One of eight investment managers for the Trust described in paragraph 31, *infra*.

31. Trust Investment Management: Article 3 of the Trust Agreement authorizes the Trust to administer the investment of funds in the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs, subject to certain limitations. The Trust closely monitors any market volatility with its investment advisors and continues to be in compliance with its Investment Policy Statement. Callan Associates, Inc. continued to assist the Trust during the Accounting Period as its investment consultant. BlackRock Financial Management, Inc., Eagle Capital Management, LLC, Harding Loevner, LP, Segall Bryant & Hamill, Silvercrest Asset Management Group LLC, Standish Mellon Asset Management Company, LLC, State Street Global Advisors, and Westwood Management Corporation have continued to act as investment managers to the Trust.

In addition, the Trust's Investment Policy Statement was amended on February 7, 2013 and September 11, 2013, and copies of those amendments are included in the Appendix filed herewith.

***

The Trustees submit that the Annual Report and attached exhibits demonstrate the Trust acted prudently and expeditiously in executing its legal obligations during the Accounting Period and up to and including the date hereof. The Trust conscientiously worked to execute


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equitable claims procedures and process Trust Claims with due diligence during the Accounting Period and up to and including the date hereof. Moreover, the Trust worked with its accountants and financial advisors to preserve and grow Trust assets in order to fulfill the purpose of the Trust--paying valid asbestos claims. In so doing, the Trust carefully complied with all Plan documents and the mandates of the San Francisco Court.



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# Financial Statements and Report of Independent Certified Public Accountants

## Western Asbestos Settlement Trust

December 31, 2013 and 2012




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## Report of Independent Certified Public Accountants

Trustees
Western Asbestos Settlement Trust

We have audited the accompanying financial statements of Western Asbestos Settlement Trust ("the Trust"), organized in the State of Nevada, which comprise the statements of net claimants' equity as of December 31, 2013 and 2012, and the related statements changes in net claimants' equity and cash flows for the years then ended, and the related notes to the financial statements.

### Management's responsibility for the financial statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the Trust's other basis of accounting; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Trust's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Trust's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.



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### Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets and liabilities of Western Asbestos Settlement Trust as of December 31, 2013 and 2012, and the changes in net claimants' equity and cash flows for the years then ended in accordance with the Trust's other basis of accounting.

### Basis of accounting

We draw attention to Note A.2 of the financial statements, which describes the basis of accounting. The financial statements are prepared on the Trust's other basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

### Supplementary information

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The Schedule of Operating Expense for the years ended December 31, 2013 and 2012 is presented for purposes of additional analysis and is not a required part of the financial statements. Such supplementary information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures. These additional procedures included comparing and reconciling the information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole.

### Restriction on use

Our report is intended solely for the information and use of the management of the Trust and Trustees, the beneficiaries of the Trust, the Futures Representative, the Futures Counsel, the members of the Trust Advisory Committee, and the United States Bankruptcy Court for the Northern District of California, Oakland Division and is not intended to be and should not be used by anyone other than these specified parties.

Grant Thornton LLP

Reno, Nevada
April 17, 2014



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**Western Asbestos Settlement Trust**

**STATEMENTS OF NET CLAIMANTS' EQUITY**

**December 31,**

| | 2013 | 2012 |
|---|---|---|
| **ASSETS** | | |
| Cash, cash equivalents and investments | | |
| Available-for-sale | | |
| Restricted | $ 40,000,000 | $ 40,000,000 |
| Unrestricted | 805,335,908 | 789,730,449 |
| Total cash, cash equivalents and investments | 845,335,908 | 829,730,449 |
| Accrued interest and dividend receivables | 5,126,409 | 5,259,599 |
| Prepaid federal income tax | 1,064,172 | - |
| Total assets | $ 851,526,489 | $ 834,990,048 |
| **LIABILITIES** | | |
| Accrued expenses | $ 1,044,265 | $ 1,320,638 |
| Claim processing deposits | 335,000 | 386,250 |
| Unpaid claims (Note D) | | |
| Outstanding offers | 9,005,735 | 15,304,951 |
| Pre-petition liquidated claims | 150,809 | 424,515 |
| Income tax payable | - | 600,345 |
| Deferred tax liability | 58,142,000 | 33,931,000 |
| Total liabilities | $ 68,677,809 | $ 51,967,699 |
| **NET CLAIMANTS' EQUITY** | $ 782,848,680 | $ 783,022,349 |

The accompanying notes are an integral part of these statements.



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**Western Asbestos Settlement Trust**

**STATEMENTS OF CHANGES IN NET CLAIMANTS' EQUITY**

**For the years ended December 31,**

| | 2013 | 2012 |
|---|---|---|
| **Net claimants' equity, beginning of year** | $ 783,022,349 | $ 792,523,666 |
| **Additions to net claimants' equity** | | |
| Investment income | 18,548,694 | 19,891,316 |
| Net decrease in outstanding claim offers | 6,578,637 | - |
| Trust facility and staff sharing income received | 993,564 | 818,680 |
| Increase in initial funding | 259,785 | - |
| Net decrease in deferred rent | 111,051 | 65,120 |
| Net realized and unrealized gains on available-for-sale securities | 67,644,822 | 46,893,676 |
| Total additions | 94,136,553 | 67,668,792 |
| **Deductions from net claimants' equity** | | |
| Operating expenses | 4,828,192 | 3,100,450 |
| Provision for income taxes, current | 5,332,608 | 4,450,519 |
| Provision for income taxes, deferred | 24,211,000 | 18,154,000 |
| Claims settled | 59,938,422 | 46,139,984 |
| Net increase in outstanding claim offers | - | 5,325,156 |
| Total deductions | 94,310,222 | 77,170,109 |
| **Net claimants' equity, end of year** | $ 782,848,680 | $ 783,022,349 |

The accompanying notes are an integral part of these statements.




