

**THORPE INSULATION SETTLEMENT TRUST**

**ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCEDURES**

## THORPE INSULATION SETTLEMENT TRUST

### ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCEDURES

Pursuant to Section 5.9 of the Thorpe Insulation Settlement Trust Distribution Procedures (the “TDP”), the Thorpe Insulation Settlement Trust (the “Trust”) hereby establishes the following Alternative Dispute Resolution (“ADR”) Procedures to resolve all present and future Asbestos Personal Injury Claims as that term is defined in the Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (hereinafter referred to for all purposes “Asbestos PI Claims”). All capitalized terms herein shall be as defined and/or referenced within the TDP.

These rules are applicable to all ADR proceedings involving asbestos-related claims against Thorpe Insulation Company and/or Pacific Insulation Company (collectively “Thorpe”). No claimant may enter the tort system without first having exhausted the ADR Procedures outlined below. In the context of these procedures, “ADR” refers to both a pro bono evaluation and a binding or non-binding arbitration proceeding. These rules may be amended from time to time.

#### I. OVERVIEW

These ADR Procedures shall not be applied to resolve conflicts relating to threshold legal issues. This includes, but is not limited to, questions about jurisdiction, standing, choice of law, and statutes of limitations. All unresolved disputes relating to threshold legal issues, including those described in this paragraph, shall be brought before the United States Bankruptcy Court for the Central District of California, Los Angeles Division.

The Trust shall appoint a Private Adjudication Coordinator, at the cost of the Trust, to administer these ADR Procedures. To initiate these procedures, the claimant must make a written request to the Trust. Within fifteen (15) days of a claimant's request for ADR, the Trust will send the claimant an ADR packet containing the documents necessary to pursue the ADR process. These ADR Procedures shall not be construed as imparting to any claimant any substantive or procedural rights beyond those conferred by the TDP.

The ADR process available to the claimant includes both pro bono evaluation as well as non-binding and binding arbitration. These ADR Procedures must be pursued by claimants on an individual basis. Claims of different claimants cannot be grouped together even if the claimants are represented by the same counsel, unless the Trust, in its sole discretion, decides it would be expeditious to conduct ADR proceedings with respect to more than one claim involving different exposed claimants with those claimants' representative. In such a case, however, the arbitrator must individually value each such claim using the valuation factors set forth in the Trust Case Valuation Matrix (“Matrix”) for the specific injury. These rules and any pro bono evaluator's or arbitrator's decision are subject to and must conform to and comply with the provisions and mandates of the Court Approved Trust documents. Section 2.2 of the TDP provides, “All unresolved disputes over a claimant's medical condition, exposure history and/or the liquidated value of the claim shall be subject to binding or non-binding arbitration, at the election of the claimant, under the Arbitration Rules.” The Arbitration

Rules are to be established pursuant to Section 5.9(a) of the TDP. Section 5.9(a) of the TDP provides:

“The Trust...shall institute Arbitration Rules for resolving disputes concerning the Trust’s outright rejection or denial of a claim, or concerning the claimant’s medical condition or exposure history for purposes of categorizing a claim. Binding and non-binding arbitration shall also be available for resolving disputes over the liquidated value of a claim. In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in the Matrix. In the case of an arbitration involving the liquidated value of a claim, the arbitrator shall consider the same valuation factors that are set forth in the Matrix.”

A deficient claim is not eligible for ADR unless the Trust has issued a rejection of the claim. A claim that is under review pursuant to the Claims Audit Program provisions of the TDP shall not be eligible for participation in the ADR proceedings until that audit review has been completed.

#### **A. Initiation of ADR Proceedings**

Within ninety (90) days of receipt of an offer or a rejection of the claim, a claimant initiates ADR proceedings by providing the Trust with a notice of ADR.

Within fifteen (15) days of the Trust’s receipt of the notice of ADR, the Trust will send the claimant an ADR packet containing a copy of these procedures and the following:

1. A summary outline of the ADR Procedures with the time limits identified.
2. Form Affidavit of Completeness, complete copies of all materials submitted to the Trust by the claimant and information in the Trust file, if any, gathered by the Trust from other sources, and copies of the TDP, Matrix and claims processing policies.
3. Demand for Pro Bono Evaluation.

