

**AMENDED J T THORPE COMPANY**

**ASBESTOS CLAIMS RESOLUTION PROCEDURES**

The Amended J T Thorpe Company Asbestos Claims Resolution Procedures (“CRP”) contained herein provide for satisfying Unsecured Asbestos Claims (“Asbestos Claims”) as that term is defined in the Glossary of Terms for the Plan Documents, Exhibit A to the Disclosure Statement of J T Thorpe Company (“Disclosure Statement”), caused by exposure to asbestos-containing products for which the Debtor has legal responsibility as provided in and required by the J T Thorpe Company Plan of Reorganization (“Plan”), the Disclosure Statement and the J T Thorpe Company Successor Trust Agreement (“Successor Trust Agreement”). The Plan and Successor Trust Agreement establish the J T Thorpe Company Successor Trust (“Successor Trust”). The Trustees of the Successor Trust (“Successor Trustees”) shall implement and administer this CRP in accordance with the Successor Trust Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the J T Thorpe Company Disclosure Statement (“Disclosure Statement”), Plan, or Successor Trust Agreement.

**SECTION I**

**Introduction**

**1.1 Purpose.** This CRP has been adopted pursuant to the Successor Trust Agreement. It is designed to provide a prompt determination and payment of Unsecured Asbestos Claims and provide reasonable assurance that the Successor Trust will value and be in a financial position to pay similar Unsecured Asbestos Claims that may arise in the future in substantially the same manner.

**1.2 Interpretation.** Nothing in this CRP shall be deemed to create a substantive right for any claimant.

## **SECTION II**

### **Overview**

**2.1 Successor Trust Goals.** The goal of the Successor Trust is to treat all claimants equitably. This CRP furthers that goal by setting forth procedures for processing and paying Unsecured Asbestos Claims on an impartial, first-in-first-out (“FIFO”) basis, with the intention of paying all claimants over time as equivalent a share as possible of the value of their claims based on historical values for substantially similar claims in the tort system. To this end, the CRP establishes a schedule of seven (7) asbestos-related diseases (“Disease Levels”) which have presumptive medical and exposure requirements (“Medical/Exposure Criteria”) and specific values (“Scheduled Values”). The Disease Levels, Medical/Exposure Criteria, and Scheduled Values which are set forth in Section 5.2(a)(3) below, have all been selected with the intention of achieving a fair allocation of the Successor Trust funds among claimants suffering from different disease processes in light of the best available information considering the settlement history of J T Thorpe Company and the rights claimants would have in the tort system absent the bankruptcy case filed by J T Thorpe Company on October 1, 2002.

**2.2 Claims Liquidation Procedures.** Unsecured Asbestos Claims shall be processed based on their place in the FIFO Processing Queue to be established pursuant to Section 5.1(a)(1) below. The Successor Trust shall liquidate all unliquidated Unsecured Asbestos Claims that meet the presumptive Medical/Exposure Criteria of Disease Levels I – VII efficiently and expeditiously under the Expedited Review process described in Section 5.2(a) below. Claimants with Unsecured Asbestos Claims that do not meet the presumptive

Medical/Exposure Criteria for Disease Levels I – VII may elect to submit their claims to the Successor Trust’s Individual Review process described in Section 5.2(b) below. In such a case, notwithstanding that the claim does not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level, the Successor Trust shall liquidate the claim at the Scheduled Value for the relevant Disease Level if the Successor Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the tort system.

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 procedures to be established by the Successor Trustees with the consent of the TAC and the Legal Representative. Disputes with the Successor Trust that cannot be resolved by non-binding arbitration (as provided in Section 5.9 below) may enter the tort system (as provided in Section 7.5 below). However, if and when a claimant obtains a judgment in the tort system, the judgment will be payable (subject to the Payment Sum Percentage provision set forth below) as provided in Section 7.6 below.

**2.3 Application of the Payment Sum Percentage.** After the liquidated value of an Unsecured Asbestos Claim is determined pursuant to the procedures set forth herein for Expedited Review, Individual Review, arbitration, or litigation in the tort system, the claimant will ultimately receive a percentage of that value based on a Payment Sum Percentage described in Section 4.2 below. As soon as reasonably practical following the Effective Date, as defined in the Disclosure Statement, the Successor Trustees shall, in a manner consistent with the provisions of Section I of this CRP, determine the initial Payment Sum Percentage of the liquidated values that will be paid to holders of Unsecured Asbestos Claims (the “Initial Payment Sum Percentage”). The Successor Trustees shall obtain the consent of the Trust Advisory

Committee (“TAC”) and the Legal Representative (the TAC and the Legal Representative are described in Section 3.1 below) in making the determination of the Initial Payment Sum Percentage.

The Payment Sum Percentage may be adjusted upwards or downwards from time to time by the Successor Trust with the consent of the TAC and the Legal Representative to reflect then-current estimates of the Successor Trust’s assets and liabilities, as well as the then-estimated value of pending and future claims. However, any adjustment to the Initial Payment Sum Percentage (or if applicable, the Payment Sum Percentage) shall be made only pursuant to Section 4.2 below. Because decisions about payments must be based on estimates and cannot be made precisely, such decisions may have to be revised in light of experience over time, and a claimant who receives payment early in the life of the Successor Trust may receive a smaller or larger Payment Sum Percentage of the liquidated value of such claim than a claimant who receives payment in the middle of or late in the life of the Successor Trust. Therefore, there can be no guarantee of any specific level of payment to claimants. Notwithstanding anything contained herein or in the Plan to the contrary, a reduction of the Payment Sum Percentage shall not create any refund obligation for those claimants previously paid. On the other hand, an increase in the Payment Sum Percentage may lead to additional payments to those claimants previously paid a lower Payment Sum Percentage. Nevertheless, the Successor Trustees shall use their best efforts to treat similar Unsecured Asbestos Claims in a substantially equivalent manner, consistent with their duties as Successor Trustees in these circumstances and the purposes of the Successor Trust, given the practical limitations imposed by the inability to predict the future with precision.

**2.4 Successor Trust's Determination of the Amount of Payments to be Made in Any Given Year.** The Successor Trust shall estimate or model the amount of cash flow anticipated to be necessary over its entire life to insure that funds will be available to treat all present and future claimants as similarly as possible. In each year, the Successor Trust will be empowered to pay out all of the interest earned during the year, together with a portion of its principal, calculated so that the application of Successor Trust funds over its life shall correspond with the needs created by the anticipated flow of claims.

**2.5 Indemnity and Contribution Claims.** As set forth in Section 5.5 below, Asbestos Claims for indemnity and contribution (if any) will be subject to the same categorization, evaluation, and payment provisions of this CRP as all other Unsecured Asbestos Claims.