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**Western Asbestos Settlement Trust**

**STATEMENTS OF CASH FLOWS**

**For the years ended December 31,**

| | 2013 | 2012 |
|---|---|---|
| **Cash inflows:** | | |
| Investment income receipts | $ 18,681,884 | $ 20,531,505 |
| Trust facility and staff sharing income received | 993,564 | 818,680 |
| Initial funding | 259,785 | - |
| Net realized gains on | | |
| Available-for-sale securities | 6,508,521 | 7,415,696 |
| Total cash inflows | 26,443,754 | 28,765,881 |
| **Cash outflows:** | | |
| Claim payments made | 59,932,707 | 46,418,581 |
| Decrease in claim processing deposits | 51,250 | 11,750 |
| Disbursements for Trust operating expenses | 4,993,514 | 2,731,755 |
| Disbursements for Trust income taxes | 6,997,125 | 3,730,691 |
| Total cash outflows | 71,974,596 | 52,892,777 |
| Net cash outflows | (45,530,842) | (24,126,896) |
| **Non-cash changes:** | | |
| Net unrealized gains on available-for-sale securities | 61,136,301 | 39,477,980 |
| **NET INCREASE IN CASH EQUIVALENTS AND INVESTMENTS AVAILABLE-FOR-SALE** | 15,605,459 | 15,351,084 |
| **Cash, cash equivalents and investments available-for sale, beginning of year** | 829,730,449 | 814,379,365 |
| **Cash, cash equivalents and investments available-for-sale, end of year** | $ 845,335,908 | $ 829,730,449 |

The accompanying notes are an integral part of these statements.




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## NOTE A - SUMMARY OF ACCOUNTING POLICIES

### 1. Description of Trust

The Western Asbestos Settlement Trust (the Trust), organized pursuant to the laws of the state of Nevada with its office in Reno, Nevada, was established pursuant to the Western Asbestos Company (Western Asbestos), Western Mac Arthur Co. (Western Mac Arthur) and Mac Arthur Co. (Mac Arthur), (collectively the Debtors), Second Amended Joint Plan of Reorganization (the Plan), dated November 18, 2003. The Trust was formed to assume the Debtors' liabilities resulting from pending and potential litigation involving individuals exposed to asbestos who have manifested asbestos-related diseases or conditions for which the Debtors' are legally responsible; liquidate, resolve, pay and satisfy all valid asbestos-related claims in accordance with the Plan; preserve, hold, manage and maximize the Trust assets for use in paying and satisfying allowed asbestos-related claims; prosecute, settle and manage the disposition of the asbestos in-place insurance coverage; and prosecute, settle and manage asbestos insurance coverage actions. Upon approval of the Plan, the Trust assumed liability for existing and future asbestos health claims against the Debtors. The Trust was created effective April 22, 2004.

The Trust was initially funded with cash, Western Asbestos securities, notes receivable and insurance settlement proceeds. Since its creation, all notes receivable have been collected. The Trust's funding is dedicated solely to the settlement of asbestos health claims and the related costs thereto, as defined in the Plan.

The Trust processes and pays all asbestos-related claims in accordance with the Western Asbestos Settlement Trust Agreement, as amended and restated, the Case Valuation Matrix, as amended and restated, (Matrix) and Trust Distribution Procedures, as amended and restated, (TDP) (collectively, the Trust Documents).

### 2. Special-Purpose Accounting Methods

The Trust's financial statements are prepared using special-purpose accounting methods that differ from accounting principles generally accepted in the United States. The special-purpose accounting methods were adopted in order to present the amount of equity available for payment of current and future claims. These special-purpose accounting methods are as follows:

- The financial statements are prepared using the accrual basis of accounting, as modified below.
- The funding received from Western Asbestos, Western Mac Arthur, and Mac Arthur and its liability insurers is recorded directly to net claimants' equity. These funds do not represent income of the Trust. Offers for asbestos health claims are reported as deductions from net claimants' equity and do not represent expenses of the Trust.
- Costs of non-income producing assets, which will be exhausted during the life of the Trust and are not available for satisfying claims, are expensed when incurred. These costs include acquisition costs of computer hardware, software, software development, office furniture, leasehold improvements, and other prepaid expenses such as rent and insurance.


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**NOTE A - SUMMARY OF ACCOUNTING POLICIES** - Continued

**2. Special-Purpose Accounting Methods** - Continued

- Future fixed liabilities and contractual obligations entered into by the Trust are recorded directly against net claimants' equity. Accordingly, the future minimum commitments outstanding at period end for non-cancelable obligations have been recorded as deductions from net claimants' equity.
- The liability for unpaid claims reflected in the statement of net claimants' equity represents settled but unpaid claims and outstanding offers. A claims liability is recorded once an offer is made to the claimant at the amount equal to the expected pro rata payment. No liability is recorded for future claim filings and filed claims on which no offer has been made. Net claimants' equity represents funding available to pay present and future claims on which no fixed liability has been recorded.
- Available-for-sale securities are recorded at fair value. All interest and dividend income on available-for-sale securities, net of investment expenses, is included in investment income on the statement of changes in net claimants' equity. Net realized and unrealized gains and losses on available-for-sale securities are recorded as a separate component on the statement of changes in net claimants' equity.
- Realized gains and losses on available-for-sale securities are recorded based on the security's amortized cost. At the time a security is sold, all previously recorded unrealized gains and losses are reversed and recorded net, as a component of other unrealized gains and losses in the accompanying statement of changes in net claimants' equity.

**3. Cash and Cash Equivalents**

Cash and cash equivalents include demand deposit accounts and cash invested in money market funds.

**4. Investments**

Fair value measurements are determined through the use of an independent, nationally recognized pricing service. For securities that have quoted prices in active markets, market quotations are provided. For securities that do not trade on a daily basis, the pricing service provides fair value estimates using a variety of inputs including, but not limited to, benchmark yields, reported trades, broker/dealer quotes, issuer spreads, bids, offers, reference data, prepayment spreads and measures of volatility. The Trust reviews on an ongoing basis the reasonableness of the methodologies used by the pricing service, as well as determines the aggregate portfolio price performance and reviews it against applicable indices.

**5. Deposits**

Claims processing deposits represent filing fees collected for each unliquidated claim, which fees are refunded by the Trust if the claim is paid.


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**NOTE A - SUMMARY OF ACCOUNTING POLICIES** - Continued

### 6. Use of Estimates

The preparation of financial statements in conformity with the special-purpose accounting methods described above requires the Trust to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of additions and deductions to net claimants' equity during the reporting period. Actual results could differ from those estimates.

### 7. Concentration of Risk

Financial instruments that potentially subject the Trust to concentrations of risk consist of cash, cash equivalents and investments. Cash equivalents consist of money market accounts. Cash equivalents and demand deposits are in excess of Federal Deposit Insurance Corporation limits.