A claimant must engage in pro bono evaluation before any form of arbitration may be elected. Only after either party rejects a non-binding arbitration award of Total Liquidated Value may a claimant commence a lawsuit against the Trust in the tort system.

The claimant is the moving party and shall have the burden of proof at each stage described below to prove his or her claim by a preponderance of the evidence.

It is the claimant’s responsibility to comply with the ADR time deadlines set forth in these ADR Procedures.

When the claimant requests pro-bono evaluation or binding or non-binding arbitration, the Trust shall execute the appropriate election form and agreement. If the claimant requests binding arbitration, then the claimant and the Trust waive their respective rights to seek a jury trial as set forth in the TDP upon execution of the Election Form and Agreement for Binding Arbitration.

If either party rejects a non-binding arbitration award of Total Liquidated Value, and the claimant has otherwise complied with the requirements of these ADR Procedures and the Plan, then the claimant may commence a lawsuit against the Trust in the Claimant's Jurisdiction, as that term is defined in Section 7.3(a) of the TDP.

## **B. Pro Bono Evaluation**

Pro Bono Evaluation is an evaluation of the claim by an evaluator selected by the Private Adjudication Coordinator from a pro bono panel. The panel shall be comprised of experienced asbestos litigation attorneys familiar with the TDP and Matrix as mutually agreed upon between the Trust Advisory Committee (the "TAC") and the Trust. Pro bono panelists must participate in a two hour claims processing training provided by the Trust staff. The Trust will provide the TAC with a list of the pro bono panelists annually. The Private Adjudication Coordinator will select a pro bono evaluator on a rotating basis for each evaluation from the list of pro bono panelists. This selection will occur with best efforts to meet thirty (30) days from the date the Trust receives the Demand Form and Affidavit of Completeness from the claimant. All parties will cooperate to cause the selection to occur as soon as practicable.

A pro bono-evaluation will be done by document submission. The identity of the pro bono evaluator will not be disclosed to the claimant or the claimant's attorney or the Trust. The injured party's name will be disclosed, so the evaluator can conduct a conflict of interest. The Private Adjudication Coordinator will communicate to the parties, the respective rejection or acceptance of settlement upon the terms of the award of Total Liquidated Value. If either or both parties reject settlement upon those terms, then the claimant may submit an Election Form and Agreement for Binding or Non-binding Arbitration.

## **C. Binding and Non-binding Arbitration**

Arbitration will be conducted in the format also known as "baseball style" arbitration. Baseball arbitration is a type of arbitration in which each party to the arbitration submits a proposed monetary award of Total Liquidated Value to the arbitrator. After a final hearing, the arbitrator will choose one award of Total Liquidated Value from the submitted awards of Total Liquidated Value without modification.

The arbitrator shall return an award of Total Liquidated Value no greater than the Maximum Value for the relevant Disease Level set forth in Section I of the Matrix, unless the claim qualifies as an Extraordinary Claim pursuant to Section IX of the Matrix. In that case, the arbitrator shall return an award of Total Liquidated Value no greater than the Maximum Value for an Extraordinary Claim as also set forth in Section IX of the Matrix.

If the claimant requests arbitration, either binding or non-binding, then the Trust shall execute the appropriate Election Form and Agreement. The Trust may not decline the claimant's election of either binding or non-binding arbitration, but reserves all rights to reject any award of Total Liquidated Value in a non-binding arbitration proceeding.

## **II. RULES GOVERNING PRO BONO EVALUATION**

The rules of evidence shall apply to pro bono evaluation.