## SECTION III

### CRP Administration

**3.1 Trust Advisory Committee and Legal Representative.** Pursuant to the Plan and the Successor Trust Agreement, this CRP will be administered by the Successor Trustees in consultation with a three-member Trust Advisory Committee (“TAC”), which represents the interests of holders of present Unsecured Asbestos Claims, and a Legal Representative, who represents the rights and interests of the Unknown Asbestos Claimants. The Successor Trustees shall obtain the consent of the TAC and the Legal Representative on any amendments to the CRP pursuant to Section 8.1 below, and on such other matters as are otherwise required below and in Articles 3.01(c)(ii), (v), and (viii), 3.01(g), 3.01(h)(i) – (vii), 6.05(b), 6.09(a), 7.02(a)(iii) and 7.03 of the Successor Trust Agreement. The TAC shall be comprised of the three individuals identified at the Confirmation Hearing.

**3.2 Consent and Consultation Procedures.** In those circumstances in which consultation or consent is required, the Successor Trustees will provide written notice to the TAC and the Legal Representative of the specific amendment or other action that is proposed. The Successor Trustees will not implement such amendment nor take such action unless and until the parties have engaged in the Procedures for Obtaining Consent described in Section 6.08 of the Successor Trust Agreement.

## **SECTION IV**

### **Payment Sum Percentage; Periodic Estimates**

**4.1 Uncertainty of J T Thorpe Company's Bodily Injury and Death Asbestos Liabilities.** As discussed above, there is inherent uncertainty regarding J T Thorpe Company's total asbestos-related tort liabilities, as well as the total value of the assets available to pay such claims. Consequently, there is inherent uncertainty regarding the amounts that holders of Unsecured Asbestos Claims will receive. To seek to ensure substantially equivalent treatment of all Unsecured Asbestos Claims, the Successor Trustees must determine from time to time the percentage of full liquidated value that holders of Unsecured Asbestos Claims will be likely to receive, i.e., the Payment Sum Percentage described in Section 2.3 above and Section 4.2 below.

**4.2 Computation of Payment Sum Percentage.** As soon as reasonably practical following the Effective Date the Successor Trustees shall, in a manner consistent with the provisions of Section I of this CRP, determine the Initial Payment Sum Percentage of the liquidated value that will be paid to holders of Unsecured Asbestos Claims. The Successor Trustees shall obtain the consent of the TAC and the Legal Representative in making the determination of the Initial Payment Sum Percentage.

The Initial Payment Sum Percentage shall be subject to change pursuant to the terms of this CRP and the Successor Trust Agreement (hereafter, if changed, the “Payment Sum Percentage”), if the Successor Trustees determine that an adjustment is required and the Successor Trustees obtain the consent for such change from the TAC and the Legal Representative. No less frequently than once every three years, commencing with the first day of January occurring after the Plan is consummated, the Successor Trustees shall reconsider the then-applicable Payment Sum Percentage to insure that it is based on accurate, current information and may, after such reconsideration, change the Payment Sum Percentage, if necessary, with the consent of the TAC and the Legal Representative.

The Successor Trustees shall also reconsider the then-applicable Payment Sum Percentage at shorter intervals if they deem such reconsideration to be appropriate or if requested to do so by the TAC or the Legal Representative. The Successor Trustees must base their determination of the Payment Sum Percentage on current estimates of the number, types, and values of Unsecured Asbestos Claims; the value and liquidity of the assets then available to the Successor Trust for their payment; all anticipated administrative and legal expenses; and any other material matters that are reasonably likely to affect the sufficiency of funds to pay a comparable percentage of full value to all holders of Unsecured Asbestos Claims. When making these determinations, the Successor Trustees shall exercise common sense and shall flexibly evaluate all relevant factors.

**4.3      Applicability of the Payment Sum Percentage.** No holder of an Unsecured Asbestos Claim shall receive payment for his or her claim in an amount that exceeds the liquidated value multiplied by the Successor Trust’s determination of the Payment Sum Percentage (or, as applicable, the Initial Payment Sum Percentage). If a redetermination of the

Payment Sum Percentage has been proposed in writing by the Successor Trustees to the TAC and the Legal Representative but has not yet been adopted, claimants shall receive the lower of the current Payment Sum Percentage or the proposed Payment Sum Percentage. However, if the proposed Payment Sum Percentage was the lower amount and is not subsequently adopted, the claimant shall thereafter receive the difference between the lower proposed amount and the higher current amount. Conversely, if the proposed Payment Sum Percentage was the higher amount and is subsequently adopted, the claimant shall thereafter receive the difference between the lower current amount and the higher adopted amount.

## **SECTION V**

### **Resolution of Asbestos Claims**

#### **5.1 Ordering, Processing and Payment of Claims.**

##### **5.1(a) Ordering of Claims.**

**5.1(a)(1) Establishment of the FIFO Processing Queue.** The Successor Trust will order Unsecured Asbestos Claims for processing purposes on a FIFO basis except as otherwise provided herein (the “FIFO Processing Queue”).

**5.1(a)(1)(A) Unsecured Asbestos Claims Liquidated Pre-Petition.** All Unsecured Asbestos Claims liquidated pre-petition other than Secured Asbestos Claims of Qualified Pre-Existing Settlement Claimants (collectively, the “Pre-Petition Liquidated Claims” or as the holders of such claims, the “Pre-Petition Liquidated Claimants”) shall be placed at the head of the FIFO Processing Queue. Pre-Petition Liquidated Claimants’ positions in the FIFO Processing Queue shall be determined by the date the claim was filed with the Successor Trust. If any claims are filed on the same date, the date the claim was filed in the tort system against J T Thorpe Company or another defendant shall determine the Pre-Petition

Liquidated Claimants' position in the FIFO Processing. Pre-Petition Liquidated Claimants who filed a claim with the Successor Trust on the same date but did not file a claim in the tort system against J T Thorpe Company or another defendant, shall be placed at the end of the FIFO Processing Queue of those claimants who filed with the Successor Trust on the same date. The earliest date of birth shall determine such Pre-Petition Liquidated Claimants' positions at the end of the FIFO Processing Queue. The earliest date of birth shall determine the Pre-Petition Liquidated Claimants' position in the FIFO Processing Queue if their Pre-Petition Liquidated Claims were (i) filed with the Successor Trust on the same date and (ii) filed in the tort system against J T Thorpe Company or another defendant on the same date.