The Trust utilizes risk controls to meet investment objectives authorized by its Trustees. Such risk controls include the use of outside investment advisors meeting predetermined criteria, and third-party quantitative and qualitative risk measurement evaluation tools. The Trust believes its risk control practices are appropriate to meet investment objectives.

Investment securities, in general, are exposed to various risks, such as interest rates, credit, and overall market volatility. Due to the level of risk associated with certain investment securities, it is reasonably possible that changes in the values of investment securities will occur in the near term and that such change could materially affect the amounts reported in the financial statements.

### 8. Income Taxes

The Trust's policy is to recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. As of December 31, 2013, the Trust did not have any accrued interest or penalties associated with any unrecognized tax benefits, nor did it incur any interest and penalties expense with any unrecognized tax benefits for the year then ended. The Trust is unaware of information concerning any tax positions for which a material change in the unrecognized tax benefit or liability is reasonably possible within the next twelve months. The Trust files income tax returns in the United States. Although the Trust owes no tax to the State of California, it files an annual tax return in California reporting no taxable income or tax owed. The Trust is no longer subject to United States federal tax examinations for years before 2010.



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**NOTE B - CASH, CASH EQUIVALENTS AND INVESTMENTS**

The Trust has classified its investments as available-for-sale, and recorded the securities at estimated fair value, as follows:

| | December 31, 2013 | |
|---|---|---|
| | Cost | Fair Value |
| Restricted | | |
| Cash equivalents | $ 433,582 | $ 433,582 |
| U.S. Government obligations | 17,032,460 | 16,583,770 |
| Municipal bonds | 1,440,903 | 1,376,862 |
| Asset-backed debt | 2,645,780 | 2,628,127 |
| Corporate debt | 19,519,905 | 18,977,659 |
| | $ 41,072,630 | $ 40,000,000 |
| Unrestricted | | |
| Cash demand deposits | $ 480,583 | $ 480,861 |
| Cash equivalents | 41,726,363 | 41,903,371 |
| Equity securities | 239,413,973 | 378,574,336 |
| U.S. Government obligations | 23,026,773 | 22,426,637 |
| Municipal bonds | 323,189,481 | 333,226,344 |
| Asset-backed debt | 3,544,513 | 3,516,183 |
| Corporate debt | 25,981,626 | 25,208,176 |
| | $ 657,363,312 | $ 805,335,908 |

| | December 31, 2012 | |
|---|---|---|
| | Cost | Fair Value |
| Restricted | | |
| Cash equivalents | $ 453,308 | $ 453,308 |
| U.S. Government obligations | 17,302,843 | 17,448,916 |
| Municipal bonds | 1,366,912 | 1,378,540 |
| Asset-backed debt | 1,603,505 | 1,603,289 |
| Corporate debt | 19,197,161 | 19,115,947 |
| | $ 39,923,729 | $ 40,000,000 |
| Unrestricted | | |
| Cash demand deposits | $ 890,244 | $ 890,244 |
| Cash equivalents | 35,853,679 | 35,853,902 |
| Equity securities | 272,685,676 | 335,097,394 |
| U.S. Government obligations | 28,324,043 | 28,541,743 |
| Municipal bonds | 334,188,694 | 357,208,352 |
| Asset-backed debt | 2,278,173 | 2,272,920 |
| Corporate debt | 29,893,920 | 29,865,894 |
| | $ 704,114,429 | $ 789,730,449 |


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**NOTE B - CASH, CASH EQUIVALENTS AND INVESTMENTS** - Continued

The Trust accounts for investments according to a fair value hierarchy that distinguishes between assumptions based on market data (observable inputs) and the Trust's assumptions (unobservable inputs). The hierarchy consists of three broad levels as follows:

Level 1 - Quoted market prices in active markets for identical assets or liabilities.

Level 2 - Quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in inactive markets; or valuations based on models where significant inputs are observable or can be corroborated by observable market data.

Level 3 - Valuations based on models where significant inputs are not observable, and for which the determination of fair value requires significant management judgment or estimation.

Assets and liabilities measured at fair value on a recurring basis, including financial instruments for which the Trust accounts, were as follows at:

| | December 31, 2013 | | |
|---|---|---|---|
| | Level 1 | Level 2 | Level 3 |
| Assets | | | |
| Cash demand deposits | $ 480,861 | $ - | $ - |
| Cash equivalents | 42,336,953 | - | - |
| Equity securities | 378,574,336 | - | - |
| U.S. Government obligations | 12,619,353 | 26,391,054 | - |
| Municipal bonds | - | 334,603,206 | - |
| Asset-backed debt | - | 5,717,646 | 426,664 |
| Corporate debt | 44,185,835 | - | - |
| | $ 478,197,338 | $ 366,711,906 | $ 426,664 |

| | December 31, 2012 | | |
|---|---|---|---|
| | Level 1 | Level 2 | Level 3 |
| Assets | | | |
| Cash demand deposits | $ 890,244 | $ - | $ - |
| Cash equivalents | 36,307,210 | - | - |
| Equity securities | 335,097,394 | - | - |
| U.S. Government obligations | 5,276,747 | 40,713,912 | - |
| Municipal bonds | - | 358,586,892 | - |
| Asset-backed debt | - | 3,387,134 | 489,075 |
| Corporate debt | 48,981,841 | - | - |
| | $ 426,553,436 | $ 402,687,938 | $ 489,075 |



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**NOTE B - CASH, CASH EQUIVALENTS AND INVESTMENTS** - Continued

The Trust experiences transfers in and out of levels within the fair value hierarchy primarily due to the market activity of the underlying security. The Trust's policy is to recognize transfers in and out at the actual date the event or change in circumstance caused the transfer. No securities were transferred between Level 1 to Level 2.