### **A. Election by the Claimant**

1. Within ninety (90) days of a claimant's receipt of the ADR packet, the Affidavit of Completeness, complete copies of all materials submitted to the Trust by the claimant and information in the Trust file, if any, gathered by the Trust from other sources, and copies of the TDP, Matrix and claims processing policies from the Trust, the claimant must return the Demand Form for Pro Bono Evaluation and Affidavit of Completeness to the Trust. The claimant or his/her attorney shall personally sign the Demand Form for Pro Bono Evaluation. The Affidavit of Completeness shall verify that all information to be considered in the ADR process has been provided to the Trust while the claim was under review by the Trust. The claim will not proceed in ADR until the Trust has received a completed Demand Form and Affidavit of Completeness from the claimant.
2. Within fifteen (15) days from the date the Trust notifies the claimant or claimant's counsel of the Trust's consent to the Demand Form, the Trust shall send copies of the signed Demand Form, Affidavit of Completeness, and Affidavit of Accuracy to the claimant or claimant's counsel; and the Trust will also send the ADR packet, Demand Form, Affidavit of Completeness, Affidavit of Accuracy, complete copies of all materials submitted to the Trust by the claimant and information in the Trust file, if any, gathered by the Trust from other sources, and copies of the TDP, Matrix and claims processing policies to the Private Adjudication Coordinator who will forward the materials to the selected pro bono evaluator at the time the evaluator is selected.

### **B. Selection of the Pro Bono Evaluator**

Within fifteen (15) days of the date the Private Adjudication Coordinator receives the complete file materials from the Trust, the Private Adjudication Coordinator shall designate the pro bono evaluator from the list of pro bono panelists and notify the parties that the evaluator has been designated without disclosing the identity of the evaluator. The pro bono evaluator shall be selected from a panel of experienced asbestos litigation plaintiff attorneys familiar with the provisions of the TDP and Matrix who have volunteered to serve at the request of the TAC and the Trust. Pro bono assignments will be made on a rotating basis. The identity of the pro bono evaluator shall not be disclosed to the claimant or the claimant's attorney or the Trust.

### **C. Extraordinary Claims and Those Reviewed by the Extraordinary Claims Panel**

In the event that the Trust or the Extraordinary Claims Panel has determined the claim qualifies as an Extraordinary Claim pursuant to Section IX of the Matrix, the Private Adjudication Coordinator shall so inform the pro bono evaluator. In such circumstances, the parties may submit a final award of Total Liquidated Value demand and the pro bono evaluator may issue an award of Total Liquidated Value, in an amount greater than the Maximum Value for such claim set forth in Section IX of the Matrix so long as the amount is no greater than the Maximum Value for Extraordinary Claims as set forth in Section IX of the Matrix.

In the event that the Extraordinary Claims Panel determined the claim does not qualify as an Extraordinary Claim pursuant to Section IX of the Matrix, the pro bono evaluator shall not be informed of the Extraordinary Claims Panel's decision. In such circumstances the claimant must confine his/her final award of Total Liquidated Value demand to, and the pro bono evaluator may issue an award of Total Liquidated Value in, an amount no greater than the Maximum Value for such claim set forth in Section I of the Matrix. The pro bono Demand Form will state the Maximum Value for each claim. If the claimants' last award of Total Liquidated Value demand exceeds the Maximum Value assigned to the relevant Disease Level in the Matrix and the Extraordinary Claims Panel has declined to give extraordinary treatment to the claim, that award of Total Liquidated Value demand will be automatically reduced to the Maximum Value.

#### **D. Individual Review Claims**

Individual Review claims may go to pro bono evaluation, but they are limited to an award of Total Liquidated Value that cannot exceed the limits set in Section VIII of the Matrix. In such circumstances, the Private Adjudication Coordinator shall so inform the pro bono evaluator of the limits set in Section VIII of the Matrix. The pro bono Demand Form will state the Maximum Value for each claim. If the claimants' last award of Total Liquidated Value demand exceeds the Maximum Value assigned to the relevant Disease Level in the Matrix, that award of Total Liquidated Value demand will be automatically reduced to the Maximum Value.

#### **E. Submission of Written Arguments**

Fifteen (15) days after the Trust sends the complete file materials to the Private Adjudication Coordinator, the claimant and the Trust shall simultaneously exchange and submit written arguments to the Private Adjudication Coordinator to be forwarded promptly to the pro bono evaluator. The written arguments shall comply with the following rules:

1. The argument shall not exceed ten (10) double spaced typewritten pages. In order to preserve anonymity in a pro bono evaluation, the name of either counsel should not be mentioned. The argument may not introduce matters not contained in the documents in the Trust's file. The evaluator shall disregard any argument that does not comply with this rule.
2. When a party fails to submit the written argument within the fifteen (15) days, the party waives written argument and the pro bono evaluator shall disregard any argument received after that time.