#### **5.1(a)(1)(B) Unsecured Asbestos Claims Filed Within Six (6)**

**Months.** For all Unsecured Asbestos Claims other than Pre-Petition Liquidated Claims, filed on or before the date six (6) months after claim forms are first made available on the Successor Trust website (the "Initial Claims Filing Date"), a claimant's position in the FIFO Processing Queue shall be determined by the earlier of (i) the date before the Petition Date (if any) that the claim was either filed in the tort system against J T Thorpe Company or was actually submitted to J T Thorpe Company pursuant to a settlement agreement; (ii) the date before the Petition Date that a claim was filed against J T Thorpe Company or another defendant in the tort system if, at that time, the claim was subject to a tolling agreement with J T Thorpe Company; (iii) the date after the Petition Date (if any) but before the Effective Date that the claim was filed against another defendant in the tort system; or (iv) the date after the Effective Date but on or before the Initial Claims Filing Date that the claim was filed with the Successor Trust. If there is more than one such claim filed on the same date, the earliest date of birth shall determine such claimants' positions in the FIFO Processing Queue.

**5.1(a)(1)(C) Unsecured Asbestos Claims Filed After Six (6)**

**Months.** For Unsecured Asbestos Claims filed after the Initial Claims Filing Date, the position of a claimant other than a Pre-Petition Liquidated Claimant in the FIFO Processing Queue shall be determined by the date the claim was filed with the Successor Trust. If any claims are filed on the same date, the date of the diagnosis of the claimant's asbestos-related disease shall determine the claimant's position in the FIFO Processing Queue. If any claims are filed with the Successor Trust on the same date and the respective holders' asbestos-related diseases were diagnosed on the same date, the earliest date of birth shall determine those claimants' positions in the FIFO Processing Queue.

**5.1(a)(2) Effect of Statutes of Limitations and Repose.** To be eligible for a place in the FIFO Processing Queue, a claim must meet either (i) for claims first filed in the tort system against J T Thorpe Company prior to the Petition Date, the applicable federal, state and foreign statutes of limitations and repose that were in effect at the time of the filing of the claim in the tort system, or (ii) for claims that were not filed against J T Thorpe Company in the tort system prior to the Petition Date, the applicable statute of limitation that was in effect at the time of the filing of the claim with the Successor Trust. However, the running of the relevant statute of limitation shall be tolled as of the earliest of (A) the actual filing of the claim against J T Thorpe Company prior to the Petition Date, whether in the tort system or by submission of the claim to J T Thorpe Company pursuant to a settlement agreement; (B) the filing of the claim against another defendant in the tort system prior to the Petition Date if the claim was tolled against J T Thorpe Company at the time by an agreement or otherwise; (C) the filing of a claim against another defendant in the tort system after the Petition Date but prior to the Initial Claims Filing Date; (D) the filing of the requisite proof of claim for voting purposes in

this Chapter 11 proceeding prior to the Effective Date; or (E) the filing of a proof of claim with the requisite supporting documentation with the Successor Trust on or before the Initial Claims Filing Date, so long as the applicable statute of limitation had not expired as of the Petition Date.

If a claim meets any of the tolling provisions described in the preceding sentence and the claim was not barred by the applicable statute of limitation at the time of the tolling event, it shall be treated as timely filed if it is actually filed with the Successor Trust on or before the Initial Claims Filing Date. Additionally, any claims that were first diagnosed after the Petition Date, irrespective of the application of any relevant statute of limitation or repose, may be filed with the Successor Trust on or before the Initial Claims Filing Date or within three (3) years after the date of diagnosis, whichever occurs later.

**5.1(b) Processing of Claims.** As a general practice, the Successor Trust will review its claims files on a regular basis and notify all claimants whose claims are likely to come up in the FIFO Processing Queue in the near future. However, claims that were not filed (i) against J T Thorpe Company in the tort system or actually submitted to J T Thorpe Company pursuant to a settlement agreement prior to the Petition Date or (ii) against another defendant in the tort system prior to the Petition Date, shall not be processed until after the Initial Claims Filing Date.

**5.1(c) Payment of Claims.** Unsecured Asbestos Claims shall be paid in FIFO order based on the date such claimant and the Successor Trust agree on the liquidated value of such claim (the “FIFO Payment Queue”), with all such payments being subject to the applicable Payment Sum Percentage. For purposes of this CRP, the claimant and the Successor Trust shall be deemed to agree on the liquidated value of a claim on the later of the date on which the claimant agrees to accept the payment determined by the Successor Trust through arbitration and

tenders a fully executed release, the date on which an arbitration award becomes binding upon such claimant, or the date on which the claimant's judgment in the tort system becomes final and unappealable. Where the claimant is deceased or incompetent, and the settlement and payment of his or her claim must be approved by a court of competent jurisdiction prior to acceptance of the claim by the claimant's representative, an offer made by the Successor Trust on the claim shall remain open so long as proceedings before that court remain pending. If the offer is approved by the court and accepted by the claimant's representative, the Successor Trust shall pay the claim in the amount so offered, multiplied by the Payment Sum Percentage in effect at the time the offer was first made. If any claims are liquidated on the same date, the claimant's position in the FIFO Payment Queue shall be determined by the date of the diagnosis of the claimant's asbestos-related disease. If any claims are liquidated on the same date and the respective holders' asbestos-related diseases were diagnosed on the same date, those claimants' positions in the FIFO Payment Queue shall be determined by the earliest date of birth.

**5.2 Resolution of Unsecured Asbestos Claims.** Within ninety (90) days after the establishment of the Successor Trust, the Successor Trustees, with the consent of the TAC and the Legal Representative, shall adopt procedures for reviewing Unsecured Asbestos Claims, which shall include the adoption of deadlines for processing such claims. Such procedures shall also require claimants holding Unsecured Asbestos Claims to first file a proof of claim form to be developed by the Successor Trustees with the consent of the TAC and the Legal Representative, together with the required supporting documentation, in accordance with the provisions of Sections 6.1 and 6.2 below. It is anticipated that the Successor Trust shall provide an initial response to the claimant within six (6) months of receiving the proof of claim form. All claims filed with the Successor Trust shall be deemed to be a claim for the highest Disease

Level for which the claim qualifies at the time of filing, with all lower Disease Levels for which the claim then qualifies or may qualify in the future subsumed into the higher Disease Level for both processing and payment purposes. Upon filing of a valid proof of claim form with the required supporting documentation, the claim shall be placed in the FIFO Processing Queue in accordance with the ordering criteria described in Section 5.1(a) above, and shall be liquidated under the Successor Trust's Expedited Review process described in Section 5.2(a) below. All claims will be processed according to the Disease Level in which they are submitted. Any claims rejected may be resubmitted for processing; however, any such claims will be treated as a new claim for purposes of the FIFO Processing Queue.