Activity in Level 3 investments for the years ended December 31, 2013 and 2012 was:

| | Mortgage Backed Securities | |
|---|---|---|
| | 2013 | 2012 |
| Balance at January 1 | $ 489,075 | $ 817,702 |
| Transfers from/(to) Level 2 | - | - |
| Purchases (sales) | - | (361,781) |
| Redemptions | - | (57,484) |
| Realized loss | - | (56,815) |
| Unrealized gain (loss) | (62,411) | 147,453 |
| Balance at December 31 | $ 426,664 | $ 489,075 |

The maturities of the Trust's available-for-sale securities at market value (excluding cash equivalents) are as follows as of December 31, 2013:

| | Less than 1 Year | After 1 Year Through 5 Years | After 5 Years Through 10 Years | After 10 Years |
|---|---|---|---|---|
| U.S. Government obligations | $ 2,151,522 | $ 3,977,977 | $ 9,791,547 | $ 23,089,361 |
| Municipal bonds | 379,440 | 133,058,754 | 165,402,952 | 35,762,060 |
| Asset-backed debt | - | 2,986,535 | 2,012,136 | 1,145,639 |
| Corporate debt | 923,588 | 25,753,086 | 16,650,536 | 858,625 |
| | $ 3,454,550 | $ 165,776,352 | $ 193,857,171 | $ 60,855,685 |



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**NOTE C - FIXED ASSETS**

The cost of non-income producing assets that will be exhausted during the life of the Trust and are not available for satisfying claims are expensed as incurred. Since inception, the cost of fixed assets expensed, net of disposals, include:

| | |
|---|---|
| Acquisition of furniture and equipment | $ 89,329 |
| Acquisition of computer hardware and software | 485,183 |
| | $ 574,512 |

These items have not been recorded as assets, but rather as operating expenses and direct deductions from net claimants' equity in the accompanying financial statements. The cost of fixed assets that were expensed during the years ended December 31, 2013 and 2012 were $55,208 and $69,008, respectively.

Total depreciation expense related to asset acquisition using accounting principles generally accepted in the United States would have been approximately $29,163 and $18,996 for the years ended December 31, 2013 and 2012, respectively.

**NOTE D - CLAIM LIABILITIES**

The Trust distinguishes between claims that were resolved prior to the establishment of the Trust and claims received and processed using the Trust Documents after the creation of the Trust (Trust Claims). The claims filed prior to the creation of the Trust were grouped into three categories: default, matrix and settlement claims (Pre-petition Liquidated Claims).

The cases underlying the Pre-petition Liquidated Claims were stayed by the court until the Plan was confirmed. The Trust approved and immediately made offers to pay, subject to receiving a claimant release, the approved Payment Percentage of the liquidated value of each Pre-Petition Liquidated Claim. Certain Pre-petition Liquidated Claims were further reduced by payments made by the Debtors' insurers prior to the formation of the Trust.

For all claims, a liability for unpaid claims is recorded at the time the offer is extended and the release authorization is mailed. Funds are mailed after the approved release is signed, received, and approved by the Trust. Unpaid claims liabilities remain on the Trust's books until the offer is accepted, rejected, withdrawn or expires after six months. Offers may be extended an additional six months upon written request and good cause. As of the years ended December 31, 2013 and 2012, there were no expired offers.

All claimants are entitled to the full liquidated value of their claim. Under the TDP, claimants receive an initial pro rata payment equal to the approved Payment Percentage of the claim's liquidated value. The remaining obligation for the unpaid portion of the liquidated amount is not recorded and is not a liability of the Trust, unless the Payment Percentage is increased. In that instance, the Trust would be obligated to retroactively pay the increased percentage to all previously paid claimants (see Note G).



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**NOTE D - CLAIM LIABILITIES** - Continued

In the interest of treating all claimants equitably in accordance with the Plan, the Trustees have recommended that all payments made during each calendar year ended December 31, 2006 through December 31, 2013 include a Cost of Living Adjustment for inflation based upon the Federal Bureau of Labor Statistics' *Consumer Price Index for Urban Wage Earners and Clerical Workers* (CPI-W). Claims liabilities at year end are adjusted for any approved Inflation Adjustments. Inflation Adjustments are cumulative. Cumulative Inflation Adjustments of 23.33% and 21.51% are included in outstanding claims liabilities as of December 31, 2013 and 2012, respectively.

The Trust processed and approved approximately $53,608,129 and $51,458,049 of Trust Claims during the years ended December 31, 2013 and 2012, respectively.

**NOTE E - COMMITMENTS AND CONTINGENCIES**

The Trust leases its offices in Reno, Nevada, under a non-cancelable operating lease. The lease contains escalation provisions, options to extend and expires August 31, 2016.

The Trust paid $104,284 and $91,142 in rental expense during the years ended December 31, 2013 and 2012, respectively. Future minimum rental commitments, excluding parking and utility expenses, under this operating lease are:

| Years ending December 31, | |
|---|---|
| 2014 | $ 91,937 |
| 2015 | 94,886 |
| 2016 | 64,569 |
| | $ 251,392 |



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## NOTE F - FACILITY AND STAFF SHARING AGREEMENT

The Trust has entered into facilities and staff sharing agreements with the J. T. Thorpe Settlement Trust, (J. T. Thorpe Trust), the Thorpe Insulation Settlement Trust (Thorpe Insulation Trust) and Plant Asbestos Settlement Trust (Plant Asbestos Trust). The three trusts are related through common Trustees. Under the agreements, and in exchange for advance monthly payments, the Trust provides use of its facilities and services relating to administration and claims processing. For the agreement with J.T Thorpe Trust, the agreement automatically renews for additional one-year periods unless either party provides six months written notice. For the agreements with Thorpe Insulation Trust and Plant Asbestos Trust, the agreements automatically renew for additional one-year periods unless either party provides written notice. The amounts of advanced monthly payments are agreed upon between the trusts from time to time. As of December 31, 2013, the equitable amount agreed upon is based on the required written calendar year reconciliation of annual services that is performed by the Trust.

The reconciliation is performed and recorded in the period subsequent to the reconciliation period. For the agreement with J. T. Thorpe Trust, the reconciliation performed for the year ended December 31, 2013 resulted in an additional payment to the Trust of approximately $56,000. The reconciliation performed for the year ended December 31, 2012 resulted in an additional payment to the Trust of approximately $103,000. For the agreement with Thorpe Insulation Trust, the reconciliation performed for the year ended December 31, 2013 resulted in an additional payment to the Trust of approximately $69,000. The reconciliation performed for the year ended December 31, 2012 resulted in an additional payment to the Trust of approximately $50,000. For the agreement with Plant Asbestos Trust, the reconciliation performed for the period of November 16, 2012 through December 31, 2013 resulted in an additional payment to the Trust of approximately $4,000. The next reconciliation period for these three trusts will be the twelve-month period ending December 31, 2014. Any excess of cost over payments or payments over cost is required to be repaid by the benefited party with interest.