#### **F. Evaluation of Documents**

The pro bono evaluation is a document only review with complete anonymity preserved between either counsel and the pro bono evaluator. The documents that the pro bono evaluator may consider shall be limited to the following:

1. ADR packet containing a copy of these procedures.

2. Copies of all materials submitted to the Trust by the claimant and information in the Trust file, if any, gathered by the Trust from other sources, as well as copies of the TDP, Matrix and claims processing policies.
3. The claimant's Affidavit of Completeness and the Trust's Affidavit of Accuracy.
4. The written arguments of the claimant and the Trust that comply with the rules for written arguments set forth above.
5. Before the Private Adjudication Coordinator forwards any documents to the pro bono evaluator, the Private Adjudication Coordinator will redact all references to either counsel.

**G. Award of Total Liquidated Value and Procedure for Acceptance/Rejection**

The pro bono evaluator shall submit an award of Total Liquidated Value to the Private Adjudication Coordinator within thirty (30) days, who will promptly mail it to the parties. The pro bono evaluator may dismiss the claim if the claimant fails to comply with these ADR Procedures.

Fifteen (15) days after receipt of the pro bono evaluator's award of Total Liquidated Value, the claimant and the Trust will each communicate in writing to the Private Adjudication Coordinator whether they will accept the pro bono evaluator's award of Total Liquidated Value to settle the claim. If both parties accept, then the Private Adjudication Coordinator will immediately inform both parties that they have achieved a settlement and the Trust will send to the claimant the appropriate release authorization letter. Upon receipt and approval of a signed release from the claimant, the Trust shall pay the claim pursuant to the TDP. If either or both parties reject the pro bono evaluator's award of Total Liquidated Value, then within ten (10) days of receipt of both parties' written communication, the Private Adjudication Coordinator shall send each party a notice of rejection of the pro bono evaluator's award of Total Liquidated Value. The notice will not indicate whether the opposing party has accepted or rejected the pro bono evaluator's written evaluation amount.

**H. Timelines**

Any of the above timelines will not be shortened as a result of early submittal of documents by either party.

**III. RULES GOVERNING NON-BINDING AND BINDING ARBITRATION**

Arbitration may proceed after rejection of a pro bono evaluator's award of Total Liquidated Value.

**A. Election by the Claimant**

The claimant must elect Arbitration within sixty (60) days of receipt of the pro bono evaluator's award of Total Liquidated Value by sending written notice to the Trust. Within fifteen (15) days of the Trust's receipt of the notice, the Trust will send the claimant an Election Form and Agreement for Binding or Non-Binding Arbitration.

## **B. Selection of the Arbitrator**

1. As soon as practicable after the receipt by the Private Adjudication Coordinator of the signed Arbitration Agreement, but no more than thirty (30) days after the receipt of the signed Arbitration Election Form and Agreement, the Private Adjudication Coordinator shall select three (3) potential arbitrators from a rotating list kept by the Private Adjudication Coordinator. The Private Adjudication Coordinator shall promptly notify the arbitrators and the parties of the potential arbitrators' selection. If a potential arbitrator is unable or unwilling to serve, then a replacement selection will be made prior to notifying the Trust and the claimant of the potential arbitrators selected. This selection will occur with best efforts to meet thirty (30) days after the Private Adjudication Coordinator receives the Arbitration Election Form and Agreement. All parties will cooperate to cause the selection to occur as soon as practicable.
2. Within fifteen (15) days of receipt of the list of the three (3) potential arbitrators, the claimant or claimant's counsel and the Trust may identify to the Private Adjudication Coordinator, one potential arbitrator to be stricken from the list. If one potential arbitrator is left, that person will conduct the arbitration. If two (2) potential arbitrators are left, then the Private Adjudication Coordinator shall appoint one of the two. The parties are then notified by the Private Adjudication Coordinator which arbitrator remains and will conduct the arbitration. If either party, or both, fails to exercise the right to strike an arbitrator from the list of potential arbitrators, the Private Adjudication Coordinator shall appoint from those potential arbitrators.
3. Upon appointment of the arbitrator, the Private Adjudication Coordinator shall promptly send copies of the Arbitration Election Form and Agreement, and all of the materials utilized in the pro bono evaluation, which include the ADR packet, Demand Form, Affidavit of Completeness, Affidavit of Accuracy, complete copies of all materials submitted to the Trust by the claimant and information in the Trust file, if any, gathered by the Trust from other sources, and copies of the TDP, Matrix and claims processing policies to the arbitrator.
4. The arbitrator shall not receive the pro bono evaluator's award of Total Liquidated Value.