**5.2(a) Expedited Review Process.**

**5.2(a)(1) In General.** The Successor Trust's Expedited Review process is designed primarily to provide an expeditious, efficient and inexpensive method for liquidating all Unsecured Asbestos Claims where the claim can be easily verified by the Successor Trust as meeting the presumptive Medical/Exposure Criteria for the relevant Disease Level. Expedited Review is also intended to provide qualifying claimants fixed and certain claims payments. Thus, Unsecured Asbestos Claims that undergo Expedited Review and meet the presumptive Medical/Exposure Criteria for the relevant Disease Level shall be paid the Scheduled Value for such Disease Level set forth in Section 5.2(a)(3) below. However, all claims liquidated by Expedited Review shall be subject to the applicable Payment Sum Percentage. Claimants holding claims that cannot be liquidated by Expedited Review because they do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level may elect the Successor Trust's Individual Review process set forth in Section 5.2(b) below.

**5.2(a)(2) Claims Processing under Expedited Review.** All holders of Unsecured Asbestos Claims (“Unsecured Asbestos Claimants”) seeking liquidation of their claims pursuant to Expedited Review shall submit a proof of claim form developed by the Successor Trustees with the consent of the TAC and the Legal Representative. As each completed proof of claim form is reached in the FIFO Processing Queue, the Successor Trust shall determine whether the claim described therein meets the Medical/Exposure Criteria for the Disease Level in which it was submitted and advise the claimant of its determination. If the Successor Trust deems the claim to be allowable, the Successor Trust shall tender to the claimant an offer of payment of the Scheduled Value for the relevant Disease Level multiplied by the applicable Payment Sum Percentage, together with a release form approved by the Successor Trust. Once the claimant returns the properly executed release form, the claim shall be placed in the FIFO Payment Queue, following which the Successor Trust shall disburse payment.

**5.2(a)(3) Disease Levels, Scheduled Values and Medical/Exposure Criteria.** The seven (7) Disease Levels covered by this CRP, together with the Medical/Exposure Criteria and the Scheduled Values for each, are set forth below. These Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all Unsecured Asbestos Claims filed with the Successor Trust on or before the Initial Claims Filing Date provided in Section 5.1(a)(1) above. Thereafter, with the consent of the TAC and the Legal Representative, the Successor Trust may add to or change the Disease Levels, Scheduled Values, or Medical/Exposure Criteria, develop subcategories of Disease Levels, Scheduled Values, or Medical/Exposure Criteria, or determine that a novel or exceptional asbestos personal injury claim is compensable even though it does not meet the Medical/Exposure Criteria for any of the then current Disease Levels.

| <u>Disease Level</u>     | <u>Scheduled Value</u> | <u>Medical/Exposure Criteria</u>  |
|--------------------------|------------------------|---|
| Mesothelioma (Level VII) | \$100,000              | (1) Diagnosis <sup>1</sup> of mesothelioma and<br>(2) Qualifying Thorpe Exposure <sup>2</sup> .   |
| Lung Cancer 1 (Level VI) | \$ 25,000              | (1) Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease <sup>3</sup> ; or in the absence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, a Non-Smoker <sup>4</sup> ; (2) Qualifying Thorpe Exposure; (3) employment for a cumulative period of at least five (5) years in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and |

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<sup>1</sup> The requirements for a diagnosis of an asbestos-related disease that may be compensated under the provisions of this CRP are set forth in Section 5.6 below.

<sup>2</sup> Qualifying Thorpe Exposure” is defined in Section 5.6 (b)(1) below.

<sup>3</sup> Evidence of “Bilateral Asbestos-Related Nonmalignant Disease” for purposes of meeting the criteria for establishing the applicable Disease Levels, means a report submitted by a qualified physician stating that the claimant has or had an X-ray reading of 1/0 or higher on the ILO scale, or bilateral pleural plaques or pleural thickening (or, solely for claims filed against J T Thorpe Company or another asbestos defendant in the tort system prior to the Petition Date, if an ILO reading is not available, a chest X-ray reading that indicates bilateral interstitial fibrosis, bilateral interstitial markings, bilateral pleural plaques or bilateral pleural thickening consistent with, or compatible with, a diagnosis of asbestos-related disease).

<sup>4</sup> “Non-Smoker” means a claimant who either (a) never smoked or (b) has not smoked during any portion of the twelve (12) years immediately prior to the diagnosis of the lung cancer.

occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b) and/or (c); and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question

Lung Cancer 2 (Level V) \$10,000

(1) Diagnosis of a primary lung cancer; (2) Qualifying Thorpe Exposure; (3) employment for a cumulative period of at least five (5) years in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b) and/or (c); and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question. Lung Cancer 2 (Level V) claims are claims that do not meet the more stringent medical and/or exposure requirements of Lung Cancer (Level VI) claims.

Other Cancer (Level IV) \$ 10,000

(1) Diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease; (2) Qualifying Thorpe

Exposure; (3) employment for a cumulative period of at least five (5) years in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b) and/or (c); and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.

Severe Asbestosis (Level III) \$ 25,000

(1) Diagnosis of asbestosis with ILO of 2/1 or greater, or asbestosis determined by pathological evidence of asbestosis,<sup>5</sup> plus (a) TLC less than 65% or (b) FVC less than 65% and FEV1/FVC ratio greater than 65%; (2) Qualifying Thorpe Exposure; (3) employment for a cumulative period of at least five (5) years in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise

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<sup>5</sup> Proof of asbestosis may be based on the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, "Asbestos-associated Diseases," Vol. 106, No. 11, App. 3 (October 8, 1982).

worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b) and/or (c); and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.

Asbestosis/  
Pleural Disease (Level II) \$ 9,000

(1) Diagnosis of asbestosis with ILO of 1/0 or greater or asbestosis determined by pathology, or bilateral pleural disease of B2 or greater, plus (a) TLC less than 80% or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%; (2) Qualifying Thorpe Exposure; (3) employment for a cumulative period of at least five (5) years in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b) and/or (c); and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.

Asbestosis/  
Pleural Disease (Level I)    \$ 4,000

(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease; (2) Qualifying Thorpe Exposure; (3) employment for a cumulative period of at least five (5) years in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b) and/or (c); and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.

**5.2(b) Individual Review Process.** The Successor Trust's Individual Review process provides a claimant with an opportunity for individual consideration and evaluation of an Unsecured Asbestos Claim that fails to meet the presumptive Medical/Exposure Criteria for the Disease Level for which he or she has applied. In such a case, the Successor Trust shall either deny the claim, or, if the Successor Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the tort system, the Successor Trust shall liquidate the claim at the Scheduled Value for that Disease Level.