## NOTE G - NET CLAIMANTS' EQUITY

The Trust was created pursuant to the Plan approved by the United States Bankruptcy Court for the Northern District of California, Oakland Division. The TDP was adopted pursuant to the Plan and concurrently with the Trust Agreement. It is designed to provide fair and equitable treatment for all Trust claims that may presently exist or may arise in the future. The TDP prescribes certain procedures for distributing the Trust's limited assets, including pro rata payments and initial determination of claim value based on scheduled diseases values, jurisdictions, and individual factual information concerning each claimant as set forth in the Trust Documents.

Under the TDP, the Trust forecasts its anticipated annual sources and uses of cash until the last projected future claim has been paid. A pro rata Payment Percentage is calculated such that the Trust will have no remaining assets or liabilities after the last future claimant receives his/her pro rata share.



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**NOTE G - NET CLAIMANTS' EQUITY** - Continued

Based on research and testimony presented during the bankruptcy, the court approved an initial payment to claimants of 31.5% of the liquidated value of then current and estimated future claims (Payment Percentage). The TDP gives the Trustees, with the consent of the Trust Advisory Committee ("TAC") and the Futures Representative, the power to periodically update its estimate of the Payment Percentage based on updated assumptions regarding its future assets and liabilities and, if appropriate, propose additional changes in the Payment Percentage. The Payment Percentage was increased by the Trustees to 34.2% in February 2006, 40.0% in July 2007, and 44% in February 2010. These changes were made with the consent of the TAC and Futures Representative. The increases were retroactive for claims approved since inception.

**NOTE H - EMPLOYEE BENEFIT PLANS**

The Trust has established a defined contribution retirement savings plan under Section 401(k) of the Internal Revenue Code for all eligible employees after completion of certain age and service requirements. Employees may voluntarily elect to defer their compensation or fund a Roth IRA and invest in various options for their retirement. The plan allows employees to defer a percentage of their salaries within limits set by the Internal Revenue Code, with the Trust matching contributions by employees of up to 4% of their salaries. The Trust may also make discretionary contributions to employee accounts. The total Trust contribution and expenses under the plan were approximately $56,416 and $46,347 for the years ended December 31, 2013 and 2012, respectively.

**NOTE I - RESTRICTED CASH, CASH EQUIVALENTS AND INVESTMENTS**

To avoid the high costs of director and officer liability insurance, and pursuant to the Trust Agreement, the Trust has elected to be self-insured and has established a segregated security fund of $40 million. These funds are devoted exclusively to securing the obligations of the Trust to indemnify the former and current Trustees and officers, employees, agents and representatives of the Trust. The funds are held in a separate Trust bank account, and the investment earnings on these funds accrue to the benefit of the Trust.

As of December 31, 2013 and 2012, cash, cash equivalents and investments of $40,000,000 were restricted for this purpose.

## NOTE J - INCOME TAXES

For federal income tax purposes, the Trust is taxed as a Qualified Settlement Fund (QSF). Income and expenses associated with the Trust are taxed in accordance with Section 468B of the Internal Revenue Code. The statutory income tax rate for the Trust is 39.6% for the year ended December 31, 2013 and 35% for the year ended December 31, 2012.

The Trust records deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the book and tax basis of assets and liabilities.

The provision for income taxes consists of the following for the years ended December 31, 2013 and 2012:

| | 2013 | 2012 |
|---|---|---|
| Income tax – current | $ 5,332,608 | $ 4,450,519 |
| Deferred income tax expense | 24,211,000 | 18,154,000 |
| | $ 29,543,608 | $ 22,604,519 |

The components of the deferred income tax asset (liability), as presented in the statements of net claimants' equity consisted of the following at December 31:

| | 2013 | 2012 |
|---|---|---|
| Deferred tax asset (liability) | | |
| Unrealized appreciation | $ (58,144,000) | $ (33,934,000) |
| Other, net | 2,000 | 3,000 |
| | $ (58,142,000) | $ (33,931,000) |

## NOTE K - SUBSEQUENT EVENTS

The Trust evaluated subsequent events through April 17, 2014, the date the financial statements were available to be issued. There were no material subsequent events that required recognition or disclosure.



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## SUPPLEMENTAL INFORMATION

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**Western Asbestos Settlement Trust**

**SCHEDULE OF OPERATING EXPENSES**

**For the years ended December 31,**

| | 2013 | 2012 |
|---|---|---|
| Accounting | $ 56,686 | $ 53,525 |
| Claims processing/claims system development | 581,775 | 531,982 |
| Computer equipment | 24,846 | 54,255 |
| Futures representative | 437,371 | 117,444 |
| Information technology support | 56,549 | 35,255 |
| Insurance | 13,506 | 6,858 |
| Legal fees | 1,946,488 | 671,050 |
| Office expense | 50,480 | 46,877 |
| Office furniture and equipment | 30,362 | 14,753 |
| Payroll and related taxes | 1,021,305 | 968,521 |
| Pension plan contribution and fees | 56,416 | 46,347 |
| Rent and utilities | 122,240 | 110,845 |
| Travel and meals | 13,620 | 7,327 |
| Trust advisory committee | 2,594 | 32,441 |
| Trustee fees | 413,838 | 366,037 |
| Trustees professional | 116 | 36,933 |
| | 4,828,192 | 3,100,450 |
| Less: Reimbursement pursuant to the shared services agreements to process and pay claims and provide operational and administrative support | (993,564) | (818,680) |
| | $ 3,834,628 | $ 2,281,770 |



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# EXHIBIT "B"

## Western Asbestos Settlement Trust
## Claim Report
## As of December 31, 2013

This report is submitted pursuant to Section 2.2 (c)(ii) of the Tenth Amendment to and Complete Restatement of Western Asbestos Settlement Trust Agreement, which requires the Trust to file with the Bankruptcy Court a summary of the number and type of claims disposed of during the time period covered by the financial statements ("Accounting Period"). This report summarizes the Trust's processing of the claims liquidated by default, settlement agreement, or the settlement matrix prior to April 22, 2004, the Effective Date of the Trust ("Pre-Petition Liquidated Claims") and the claims received since the Effective Date of the Trust ("Trust Claims").