## **C. Extraordinary Claims and Those Reviewed by the Extraordinary Claims Panel**

In the event that the Trust or the Extraordinary Claims Panel has determined the claim qualifies as an Extraordinary Claim pursuant to Section IX of the Matrix, the Private Adjudication Coordinator shall so inform the arbitrator. In such circumstances, the parties may submit a final award of Total Liquidated Value demand, and the arbitrator may issue an award of Total Liquidated Value, in an amount greater than the Maximum Value for such claim set forth in Section IX of the Matrix so long as the amount is no greater than the Maximum Value for Extraordinary Claims as set forth in Section IX of the Matrix.

In the event that the Extraordinary Claims Panel determined the claim does not qualify as an Extraordinary Claim pursuant to Section IX of the Matrix, the arbitrator shall not be informed of the Extraordinary Claims Panel's decision. In such circumstances the claimant must confine his/her final award of Total Liquidated Value demand to, and the arbitrator may issue an award of Total Liquidated Value in, an amount no greater than the Maximum Value for such claim set forth in Section I of the Matrix. The pro bono Demand Form will state the Maximum Value for each claim. If the claimant's final award of Total Liquidated Value demand exceeds the Maximum Value assigned to the relevant Disease Level in the Matrix and the Extraordinary Claims Panel has declined

to give extraordinary treatment to the claim, that award of Total Liquidated Value demand will be automatically reduced to the Maximum Value.

**D. Individual Review Claims**

Individual Review claims may go to arbitration, but they are limited to an arbitration award of Total Liquidated Value that cannot exceed the limits set in Section VIII of the Matrix. In such circumstances, the Private Adjudication Coordinator shall so inform the arbitrator of the limits set in Section VIII of the Matrix. The pro bono Demand Form will state the Maximum Value for each claim. If the claimants' last award of Total Liquidated Value demand exceeds the Maximum Value assigned to the relevant Disease Level in the Matrix, that award of Total Liquidated Value demand will be automatically reduced to the Maximum Value.

**E. "Baseball Style" Binding Arbitration**

All binding arbitration shall be conducted in the format also known as "baseball style" arbitration as discussed above in Section I(C) of these ADR Procedures.

**F. Submission of Pre-Arbitration Statements**

Within twenty (20) days of the appointment of an arbitrator each party shall submit to the opposing party and to the arbitrator a written statement (not to exceed ten (10) double spaced pages) containing that party's positions and arguments. Each party may then submit a supplement to its written statement (not to exceed five (5) double-spaced pages) following the initial pre-arbitration conference to respond to the opposing party's positions and arguments and addressing issues raised at the initial pre-arbitration conference. Supplements must be sent to the opposing party and to the arbitrator within ten (10) days after the date of the initial pre-arbitration conference. The arguments may not introduce matters not contained in the documents in the Trust's file. The arbitrator shall disregard any argument that does not comply with this rule.

**G. Initial Pre-Arbitration Conference, Scheduling Oral Arguments, Telephone Conference for Oral Arguments**

1. Within fifteen (15) days of the receipt of both parties' briefs, the Private Adjudication Coordinator shall contact the claimant or claimant's counsel, the arbitrator, and the Trust to schedule the initial pre-arbitration conference. The initial pre-arbitration conference shall be presided over by the arbitrator and held by telephone conference call.
2. During the initial pre-arbitration conference, the arbitrator shall schedule the date of the arbitration oral arguments, which shall be conducted by telephone conference.
3. During the initial pre-arbitration conference, the arbitrator shall seek to achieve agreement between the parties on narrowing the issues and any other matters that will expedite the arbitration proceedings.