### **5.3 Categorizing Claims as Extraordinary and/or Exigent.**

**5.3(a) Extraordinary Claims.** “Extraordinary Claim” means an Unsecured Asbestos Claim that otherwise satisfies the Medical Criteria for Disease Levels I - VII that is (i) held by a claimant whose exposure to asbestos was at least 75% the result of exposure to an asbestos-containing product sold, fabricated, installed, maintained, repaired, removed and/or handled by J T Thorpe Company and there is little likelihood of a substantial recovery elsewhere and (ii) evaluated and liquidated by the Successor Trust taking into consideration factors that affect the severity of damages and values within the tort system, including, but not limited to: (a) the degree to which the characteristics of a claim differ from the presumptive Medical/Exposure Criteria for the Disease Level in question; (b) factors such as the claimant’s age, disability, employment status, disruption of household, family or recreational activities, dependencies, special damages, and pain and suffering; and (c) evidence that the claimant’s damages were (or were not) caused by asbestos exposure, including exposure to asbestos-containing products sold, fabricated, installed, maintained, repaired, removed and/or handled by J T Thorpe Company; and (d) the industry and occupation of the claimant’s exposure. All such Extraordinary Claims, if valid, shall be entitled to an award of up to five (5) times the Scheduled Value (as provided in Section 5.2(a)(3) above), multiplied by the applicable Payment Sum Percentage. An Extraordinary Claim, following its liquidation, shall be placed at the head of the FIFO Payment Queue for purposes of payment based on its date of liquidation.

**5.3(b) Exigent Hardship Claims.** At any time the Successor Trust may liquidate and pay certain Unsecured Asbestos Claims that qualify as Exigent Hardship Claims, as defined below. Such claims may be considered separately no matter what the order of processing otherwise would have been under this CRP. An Exigent Hardship Claim, following

its liquidation, shall be placed at the head of the FIFO Payment Queue for purposes of payment. An Unsecured Asbestos Claim qualifies for payment as an Exigent Hardship Claim if the claim meets the Medical/Exposure Criteria for Severe Asbestosis (Disease Level III), or an asbestos-related malignancy (Disease Levels IV – VII), and the Successor Trust, in its sole discretion, determines (i) that the claimant needs financial assistance on an immediate basis based on the claimant's expenses and all sources of available income, and (ii) that there is a causal connection between the claimant's dire financial condition and the claimant's asbestos-related disease.

**5.4 Derivative Asbestos Claims.** If a claimant alleges an asbestos-related disease resulting solely from exposure to an occupationally exposed person, such as a family member, the claimant may seek Individual Review of his or her claim pursuant to Section 5.2(b) above. In such a case, the claimant must establish that the occupationally exposed person would have met the exposure requirements under this CRP that would have been applicable had that person filed a direct claim against the Successor Trust. In addition, the derivative claimant must establish (i) that he or she is suffering from one of the seven (7) Disease Levels described in Section 5.2(a)(3) above; (ii) that his or her own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person was exposed to asbestos products sold, fabricated, installed, maintained, repaired, removed and/or handled by J T Thorpe Company; and (iii) that such exposure was a cause of the claimed disease. The proof of claim form developed by the Successor Trust may contain an additional section for Derivative Asbestos Claims. All other liquidation and payment rights and limitations under this CRP shall be applicable to such claims.

**5.5 Indirect Asbestos Claims.** Indirect Asbestos Claims, as defined in the Disclosure Statement and asserted against the Successor Trust based on theories of contribution

or indemnification under applicable law, may not be processed or paid by the Successor Trust unless (a) such claim satisfied the requirements of the bar date established by the Bankruptcy Court for J T Thorpe Company claims, if applicable, and is not otherwise disallowed by Section 502(e) of the Code; and (b) the Indirect Claimant establishes to the satisfaction of the Successor Trustees that (i) the Indirect Claimant has paid in full the liability and obligations of the Successor Trust to the individual claimant to whom the Successor Trust would otherwise have had a liability or obligation under these procedures (the “Direct Claimant”), (ii) the Direct Claimant and the Indirect Claimant have forever released the Successor Trust from all liability to the Direct Claimant, and (iii) the claim is not otherwise barred by a statute of limitations or repose or by other applicable law. In no event shall any Indirect Claimant have any rights against the Successor Trust superior to the rights of the related Direct Claimant against the Successor Trust, including any rights with respect to the timing, amount or manner of payment; nor shall an Indirect Claimant be paid an amount that exceeds what the Indirect Claimant has actually paid the related Direct Claimant.

The Successor Trust shall not pay any Indirect Claimant unless and until the Indirect Claimant’s aggregate liability for the Direct Claimant’s claim has been fixed, liquidated and paid fully by the Indirect Claimant by settlement (with an appropriate full release in favor of the Successor Trust) or by a Final Order (as defined in the Disclosure Statement) provided that such claim is valid under the applicable state law. In any case where the Indirect Claimant has satisfied the claim of a claimant against the Successor Trust under applicable law by way of a settlement, the Indirect Claimant shall obtain for the benefit of the Successor Trust a release in form and substance satisfactory to the Successor Trustees. The Successor Trustees may develop and approve a separate proof of claim form for Indirect Asbestos Claims.

Indirect Asbestos Claims that have not been disallowed, discharged, or otherwise resolved by prior order of the Court shall be processed in accordance with procedures to be developed and implemented by the Successor Trustees, which procedures (a) shall determine the validity, allowability and enforceability of such claims and (b) shall otherwise provide the same liquidation and payment procedures and rights to the holders of such claims as the Successor Trust would have afforded the holders of the underlying valid Unsecured Asbestos Claims.

## **5.6 Evidentiary Requirements.**

### **5.6(a) Medical Evidence.**

**5.6(a)(1) In General.** All diagnoses of a Disease Level shall be accompanied by either (i) a statement by the physician providing the diagnosis that at least ten (10) years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis, or (ii) a history of the claimant's exposure sufficient to establish a 10-year latency period. A finding by the diagnosing physician that a claimant's disease is "consistent with" or "compatible with" asbestosis will not alone be treated by the Successor Trust as a diagnosis.

