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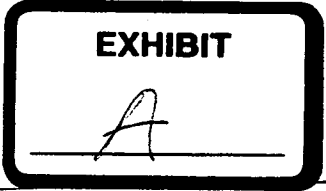
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UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In Re:  
J.T. THORPE, INC., a California  
corporation, J.T. THORPE, INC., a dissolved  
California corporation, THORPE  
TECHNOLOGIES, INC., a California  
corporation and THORPE HOLDING  
COMPANY,  
  
Debtors.

Case Nos.: LA02-14216BB;  
LA04-35876BB; LA04-35847BB; and  
LA04-35877BB  
  
Jointly Administered As  
Case No. LA02-14216BB  
  
Chapter 11  
  
Adversary No.: 04-01438



1 J.T. THORPE, INC., a California  
2 Corporation; J.T. THORPE, INC.,  
3 a dissolved California Corporation,

4 Plaintiffs,

5 v.

6 FEDERAL INSURANCE COMPANY; ST.  
7 PAUL FIRE AND MARINE INSURANCE  
8 COMPANY; NATIONAL UNION FIRE  
INSURANCE COMPANY OF  
PITTSBURGH, PA; AMERICAN  
MOTORISTS INSURANCE COMPANY;  
FIRST STATE INSURANCE COMPANY,

9 Defendants.

**FIRST AMENDED COMPLAINT  
FOR:**

- (i) **DECLARATORY RELIEF**
- (ii) **BREACH OF CONTRACT**
- (iii) **TORTIOUS BREACH OF  
THE IMPLIED COVENANT  
OF GOOD FAITH AND FAIR  
DEALING**

10 Plaintiff J.T. Thorpe, Inc., a California Corporation (“Thorpe”) and Plaintiff J.T.  
11 Thorpe, Inc., a dissolved California Corporation (“Dissolved Thorpe”), Debtors and  
12 Debtors-In-Possession in this Chapter 11 proceeding, for their complaint alleges as  
13 follows:

**The Plaintiffs**

- 14 1. Plaintiff Thorpe is a California Corporation with its principal place of  
15 business in the County of Los Angeles.
- 16 2. Plaintiff Dissolved Thorpe is a dissolved California Corporation seeking to  
17 wind up its business.
- 18 3. Dissolved Thorpe was formed on October 11, 1932 to acquire the firebrick,  
19 high temperature insulation and acid proof masonry repair and construction work in the  
20 Southern California area and Pacific Southwest. Dissolved Thorpe was in the business of  
21 refractory contracting. Dissolved Thorpe’s work included the installation and repair of  
22 refractory linings in boilers, kilns and furnaces and the design of duct and heater systems.
- 23 4. The bulk of Dissolved Thorpe’s work was performed within the State of  
24 California, particularly the Los Angeles area. Outside of California, Dissolved Thorpe  
25 worked in thirty-six states performing a variety of services over the fifty-four years of its  
26 existence. A limited number of jobs were performed in Alabama, Alaska, Arkansas,  
27 Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas,  
28

1 Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana, New Jersey, Ohio,  
2 Oregon, Pennsylvania, Tennessee, Virginia, West Virginia and Wyoming. Dissolved  
3 Thorpe performed a great number of jobs in Arizona, Illinois, Louisiana, Mississippi,  
4 Nevada, New Mexico, Oklahoma, Texas, Utah and Washington.

5 5. Dissolved Thorpe was liquidated on December 30, 1986 after selling all of  
6 its assets and liabilities, (except its shares in a Texas company known as J.T. Thorpe  
7 Corporation ("Thorpe Texas") and its ownership interest in certain real property), to  
8 Thorpe, then known as Thorpe Constructors, Inc. Dissolved Thorpe has filed a  
9 bankruptcy case in order to wind up its affairs and distribute its assets pursuant to the  
10 priorities set forth in the Bankruptcy Code.

11 6. Thorpe was incorporated in California on November 3, 1986 as Thorpe  
12 Constructors, Inc. On December 31, 1986, following the liquidation of Dissolved  
13 Thorpe, it was renamed J.T. Thorpe, Inc. Thorpe continued the same refractory  
14 contracting operations of Dissolved Thorpe until February 27, 1992.