If appropriate, or if the parties do not agree on these issues, then the arbitrator must issue orders governing the process.

## **H. No Discovery**

There shall be no discovery. The purpose of the arbitration is to resolve differences between the Trust and the claimant based only on the documents that have been previously submitted to the Trust by the claimant and any other documents relied upon by the Trust to make a settlement offer to the claimant or to reject the claim.

## **I. No Record of Proceedings**

There will be no record or transcript of the proceedings.

## **J. Postponement of Oral Arguments**

The arbitrator for good cause may postpone the oral arguments upon the request of a party or upon the arbitrator's own initiative, and shall also grant such postponement when all of the parties agree.

## **K. Duration of Oral Arguments**

The arbitrator shall complete the oral arguments in three (3) hours. The arbitrator shall set time limits on the respective presentations, and shall enforce those set limits.

## **L. Evidence at Hearing**

1. Rules of Evidence: The arbitrator shall require the rules of evidence used in judicial proceedings. The arbitrator shall determine the applicability of any privilege or immunity and the admissibility, relevance, materiality and weight of the evidence offered. In the absence of a well-founded and substantiated objection raising a substantial question of authenticity or foundation, all
  - i. documents (such as medical records, expert reports, social security records, employment and union records, military records, business records, deposition transcripts, verified discovery responses, declarations and affidavits, etc.) normally submitted in connection with claims will be presumed to be authentic, and
  - ii. hearsay objections to such documents, and to discovery responses and declarations that clearly disclose the foundation and source of information presented, and the adequacy of the foundation, will be waived.

Nothing herein shall prevent the Trust or claimant from arguing the weight, or its absence, to be given to evidence in light of its source, foundation, or provenance.

2. Admission of Evidence: The evidence that the arbitrator may consider shall be limited to the documents supplied to the Trust prior to the execution of the Affidavit of Completeness, the Agreement for Binding or Non-Binding Arbitration, underlying data that was used by the Trust to make initial liquidated value.
3. Closing arguments of the claimant and the Trust: The arguments shall be limited to the evidence contained and the issues raised in the documents referred to above.

**M. Option to Waive Oral Arguments**

The parties may request a waiver of oral arguments. Oral arguments will only be waived if all parties consent.

**N. Arbitration Decision**

The arbitrator shall issue a reasoned decision, not to exceed two pages, no later than fifteen (15) days after the date of the close of the oral arguments. Punitive, exemplary, trebled or other like damages or attorneys' fees, and prejudgment and post-judgment interest and costs shall not be sought or allowed. The award of Total Liquidated Value shall dispose of all monetary claims presented to the arbitrator and shall determine fully the only issue to be decided: the amount, if any, at which the claim Total Liquidated Value should be fixed. The arbitrator may dismiss the claim if the claimant fails to comply with these ADR Procedures.

**O. Non-binding Award of Total Liquidated Value**

A party in a non-binding arbitration proceeding that wishes to reject the award of Total Liquidated Value must notify the other party within thirty (30) days from the date a non-binding award of Total Liquidated Value is issued. If no rejection is received or sent by the Trust, then the decision will stand and the award of Total Liquidated Value will be deemed accepted by both parties and the Trust will send to the claimant the appropriate release authorization letter. Upon receipt and approval of a signed release from the claimant, the Trust shall pay the claim pursuant to the TDP.