**5.6(a)(1)(A) Disease Levels I – III.** Except for claims filed against J T Thorpe Company or another asbestos defendant in the tort system prior to the Petition Date, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I – III) shall be based (i) in the case of a claimant who was living at the time the claim was filed, upon (A) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease, (B) an X-ray reading by a certified B-reader, and (C) pulmonary function testing<sup>6</sup>

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<sup>6</sup> "Pulmonary Function Testing" shall mean spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society ("ATS") and that is

if the claim involves Asbestosis/Pleural Disease (Levels I – II) or Severe Asbestosis (Level III)<sup>7</sup>; and (ii) in the case of a claimant who was deceased at the time the claim was filed, upon (A) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease, (B) pathological evidence of the non-malignant asbestos-related disease, or (C) an X-ray reading by a certified B reader.

**5.6(a)(1)(B) Disease Levels IV – VII.** Except for claims filed against J T Thorpe Company or another asbestos defendant in the tort system prior to the Petition Date, diagnoses of an asbestos-related malignancy (Disease Levels IV – VII<sup>8</sup>) shall be based on either (i) a physical examination of the claimant by the physician providing the diagnosis of the malignant asbestos-related disease, or (ii) a diagnosis of such a malignant asbestos-related disease by a board-certified pathologist.

**5.6(a)(2) Credibility of Medical Evidence.** Before making any payment to a claimant, the Successor Trust must have reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical standards. The Successor Trust may require the submission of X-rays, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examination or reviews of other medical evidence, and may require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods and procedure to insure

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performed on equipment which is in material compliance with ATS standards for technical quality and calibration.

<sup>7</sup> All diagnoses of Severe Asbestosis and Asbestosis/Pleural Disease (Disease Levels I – III) not based on pathology shall be presumed to be based on findings of bilateral asbestosis or pleural disease. However, the Successor Trust may rebut such presumptions.

<sup>8</sup> All diagnoses of Mesothelioma (Disease Level VII) shall be presumed to be based on findings that the disease involves a malignancy. However, the Successor Trust may rebut such presumptions.

that such evidence is reliable. Medical evidence (i) that is of a kind shown to have been received in evidence by a state or federal judge at trial, (ii) that is consistent with evidence submitted to J T Thorpe Company to settle similar disease cases prior to J T Thorpe Company's bankruptcy, or (iii) a diagnosis by a physician shown to have previously qualified as a medical expert with respect to the asbestos-related disease in question before a state or federal judge, is presumptively reliable, although the Successor Trust may seek to rebut the presumption. In addition, claimants who otherwise meet the requirements of this CRP for payment of an Unsecured Asbestos Claim shall be paid irrespective of the results in any litigation at any time between the claimant and any other defendant in the tort system. However, any relevant evidence submitted in a proceeding in the tort system involving another defendant, other than any findings of fact, a verdict, or a judgment, may be introduced by either the claimant or the Successor Trust in any Individual Review proceeding conducted pursuant to 5.2(b) or any Extraordinary Claim proceeding conducted pursuant to 5.3(a).

**5.6(b) Exposure Evidence.**

**5.6(b)(1) Qualifying Thorpe Exposure.** To qualify for any Disease Level, the claimant must demonstrate exposure to an asbestos-containing product sold, fabricated, installed, maintained, repaired, removed and/or handled by J T Thorpe Company ("Qualifying Thorpe Exposure"). Claims based on conspiracy theories that involve no exposure to an asbestos-containing product sold, fabricated, installed, maintained, repaired, removed and/or handled by J T Thorpe Company are not compensable under this CRP. To meet the presumptive exposure requirements of Expedited Review set forth in Section 5.2(a)(3) above, the claimant must show (i) for Disease Level VII, Qualifying Thorpe Exposure; (ii) for all other Disease Levels except for Disease Level VII, six (6) months of Qualifying Thorpe Exposure plus

five (5) years cumulative occupational asbestos exposure in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b), and/or (c). If the claimant cannot meet the relevant Qualifying Thorpe Exposure for a Disease Level under the Expedited Review process, the claimant may seek Individual Review of his or her exposure to an asbestos-containing product sold, fabricated, installed, maintained, repaired, removed and/or handled by J T Thorpe Company pursuant to Section 5.2(b) above.

**5.6(b)(2) Job Site Exposure Evidence.** The claimant must demonstrate credible and meaningful Qualifying Thorpe Exposure. Such credible and meaningful evidence of Qualifying Thorpe Exposure may be established by an affidavit of the claimant, by an affidavit of a co-worker or an affidavit of a family member or estate representative in the case of a deceased claimant (providing the Successor Trust finds such evidence reasonably reliable), by invoices, employment, construction or similar records, by verified listing of employer/jobsites, verified work history, answers to interrogatories with verification page, deposition testimony, or by other credible evidence. The specific exposure information required by the Successor Trust to process a claim under either Expedited or Individual Review shall be set forth on a proof of claim form to be developed by the Successor Trustees with the consent of the TAC and the Legal Representative. The Successor Trust can

also require submission of other or additional evidence of exposure when it deems such to be necessary.

**5.6(b)(3)      Modification of the Thorpe Job Site List.**

The Thorpe Job Site List may be modified from time to time to add additional locations and/or additional time periods for locations already on the Thorpe Job Site List as the Successor Trust deems necessary, with the consent of the TAC and the Legal Representative. If a claimant disputes the Successor Trust's failure or refusal to modify the Thorpe Job Site List in order to add an additional location(s) and/or an additional time period(s), the claimant may elect to resolve that dispute through either non-binding or binding arbitration as set forth in this CRP in Section 5.9.

**5.7      Claims Audit Program.** The Successor Trust, with the consent of the TAC and the Legal Representative, may develop methods for auditing the reliability of medical evidence, including additional reading of X-rays and verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including an asbestos-containing product sold, fabricated, installed, maintained, repaired, removed and/or handled by J T Thorpe Company. In the event that the Successor Trust reasonably determines that any individual or entity has engaged in a pattern or practice of providing unreliable medical evidence to the Successor Trust, the Successor Trust may decline to accept additional evidence from such individual or entity in the future. Further, in the event that an audit reveals that fraudulent information has been provided to the Successor Trust, the Successor Trust may penalize any claimant or claimant's attorney by disallowing the Unsecured Asbestos Claim or by other means including, but not limited to, requiring the source of the fraudulent information to pay the costs associated with the audit and any future audit or audits, reordering the priority of payment of all affected claimants'

Unsecured Asbestos Claims, raising the level of scrutiny of additional information submitted from the same source or sources, refusing to accept additional evidence from the same source or sources, seeking the prosecution of the claimant or claimant's attorney for presenting a fraudulent claim in violation of 18 U.S.C. §152, and seeking sanctions from the Bankruptcy Court.