15 7. Thorpe continued in all respects the business operations of Dissolved  
16 Thorpe, including completing the contracts that were in place; using the same equipment;  
17 employing the same personnel; conducting the same operations for the same customers at  
18 the same locations; using the same customer lists; and operating from the same locations.  
19 Additionally, at least two of the seven shareholders of Dissolved Thorpe became  
20 shareholders of a holding company which is the sole shareholder of Thorpe.

21 8. Dissolved Thorpe and Thorpe contend that for purposes of liability arising  
22 from the Asbestos Related Claims, and rights to insurance, Dissolved Thorpe and Thorpe  
23 are indistinguishable under applicable law. (Collectively Dissolved Thorpe and Present  
24 Thorpe will be referred to as "Thorpe Entities" hereafter).

25 **JURISDICTION AND VENUE**

26 9. The Court has jurisdiction over this adversary proceeding as a core matter  
27 pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O), inasmuch as the claims asserted herein  
28 relate directly to the administration of a bankruptcy estate whose valuable assets consist,

1 almost entirely, of the insurance policies described below. The rulings sought by the  
2 Thorpe Entities are vital to the efficient and effective consummation of a reorganization  
3 plan inasmuch as such rulings will (i) determine the rights and obligations between and  
4 among Thorpe Entities and the defendant insurance companies with respect to insurance  
5 coverage available for creditors asserting injury as a result of alleged exposure to  
6 asbestos, (ii) establish the criteria by which such insurance will respond to asbestos  
7 claims pursuant to the Thorpe Entities' ultimate plan of reorganization, and (iii) assist in  
8 quantifying the amount of insurance available to creditors alleging asbestos-related  
9 injury, such that the Thorpe Entities' ultimate plan of reorganization will comply with 11  
10 U.S.C. § 524g, which requires that present and future asbestos claims be treated by the  
11 Thorpe Entities in a substantially similar manner. The insurance proceeds marshaled  
12 through this adversary proceeding will be used for the benefit of the present and future  
13 asbestos bodily injury claimants. This action is therefore integral to Thorpe Entities  
14 bankruptcy proceeding and the eventual success of their reorganization plan.

15 10. Venue for this adversary proceeding is proper in this Court pursuant to 28  
16 U.S.C. § 1409.

#### 17 NATURE OF THIS PROCEEDING

18 11. In this adversary proceeding, Thorpe Entities seek to marshal their  
19 insurance assets for the benefit of present, and future, asbestos claimants to which they  
20 are, or will become upon confirmation of the plan of reorganization, legally obligated to  
21 pay money damages as compensation for bodily injury resulting from exposure to  
22 asbestos. The defendants are insurance companies that issued general liability insurance  
23 policies that provide potentially unlimited coverage to the Thorpe Entities for asbestos  
24 liabilities. Defendants have failed or refused to honor their insuring obligations for the  
25 asbestos liabilities faced by the Thorpe Entities, thus requiring this adversary proceeding.

26 12. The Thorpe Entities have each filed a voluntary petition for reorganization  
27 under Chapter 11 of the United States Bankruptcy Code. The bankruptcy cases are  
28 jointly administered under case number LA 02-14216-BB. At the time of the filing of the

1 bankruptcy case by Thorpe, more than 1,000 asbestos bodily injury lawsuits were  
2 pending against Thorpe Entities in California, the majority of which alleged injurious  
3 exposure to asbestos during Thorpe Entities' refractory operations. The asbestos claims  
4 continue to be asserted against Thorpe Entities, and are expected to be asserted for many  
5 years into the future. At the time the Thorpe Entities filed their petitions, the defendant  
6 insurance companies were denying or contesting their insuring obligations for the  
7 asbestos claims. They continue to do so.