### Pre-Petition Liquidated Claims

In 2004, the Trust implemented a procedure to pay the Pre-Petition Liquidated Claims in accordance with the Plan, the Trust Distribution Procedures and the Confirmation Order. The Confirmation Order, as amended on April 14, 2004, provided that the initial payment to Pre-Petition Liquidated claimants was to be 31.5% of the total liquidated value of each claim. The total liquidated value of California default claims includes statutory interest. As the Payment Percentage has been raised, the Pre-Petition Liquidated Claims, that were paid earlier, have received this additional compensation.

The Trust paid three (3) Pre-Petition Liquidated Claims during the Accounting Period in the amount of $28,904, at the approved Payment Percentage of 44%, which also included an additional 19.48% to account for inflation based upon the Federal Bureau of Labor Statistics' Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W"). As well, six (6) additional Pre-Petition Liquidated Claims have been withdrawn. The Trust has not yet received proper releases for fifteen (15) Pre-Petition Liquidated Claims in the total amount of $147,267. That amount is based upon the current Payment Percentage of 44% of the total liquidated value, and includes the inflation adjustment of 23.33% utilized for claims payments made in 2014.

### Trust Claims

Claims received and disposed of from January 1, 2013, through December 31, 2013, in accordance with the First Amendment to and Complete Restatement of Western Asbestos Settlement Trust Case Valuation Matrix ("Matrix") and the First Amendment to and Complete Restatement of the Western Asbestos Company/Western Mac Arthur Co. /Mac Arthur Co. Asbestos Personal Injury Settlement Trust Distribution Procedures ("TDP") are as set forth below.

The value of each compensable disease is determined by the Matrix and TDP. Claim compensation is adjusted for individual claimants based upon jurisdiction and tort related individual characteristics including, but not limited to: age, marital status,

dependents, medical specials, economic loss, and whether living at the time of commencement of litigation or filing the claim with the Trust. Each valid claim is awarded a total liquidated value. As of December 31, 2013, Trust Claims were paid at the approved Payment Percentage of 44%. Payments made on Trust Claims included an additional 19.48% to account for inflation based upon the CPI-W.

During the Accounting Period, 715 claims were received, 949 claims were paid, and 1,129 claims received offers.

Below is a summary of the number and type of claims disposed of (paid) in 2013.

| Compensable Disease | Number of California Claims | Number of Minnesota Claims | Number of North Dakota Claims | Totals |
|---|---|---|---|---|
| Grade II Non-Malignant | 283 | 29 | 0 | 312 |
| Grade I Non-Malignant | 162 | 9 | 0 | 171 |
| Grade I Non-Malignant Enhanced Asbestosis | 56 | 5 | 0 | 61 |
| Grade I Non-Malignant Serious Asbestosis | 38 | 11 | 0 | 49 |
| Colo-Rectal | 2 | 2 | 0 | 4 |
| Esophageal | 6 | 0 | 0 | 6 |
| Kidney | 2 | 0 | 0 | 2 |
| Laryngeal | 1 | 0 | 0 | 1 |
| Non-Hodgkin's Lymphoma | 2 | 3 | 0 | 5 |
| Other Organ Cancer | 1 | 1 | 0 | 2 |
| Lung Cancer | 107 | 21 | 0 | 128 |
| Mesothelioma | 151 | 49 | 0 | 200 |
| Totals | 819 | 130 | 0 | 949 |



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# EXHIBIT "C"

**Background to further developments in *Western Asbestos Settlement Trust v. Michael J. Mandelbrot and Mandelbrot Law Firm*, Adversary Proceeding No. 13-03205**

In its Ninth Annual Report and Accounting to this Court, pp. 10-12, the Trust reported that it had commenced the above-captioned adversary proceeding after receiving complaints and threats of suit from Mr. Mandelbrot directed at the Trust's investigation into the claims filing practices of Mr. Mandelbrot and the Mandelbrot Law Firm ("Mandelbrot"). The Trust, as well as the J.T. Thorpe Trust and the Thorpe Trust (together, the Thorpe Trust and the J.T. Thorpe Trust are hereinafter referred to as the "Thorpe Trusts"), had initiated investigations of these practices pursuant to section 5.7(a) of their respective Trust Distribution Procedures in September 2011.

All three trusts commenced adversary proceedings a year later, in September 2012, in the face of escalating conflict with Mandelbrot and his complaints that the investigation was unauthorized and the product of the Thorpe Trusts' and Western Trust's bias against him and his law firm. As amended, the various complaints sought: (i) confirmation from the supervising Bankruptcy Courts "that the Investigation to determine whether the Defendants have engaged in a pattern or practice of submitting unreliable evidence to the Trust is authorized and appropriate under the circumstances," and (ii) related equitable relief.

On May 24, 2013, the three trusts joined in a letter to Mandelbrot reviewing the history of the investigation and setting forth their conclusions and decisions in the investigation based on the information obtained as of that date. The letter reported that each trust had reached the following conclusions, among others:

1. Mandelbrot (i.e., the firm and its principal) each are unreliable under the "person" or "entity" requirement of section 5.7(a).

2. Mandelbrot has submitted unreliable evidence to each of the Trusts and, with regard to the Thorpe Trusts specifically, has done so in a pattern revealed by the practices that have been the focus of this investigation. The pattern revealed by the investigation has been exacerbated by a lack of cooperation with the Trusts' audit efforts.


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3. While the Trustees do not make such a determination at this time, there is substantial information to support a conclusion that some of the unreliable evidence submitted to the Trusts was fabricated or manipulated intentionally or with conscious disregard for its accuracy and thus was fraudulent.

On conditions set forth in the May 24, 2013 letter, the Thorpe Trusts, but not the Western Trust, terminated Mandelbrot's claims filing privileges pursuant to Section 5.7(a) of their respective TDPs.While stating that it would continue to closely monitor the evidentiary submissions of Mandelbrot, and thereafter advising Mandelbrot that certain investigations remained ongoing, the Western Trust declined at the time to terminate Mandelbrot's filing privileges because claims filed by Mandelbrot with the Western Trust less clearly reflected a pattern or practice of unreliability.