**5.8 Second Disease (Malignancy) Claims.** The holder of a claim involving a non-malignant asbestos-related disease (Disease Levels I – III) may file a new claim for a malignant disease (Disease Levels IV – VII) that is subsequently diagnosed. Any additional payments to which such a claimant may be entitled with respect to such malignant asbestos-related disease shall not be reduced by the amount paid for the non-malignant asbestos-related disease.

**5.9 Arbitration.**

**5.9(a) Establishment of Arbitration Procedures.** The Successor Trust, with the consent of the TAC and the Legal Representative, shall institute binding and non-binding arbitration procedures for resolving disputes concerning whether the Successor Trust's outright rejection or denial of a claim was proper or whether the claimant's medical condition or exposure history meets the requirements of this CRP for purposes of categorizing a claim involving Disease Levels I – VII. Except in the case of Extraordinary Claims, binding and non-binding arbitration shall not be available to modify the Scheduled Value of a claim involving Disease Levels I – VII. In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in Section 5.6 above. In the case of an arbitration involving an Extraordinary Claim, the arbitrator shall consider the same valuation factors that are set forth in Section 5.3(a) above. With respect to all claims eligible for arbitration, the claimant, but not the Successor Trust, may elect either non-binding or binding arbitration. The arbitration rules

established by the Successor Trust may be modified by the Successor Trust with the consent of the TAC and the Legal Representative. Such amendments may include the adoption of mediation procedures as well as the establishment of an Extraordinary Claims Panel to review such claims pursuant to Section 5.3(a) above.

**5.9(b) Claims Eligible for Arbitration.** Holders of Asbestos Claims may elect to submit their claims to binding or non-binding arbitration only after other alternative dispute resolution procedures, which may be established by the Successor Trustees, have been exhausted. Claimants who do not prevail in non-binding or binding arbitration shall pay the attorneys' fees of the prevailing party(ies).

**5.9(c) Limitations on and Payment of Arbitration Awards.** In the case of a non-Extraordinary Claim involving Disease Levels I – VII, the arbitrator shall not return an award in excess of the Scheduled Value for the appropriate Disease Level as set forth in Section 5.2(a)(3) above. In the case of an Extraordinary Claim involving Disease Levels I – VII, the arbitrator shall not return an award in excess of five (5) times the Scheduled Value for such claim. A claimant who submits to arbitration and who accepts the arbitral award will receive payments in the same manner as one who accepts the Successor Trust's original valuation of the claim.

**5.10 Litigation.** Claimants who elect non-binding arbitration and then reject their arbitral awards retain the right to exit to the tort system pursuant to Section 7.5 below. However, a claimant shall be eligible for payment of a judgment for monetary damages obtained in the tort system from the Successor Trust's available cash only as provided in Section 7.6 below.

## **SECTION VI**

### **Claims Materials**

**6.1      Claims Materials.** The Successor Trust shall prepare suitable and efficient claims materials (“Claims Materials”), and shall provide such Claims Materials upon a written request for such materials to the claimant. The Successor Trust shall prepare appropriate proof of claim forms and each proof of claim form to be submitted to the Successor Trust shall include a certification by the claimant or his or her attorney sufficient to meet the requirements of Rule 11(b) of the Federal Rules of Civil Procedure. The proof of claim form may be changed by the Successor Trust with the consent of the TAC and the Legal Representative.

**6.2      Content of Claims Materials.** The Claims Materials shall include a copy of this CRP, such instructions as the Successor Trustees shall approve, and a proof of claim form. If feasible, the forms used by the Successor Trust to obtain claims information shall be the same or substantially similar to those used by other asbestos claims resolution organizations. Instead of collecting some or all of the claims information from a claimant or the claimant’s attorney, the Successor Trust may also obtain such information from electronic databases maintained by any other asbestos claims resolution organization. However, the Successor Trust shall inform the claimant that it plans to obtain information as available from such other organizations and may do so unless the claimant objects in writing or provides such information directly to the Successor Trust. If requested by the claimant, the Successor Trust shall accept information provided electronically. The claimant may, but will not be required to, provide the Successor Trust with evidence of recovery from other asbestos claims resolution organizations.

**6.3 Withdrawal of Claims.** A claimant may withdraw an Unsecured Asbestos Claim at any time upon written notice to the Successor Trust and file another claim subsequently without affecting the status of the claim for statute of limitations purposes. However, any such claim filed after withdrawal shall be given a place in the FIFO Processing Queue based on the date of such subsequent filing. A claim will be deemed to have been withdrawn if the claimant neither accepts, rejects, nor initiates arbitration within six (6) months of the Successor Trust's offer of payment or rejection of the claim. Upon written request and good cause, the Successor Trust may extend this period for an additional six (6) months.

**6.4 Filing Requirements and Fees.** The Successor Trustees shall have the discretion to determine, with the consent of the TAC and the Legal Representative, (a) whether a claimant must have previously filed the claim in the tort system to be eligible to file the claim with the Successor Trust and (b) whether a filing fee should be required for any Unsecured Asbestos Claims.

## **SECTION VII**

### **General Guidelines for Liquidating and Paying Claims**

**7.1 Showing Required.** To establish a valid Unsecured Asbestos Claim, a claimant must meet the requirements set forth in this CRP. The Successor Trust may require the submission of X-rays, laboratory tests, medical examinations or reviews, other medical evidence, or any other evidence to support or verify the Unsecured Asbestos Claim, and may further require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods, and procedures to insure that such evidence is reliable.

**7.2 Costs Considered.** Notwithstanding any provisions of this CRP to the contrary, the Successor Trustees shall always give appropriate consideration to the cost of investigating

and uncovering invalid Unsecured Asbestos Claims so that the payment of valid Unsecured Asbestos Claims is not further impaired by such processes with respect to issues related to the validity of the medical evidence supporting an Unsecured Asbestos Claim. The Successor Trustees shall also have the latitude to make judgments regarding the amount of transaction costs to be expended by the Successor Trust so that valid Unsecured Asbestos Claims are not unduly further impaired by the costs of additional investigation. Nothing herein shall prevent the Successor Trustees, in appropriate circumstances, from contesting the validity of any claim against the Successor Trust whatever the costs, or from declining to accept medical evidence from sources that the Successor Trustees have determined to be unreliable pursuant to the Claims Audit Program described in Section 5.7 above.