**P. Procedure for Rejected Award of Total Liquidated Value**

1. Rejection by the Claimant: If the claimant wishes to reject a non-binding award of Total Liquidated Value and wishes to pursue the claim through litigation, then the claimant must notify the Trust no later than thirty (30) days from the date of the non-binding award of Total Liquidated Value. If the award of Total Liquidated Value does not equal or exceed the claimant's award of Total Liquidated Value demand, the claimant must also pay an administrative fee of \$150. Within fifteen (15) days of receipt of notification, and, if applicable, payment of the \$150 administrative fee, the Trust will send the claimant an authorization to commence litigation.
2. Rejection by the Trust: If the Trust wishes to reject the non-binding award of Total Liquidated Value, it must send notification no later than thirty (30) days from the date of the non-binding award of Total Liquidated Value. Within fifteen (15) days of receipt of notification, the claimant may request that the Trust forward the authorization to commence litigation.

**Q. Payment of Binding Award of Total Liquidated Value**

Within thirty (30) days from the date the binding award of Total Liquidated Value is issued, the Trust will send to the claimant the appropriate release authorization letter. Upon receipt and approval of a signed release from the claimant, the Trust shall pay the claim pursuant to the TDP.

#### **IV. GENERAL ADR PROCEDURES**

##### **A. ADR Submissions**

If the claimant's submissions contain materials not previously submitted in support of the claim, then the ADR proceedings shall cease and the claim shall be returned to the Trust for processing in the ordinary course of business. Whether further processing shall include pro bono evaluation shall be agreed upon by the parties.

##### **B. No *Ex Parte* Communication**

There shall be no ex parte communication between the arbitrator and any counsel or party on any matter relating to the arbitration. All correspondence between the arbitrator and the parties will be facilitated by the Private Adjudication Coordinator.

##### **C. Costs of ADR**

If the claimant elects non-binding arbitration, the claimant will be responsible for one-half of the arbitrator's fees and costs pursuant to Section 5.9(a) of the TDP. If the claimant elects binding arbitration, the Trust will pay the arbitrator's fee. Claimants will pay their costs and attorney fees.

##### **D. Exclusion of Liability and Arbitrator Immunity**

The Private Adjudication Coordinator, pro bono evaluator, and arbitrator shall not be liable to any party for any act or omission in connection with any evaluation conducted under these rules. Pro bono evaluators and arbitrators who serve pursuant to these rules shall have the same immunity as judges for their official acts.

##### **F. Relationship of Rules to Non-binding Arbitration Agreement or Binding Arbitration Agreement**

These Rules shall be deemed a part of and incorporated by reference in the notice of ADR form and shall be binding on all parties.

##### **G. Jurisdiction**

Any dispute under these rules shall be subject to the jurisdiction of the United States Bankruptcy Court for the Central District of California, Los Angeles Division.

##### **H. Statement of Confidentiality**

All arbitration proceedings and information relating to the proceeding will be confidential. Neither party shall disclose the information obtained during the proceedings, nor the valuation placed on the case by an arbitrator to anyone or use such information or valuation in any further proceeding except as necessary to maintain the Trust's obligation to report to the Bankruptcy Court and to provide

ongoing evaluation by the Trust. Except for documents prepared by a non-party which are introduced as evidence before an arbitrator, any document prepared by another party, attorney or other participant in anticipation of the arbitration is privileged and shall not be disclosed to any court or arbitrator or construed for any purpose as an admission against interest. Documents that are not otherwise privileged or confidential do not become confidential simply because they have been used in the ADR proceedings.

All arbitration proceedings shall be deemed a settlement conference pursuant to Rule 408 of the Federal Rules of Evidence. Except by agreement of the parties, the parties will not introduce into evidence in any other proceedings the fact that there was an arbitration, the nature or amount of the award, and written submissions may not be used for purposes of showing accord and satisfaction or res judicata. In binding arbitration, the decision of the arbitrator may be admissible in the event the claimant improperly seeks to litigate the claim. The binding arbitration award shall be admissible in support of a motion to enjoin such litigation or to enforce the binding arbitration award. No arbitrator will ever be subpoenaed or otherwise required by any party or any third party, to testify or produce records, notes or work product in any future proceedings.