**Dismissal Without Prejudice of Adversary Proceeding in this Court**

This Court found in October 2013 that there was not a ripe controversy before it and dismissed the adversary proceedings without prejudice to the Trust's continuing monitoring of Mandelbrot's evidentiary submissions or returning to this Court once the Trust's investigation was complete and a remedy imposed. (See Smith Declaration Ex. 1 Hearing Transcript October 29, 2013 p. 13:3 to 14:14)

**Trial of Remaining Adversary Proceedings**

The parallel adversary proceedings commenced by the Thorpe Trusts continued, however, and ultimately came to trial before the supervising bankruptcy court for the Thorpe Trusts, the United States Bankruptcy Court for the Central District of California, the Honorable Sheri Bluebond presiding, on January 21, 2014. In connection with the trial on the Thorpe Trusts' adversary proceeding complaints, the Thorpe Trusts also sought a ruling on a motion for instructions regarding the Thorpe Trusts' decision to terminate Mandelbrot's claims-filing privileges.

The evidence presented at the trial included deposition testimony from the Western Trust adversary proceedings, as well as documents requested and produced in the Western Trust adversary proceedings. Defendants, for example, offered documents and evidence produced in the Western Trust adversary proceedings to attempt to substantiate their charges of wrongdoing and bias of this Trust as well as the Thorpe Trusts.


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Trial and pretrial submissions revealed additional irregularities in Mandelbrot claims filing practices with the three trusts, including misuse of signatures and verifications in claim submissions. Evidence at trial also supported the conclusion that claims-handling irregularities identified earlier in the investigation performed by the three trusts were chronic and purposeful, as opposed to resulting from mere inadvertence. In its tentative ruling regarding the enforceability of the stipulation ending the trial, the Central District Bankruptcy Court noted that, absent a stipulation ending the trial, the court would have found based on the evidence submitted before and during trial that (1) Mandelbrot made a practice of submitting unreliable claims to the trusts, (2) Mandelbrot made insufficient attempts to ascertain whether the information provided to the trusts in support of claims was reliable, and (3) Mandelbrot's practice was to submit a claim for as large an amount as possible without having made reasonable efforts to ascertain whether or not the basis of the claim was factually correct.

One example of such a claims-filing practice included witness declarations submitted by Mandelbrot attesting that U.S. Navy sailors, whose ships were being repaired, left their ships and performed their regular duties in the shipyard, thereby increasing their asbestos exposure and claim value. Prior to trial, Mandelbrot repeatedly took the position that the merit of such claims – which were unusual and contrary to the trusts' claims experience – would be proven at trial, and that irregularities or inconsistencies that had been uncovered by the trusts' investigation were inadvertent or immaterial.

The trial evidence showed otherwise. It included proof indicating that Mandelbrot had written a draft declaration for his expert trialwitness stating that sailors, while their ships were being repaired in a shipyard, got off of their ships and performed their regular duties in the shipyard. The expert witness refused to sign the draft declaration provided by Mandelbrot, and wrote a letter to Mandelbrot stating that he could no longer work for him. After a change to the declaration, however, the expert continued service, and testified that sailors whose ships were being repaired did not perform their regular duties in shipyards. (See Smith Declaration Ex. 2 Designation of Deposition Testimony of Captain F.J. Burger, USN, (Ret.) Re; Motion of the Thorpe Trusts for Instructions regarding (1) the Trusts' Audit Findings and (2) the Trusts' Remedy; Authentication


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Declaration of Michael E. Molland which as admitted into evidence p. 13:16-21; p. 57:13-58:6; p. 69:3-21; p. 72:1-13; p. 74-13-19.). In an attempt to prove the same fact, Mandelbrot also proffered the declaration of Mr. Genthner, a shipyard worker percipient witness and Mandelbrot client. (See Smith Declaration Ex. 3 Designation Of Deposition Testimony Of Paul Genthner Re: Motion Of The Thorpe Trusts For Instructions Regarding (1) The Trusts' Audit Findings And (2) The Trusts Remedy; Authentication Declaration Of Michael E. Molland). Mr. Mandelbrot was the only person Mr. Genthner talked to about his declaration before it was prepared and sent to him for signature. Mr. Genthner received the declaration from Mr. Mandelbrot's office and signed it. The declaration describes work done in the Long Beach Naval Shipyard. At deposition, Mr. Genthner testified, contrary to his declaration, that "shipyard" work described in his declaration as being performed by disembarked U.S. Navy sailors was in fact work done at the adjoining naval station – not in the shipyard. (See Smith Declaration Ex. 3 p. 45:13- 46:20; p. 48:8-50:16.)

In addition to all of the other evidence introduced at trial in the Central District Bankruptcy Court, and revealed during the investigation, these additional examples made it clear to the Trustees of this Trust that Mandelbrot either was insisting on continuing his practice of submitting unreliable and untrue declarations or, at the very least, his office practices were not capable of accurately reporting and verifying witness declarations. For all of these reasons, the Trustees of this Trust, with the approval of the Futures Representative, determined that Western should join the stipulated remedy reached on the last day of trial.

**Stipulated Resolution for All Trusts**

After the above facts had been revealed during trial, and on the morning of January 23, 2014 – the last day of trial, when Mr. Mandelbrot was expecting to take the stand and be subjected to cross-examination – Mandelbrot sought to resolve all claims and end the trial. Mandelbrot and the Thorpe Trusts, as well as this Trust and the Plant Trust, then entered into an agreement that, among other things, resolved all the matters at issue in the Thorpe Adversary Proceedings trial. The terms of the agreement included numerous representations and promises by Mandelbrot that the investigation and conclusions and decisions of the Thorpe Trusts and the Western Trust were conducted and reached reasonably, were free of bias or wrongdoing, and were


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authorized by the respective Trust Distribution Procedures. Pertinent here, the agreement terminated, “effective immediately," Mandelbrot’s claims filing privileges with this Trust and commenced a process whereby Mandelbrot would undertake to transfer his inventory of pending claims to other counsel. As part of the stipulation, the Thorpe Trusts and this Trust also agreed to dismiss claims for equitable relief against Mandelbrot with prejudice (the claim asserted by the Western Trust having previously been dismissed without prejudice).