**7.3 Discretion to Vary the Order and Amounts of Payments in Event of Limited Liquidity.** Consistent with the provisions hereof and subject to the FIFO Processing and Payment Queues, the Successor Trustees shall proceed as quickly as possible to liquidate valid Unsecured Asbestos Claims, and shall make payments to holders of such claims in accordance with this CRP promptly as funds become available and as claims are liquidated, while maintaining sufficient resources to pay future valid claims in substantially the same manner. Because the Successor Trust's income over time remains uncertain, and decisions about payments must be based on estimates that cannot be done precisely, payments may have to be revised in light of experiences over time, and there can be no guarantee of any specific level of payment to claimants. However, the Successor Trustees shall use their best efforts to treat similar claims in substantially the same manner, consistent with their duties as Successor Trustees, the purposes of the Successor Trust, and the practical limitations imposed by the inability to predict the future with precision. In the event that the Successor Trust faces

temporary periods of limited liquidity, the Successor Trustees may, with the consent of the TAC and the Legal Representative, suspend the normal order of payment and may temporarily limit or suspend payments altogether.

**7.4 Punitive Damages.** In determining the value of any liquidated or unliquidated Unsecured Asbestos Claim, punitive or exemplary damages, i.e., damages other than compensatory damages, shall not be considered or allowed, notwithstanding their availability in the tort system.

**7.5 Suits in the Tort System.** If the holder of a disputed claim disagrees with the Successor Trust's determination regarding the claimant's exposure history or the liquidated value of the claim, and if the holder has first submitted the claim to non-binding arbitration as provided in Section 5.9 above, the holder may file a lawsuit in the Claimant's Jurisdiction. For purposes of this CRP, the "Claimant's Jurisdiction" is the jurisdiction in which the claim was filed (if at all) against J T Thorpe Company in the tort system prior to the Petition Date. If the claim was not filed against J T Thorpe Company in the tort system prior to the Petition Date, the claimant may elect as the Claimant's Jurisdiction either (i) the jurisdiction in which the claimant resides at the time of the diagnosis or when the claim is filed with the Successor Trust; or (ii) a jurisdiction in which the claimant was exposed to an asbestos-containing product that was sold, fabricated, installed, maintained, repaired, removed and/or handled by J T Thorpe Company. Any such lawsuit must be filed by the claimant in his or her own right and name and not as a member or representative of a class, and no such lawsuit may be consolidated with any other lawsuit. All defenses (including, with respect to the Successor Trust, all defenses which could have been asserted by J T Thorpe Company) shall be available to both sides at trial; however, the Successor Trust may waive any defense and/or concede any issue of fact or law. If the claimant was alive

at the time the initial pre-petition complaint was filed or on the date the proof of claim was filed, the case will be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim.

**7.6 Payment of Judgments for Money Damages.** If and when a claimant obtains a judgment in the tort system, the claim shall be placed in the FIFO Processing Queue based on the date on which the judgment became final. Thereafter, the claimant shall receive from the Successor Trust an initial payment (subject to the Payment Sum Percentage provision set forth above) of an amount equal to one-hundred percent (100%) of the greater of (i) the Successor Trust's last offer to the claimant or (ii) the award that the claimant declined in non-binding arbitration. The claimant shall receive the balance of the judgment, if any, in five (5) equal installments in years six (6) through ten (10) following the year of the initial payment (also subject to the Payment Sum Percentage provision set forth above). In the case of non-Extraordinary Claims, the amount payable under this provision shall not exceed the relevant Scheduled Value. In the case of Extraordinary Claims, the total amounts paid with respect to such claims shall not exceed five (5) times the relevant Scheduled Value for such claims. Under no circumstances shall interest be paid under otherwise applicable state law on any judgments obtained in the tort system.

Notwithstanding the provisions of this Section 7.6, the Successor Trust, with the consent of the TAC and the Legal Representative, may allow a claimant to pursue his or her claim in the tort system and to pursue collection of any judgment from an insurer identified by the Successor Trust as not having settled with JT Thorpe Company or the Successor Trust.

**7.7 Releases.** An Unsecured Asbestos Claimant accepting payment from the Successor Trust to resolve a malignant disease claim (Disease Levels IV – VII) must execute a full release of

the Successor Trust and all Protected Parties as a condition precedent to receiving payment. An Unsecured Asbestos Claimant accepting payment from the Successor Trust to resolve a non-malignant disease claim (Disease Levels I – III) must execute a full release of all Protected Parties with the exception of the Successor Trust and must execute a limited release of the Successor Trust (preserving only claims specified in the next sentence), as a condition precedent to receiving payment. Any claimant who receives payment from the Successor Trust for a non-malignant disease claim may file a new Unsecured Asbestos Claim with the Successor Trust for an asbestos-related malignancy that is subsequently diagnosed. If permitted by state law, the endorsing of a check or draft for payment by or on behalf of a claimant shall constitute a release by such claimant.

**7.8 Third-Party Services.** Nothing in this CRP shall preclude the Successor Trust from contracting with another asbestos claims resolution organization to provide services to the Successor Trust so long as decisions about the categorization and liquidated value of Unsecured Asbestos Claims are based on the relevant provisions of this CRP, including the Diseases Levels, Scheduled Values, and Medical/Exposure Criteria set forth above.

**7.9 Successor Trust Disclosure of Information.** Periodically, but not less often than once a year, the Successor Trust shall make available to claimants and other interested parties, the number of claims by Disease Level that have been resolved both by arbitration as well as by trial indicating the amounts of the awards and the averages of the awards by jurisdiction.

## **SECTION VIII**

### **Miscellaneous**

**8.1 Amendments.** Except as otherwise provided herein, the Successor Trustees may amend, modify, delete, or add to any provisions of this CRP (including, without limitation,

amendments to conform this CRP to advances in scientific or medical knowledge or other changes in circumstances), provided they first obtain the consent of the Legal Representative and the TAC, pursuant to the Procedures for Obtaining Consent described in Section 6.08 of the Successor Trust Agreement set forth in Section 6.08 of the Successor Trust Agreement, except that the right to adjust the Payment Sum Percentage is governed by Section 4.2 above.

**8.2 Severability.** Should any provision contained in this CRP be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this CRP. Should any provision contained in this CRP be determined to be inconsistent with or contrary to J T Thorpe Company's obligations to any insurance company providing insurance coverage to J T Thorpe Company in respect of claims for bodily injury and death based on exposure to asbestos-containing products sold, fabricated, installed, maintained, repaired, removed and/or handled by J T Thorpe Company, no payment shall be made by the Successor Trust in respect of any such claim from proceeds from said insurance coverage.

**8.3 Governing Law.** Except for purposes of determining the liquidated value of any Unsecured Asbestos Claim, administration of this CRP shall be governed by, and construed in accordance with, the laws of the State of Texas, without giving effect to the principles of conflicts of law thereof. The law governing the liquidation of Unsecured Asbestos Claims in the case of arbitration or litigation in the tort system shall be the law of the Claimant's Jurisdiction as described in Section 7.5 above.