**THORPE INSULATION SETTLEMENT TRUST**

**NOTICE OF ADR**

PLEASE TAKE NOTICE that I, \_\_\_\_\_ (Claimant), Trust  
Claim Number \_\_\_\_\_, hereby wish to submit all disputes relating to the Trust's valuation of my  
claim to ADR under the ADR Procedures established pursuant to Section 5.9 of the TDP.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Claimant or Claimant's Attorney

**THORPE INSULATION SETTLEMENT TRUST**  
**DEMAND FOR PRO BONO EVALUATION**

I, \_\_\_\_\_ (Claimant), Trust Claim Number \_\_\_\_\_, hereby agree to a Non-Binding document evaluation of my claim by an individual selected from the Panel of Pro Bono Evaluators who have volunteered to serve at the request of the Trust Advisory Committee and the Trust. I have been provided with a copy of the ADR Procedures established pursuant to Section 5.9 of the TDP and I understand and agree to abide by those rules in the course of the Non-Binding Pro Bono Evaluation.

Claimant's Demand for Award of Total Liquidated Value: \$\_\_\_\_\_

Trust's Demand for Award of Total Liquidated Value: \$\_\_\_\_\_

Dated:\_\_\_\_\_

\_\_\_\_\_  
Claimant or Claimant's Attorney

Accepted and Consented to:

THORPE INSULATION SETTLEMENT TRUST

By:\_\_\_\_\_

Its:\_\_\_\_\_

Dated:\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

**AFFIDAVIT OF COMPLETENESS**

I, \_\_\_\_\_, as the person or legal representative of the person who has filed a claim with the Thorpe Insulation Settlement Trust (“Trust”), being duly sworn, depose and say:

I verify that all information with respect to my Trust claim that will be considered in the ADR process has been previously provided to the Trust.

I have received and reviewed the copies of all materials I submitted to the Trust and information in the Trust file, if any, gathered by the Trust from other sources, and copies of the TDP, Matrix and claims processing policies and verify that the documentation with respect to my Trust claim is complete.

I have no other information which I wish to be considered in the valuation of my Trust Claim Number \_\_\_\_\_.

I declare under penalty of perjury, that the foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Claimant or Claimant’s Attorney

Sworn to before me this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

**AFFIDAVIT OF ACCURACY**

I, \_\_\_\_\_, an Authorized Agent of the Thorpe Insulation Settlement Trust (“Trust”), being duly sworn, depose and say:

I verify that attached to this affidavit is a true and correct copy of all information which the Trust considered in the valuation of Trust Claim Number \_\_\_\_\_.

I declare under penalty of perjury, that the foregoing is true and correct.

Dated: \_\_\_\_\_

Thorpe Insulation Settlement Trust

By: \_\_\_\_\_

Its: \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**THORPE INSULATION SETTLEMENT TRUST**

**ELECTION FORM AND AGREEMENT FOR  
BINDING OR NON-BINDING ARBITRATION**

I, \_\_\_\_\_ (Claimant), Trust Claim Number \_\_\_\_\_, hereby

elect and agree to:

Non-Binding Arbitration of my Trust claim. Submit all disputes with the Trust relating to my claim to Non- Binding Arbitration under the terms for Non-Binding Arbitration established by the Trust. I have been provided with a copy of the ADR Procedures established pursuant to Section 5.9 of the TDP and I understand and agree to abide by those rules in the course of the Non-Binding Arbitration.

Binding Arbitration of my Trust claim. Submit all disputes with the Trust relating to my claim to Binding Arbitration under the terms for Binding Arbitration established by the Trust. I have been provided with a copy of the ADR Procedures established pursuant to Section 5.9 of the TDP and I understand and agree to abide by those rules in the course of the Binding Arbitration. I understand that as a result of this agreement, if accepted by the Trust, I waive my rights to litigate my claim in court, including the right to trial by jury, and agree to be bound by the arbitration award of Total Liquidated Value.

**Claimant and, if represented by counsel, Claimant's Attorney must both sign**

\_\_\_\_\_  
Claimant

\_\_\_\_\_  
Claimant's Attorney

Dated: \_\_\_\_\_

Accepted and Consented to:

By accepting this agreement, the Trust waives its rights to litigate the claimant's claim in court, including the right to a trial by jury, and agrees to be bound by the arbitration award of Total Liquidated Value.

THORPE INSULATION SETTLEMENT TRUST

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_