The terms of the agreement were read in to the record in open court and agreed to by all the contracting parties, including this Trust and Mandelbrot (both directly and through Mandelbrot’s counsel), subject only to a vote of approval by this Trust pursuant to the Trust’s procedures. In accordance with the trial court’s instructions, the Thorpe Trusts prepared an Order, Findings of Fact and Conclusions of Law, and a Judgment [Docket No. 198]. The Central District Bankruptcy Court set aside time on February 18, 2014 to hear any disputes regarding the wording of these formalized documents.

**Mandelbrot Termination of Counsel and Attempt to Repudiate Stipulation**

Several days later, but before the Thorpe Trusts were able to lodge any of these draft documents with the Central District Bankruptcy Court, Mandelbrot’s attorney withdrew as counsel, Mr. Mandelbrot substituted himself as counsel, and Mr. Mandelbrot then purported to repudiate the January 23, 2014 stipulation. The Thorpe Trusts provided copies of the Order, Findings of Fact and Conclusions of Law, and Judgment to Mandelbrot and filed them, along with a Notice of Dispute [Docket No. 197], with the court on February 11, 2014. (Copies of these pleadings, which include the terms of the agreement, are included in the Appendix filed herewith.) Mandelbrot filed written objections to the agreement on or about February 12, 2014.

**Thorpe Trusts’ Motion to Enforce the Settlement Agreement**

At the Thorpe Trusts’ request, the Central District Bankruptcy Court set a hearing and briefing schedule for a motion to enforce the January 23, 2014 stipulation. The hearing was held on March 27, 2014. Mandelbrot specifically challenged the jurisdiction of the Central District Bankruptcy Court to rule on the enforceability of the stipulation as to the Western Trust. Mandelbrot also raised numerous defenses and grounds challenging the ability of the Central District


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Bankruptcy Court to enjoin him from filing claims on behalf of claimants with all the trusts, including the Western Trust. At the March 27, 2014 hearing, the court ruled that the agreement was enforceable, that it was appropriate and permissible for the contracting parties to include in their agreement that Mandelbrot was barred from filing any more claims with this Trust, and that Mandelbrot agreed to transfer all of his claims past and present to new counsel. (See Smith Declaration Ex. 4 Hearing Transcript March 27, 2014 p. 10:21-11; p.13:2-16). On April 7, 2014, the Central District Bankruptcy Court entered an order finding the stipulation enforceable, and requiring that notice[1] be given, as feasible, to Mandelbrot claimants regarding Mandelbrot's agreement to transfer claims to new counsel of record. (See Smith Declaration Ex. 5 Order Granting Motion To Enforce January 23, 2014 Stipulated Agreement, Los Angeles Court [Docket No. 232] ("Enforcement Order") and Ex. 6 the Order Following Trial On Adversary Complaints And Motion For Instructions [Docket No. 233] ("Order After Trial")).

Also on April 7, 2014, the Central District Bankruptcy Court issued an Order After Trial which required, among other things, that Mandelbrot: (1) file no new claims with the Thorpe Trusts or this Trust and (2) cease all activity with respect to claims ("Pending Claims") for the Thorpe Trusts and this Trust and to transfer each Pending Claim and all past claims made against the Thorpe Trusts and this Trust to an attorney who will take responsibility for the claims. The Order

[1] With regard to the Notice the Order provides "To insure to the fullest extent possible that all claimants with the Thorpe Trusts and the Western Trust who are represented by Mandelbrot and all counsel who have referred claimants to Mandelbrot for purposes of making claims against the Thorpe Trusts and Western Trust (the "Notice Recipients") are informed of the potential consequences to them if their claims are not timely transferred in accordance with the terms of the Stipulation, the Thorpe Trusts and the Western Trust shall transmit to the Notice Recipients by mail, email, publication on their web sites and otherwise…" and specifies that the Notice state the following:

NOTICE TO BENEFICIARIES AND POTENTIAL BENEFICIARIES OF THE J.T. THORPE SETTLEMENT TRUST, THORPE INSULATION COMPANY ASBESTOS SETTLEMENT TRUST, AND WESTERN ASBESTOS SETTLEMENT TRUST REPRESENTED BY MICHAEL J. MANDELBROT:

This notice concerns your claim(s) with the above-referenced trusts (collectively, the "Trusts"), and has been authorized and approved by the United States Bankruptcy Court for the Central District of California.

Under the terms of an agreement between these Trusts and Michael Mandelbrot, and subsequent order of the Bankruptcy Court, Mandelbrot must transfer all claims for which he serves or has served as counsel to a new attorney of record by July 23, 2014.

If you chose to select new counsel to represent you, or to represent yourself in connection with your claim(s) with the Trusts, YOU MUST DO SO BY JULY 23, 2014 OR YOUR CLAIM MAY BE DEEMED WITHDRAWN. THIS MAY DELAY OR ELIMINATE YOUR RIGHTS TO PAYMENTS FROM THE TRUST(S), including initial payments and any further payments from the Trust(s) in the event of an increase in payment percentage, and MAY REQUIRE ADDITIONAL FILING FEES in the event you elect to re-submit your claim following withdrawal.

YOU ARE ADVISED TO CONSULT WITH COUNSEL REGARDING THIS NOTICE.

For additional information regarding this notice, and the background giving rise to this dispute, please see the Bankruptcy Court's Findings of Fact and Conclusions of Law, Order Following Trial, and Judgment, which have been posted on each of the Trusts' websites.



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further provided that if the Thorpe Trusts or this Trust do not receive a notice of transfer for the Pending Claims and past claims by July 23, 2014, then those claims may be deemed withdrawn. In addition, the Order provides that violations of the stipulation may either be brought to the attention of this Court or to the Central District Bankruptcy Court. The Central District Bankruptcy Court issued its Findings of Fact and Conclusions of Law supporting its Order after Trial. (See Smith Declaration Ex. 7 Findings of Fact and Conclusions of Law [Docket No. 235].

All of this was reduced to a Judgment in Adversary Proceedings, entered on April 7, 2014, resolving the adversary proceedings in the Central District of California. [Docket No. 234]. This Trust has implemented the stipulated agreement found to be enforceable by the Central District Bankruptcy Court. Following entry of Judgment, Mandelbrot has filed a notice of appeal, and likewise filed a motion to stay enforcement of the Judgment pending appeal, which is currently set for hearing on May 27, 2014.



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