8 13. Based on the terms and conditions of the defendants' insurance policies, and  
9 applicable law, the Thorpe Entities seek at least the following interpretative rulings and  
10 declaratory relief from this Court:

11 (a) That each of the defendant's policies responds to claims for asbestos-  
12 related bodily injury that occurred during their respective policy periods, and that such  
13 asbestos-related injury occurs upon first exposure to asbestos and continues thereafter  
14 until death, thereby triggering all policies on a "continuous trigger" basis;

15 (b) That, once triggered, each of the defendant's policies provides full  
16 coverage up to its "per occurrence" limits for each asbestos claim, and that such coverage  
17 is not limited to the portion of bodily injury that occurred during their respective policy  
18 periods;

19 (c) That, where multiple policies are triggered by an asbestos claim,  
20 Thorpe is entitled to select the policy or policies responsive to such claim;

21 (d) That each of the defendant's policies does not contain aggregate  
22 limits for asbestos claims alleging injurious exposure to asbestos during the Thorpe  
23 Entities' business operations, and that such claims do not fall within the limitations of the  
24 products-completed operations coverage afforded by the defendants' policies; and

25 (e) That the asbestos bodily injury claims asserted, or to be asserted,  
26 against the Thorpe Entities constitute multiple "occurrences" as that term is defined in the  
27 defendants' policies or by applicable law, and that the defendants cannot limit their  
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1 coverage through artificially treating the asbestos bodily injury claims as a "single  
2 occurrence."

3 In addition, the Thorpe Entities seek compensatory damages against certain  
4 defendants for breach of contract, and compensatory and exemplary damages against  
5 certain defendants for tortious breach of the implied covenant of good faith and fair  
6 dealing as a result of defendants' denial of a contractual relationship with the Thorpe  
7 Entities and other bad faith conduct.

### 8 THE INSURANCE COMPANY DEFENDANTS

9 14. Defendant Federal Insurance Company ("Federal") is a corporation  
10 organized under the laws of the State of Indiana, with its principal place of business in  
11 the State of New Jersey.

12 15. Defendant St. Paul Fire and Marine Insurance Company ("St. Paul") is a  
13 corporation organized under the laws of the State of Minnesota, with its principal place  
14 of business in the State of Minnesota.

15 16. Defendant National Union Fire Insurance Company of Pittsburgh, PA  
16 ("National Union") is a corporation organized under the laws of the State of  
17 Pennsylvania, with its principal place of business in the State of New York.

18 17. Defendant American Motorists Insurance Company ("AMICO") is a  
19 corporation organized under the laws of the State of Illinois, with its principal place of  
20 business in the State of Illinois.

21 18. Defendant First State Insurance Company ("First State") is a corporation  
22 organized under the laws of the State of Connecticut, with its principal place of business  
23 in the State of Massachusetts.

### 24 INSURANCE POLICIES AT ISSUE

25 20. Defendant Federal issued at least the following liability insurance policies  
26 to the Thorpe Entities that cover the asbestos bodily injury claims and that contain no  
27

1 "aggregate" limits for claims alleging injurious exposure to asbestos during the Thorpe  
2 Entities' business operations:

3	<u>Policy No.</u>	<u>Period</u>
4	7721-63-41	1/1/66 - 1/1/67
5	7740-09-00	1/1/67 - 1/1/68
6	7740-43-73	1/1/68 - 1/1/69
7	7744-56-66	1/1/69 - 1/1/70
8	7750-32-17	1/1/70 - 1/1/71
9	7761-04-25	1/1/71 - 1/1/72
10	7761-07-17	1/1/72 - 1/1/73
11	7772-89-23	1/1/73 - 1/1/74
12	7772-89-23	1/1/74 - 1/1/75
13	7772-89-23	1/1/75 - 1/1/76
14	7772-89-23	1/1/76 - 1/1/77
15	7772-89-23	1/1/77 - 1/1/78

16 21. Defendant St. Paul issued at least the following liability insurance policies  
17 to the Thorpe Entities that cover the asbestos bodily injury claims and that contain no  
18 "aggregate" limits for claims alleging injurious exposure to asbestos during the Thorpe  
19 Entities' business operations:

20	<u>Policy No.</u>	<u>Period</u>
21	661-NB-1940	1/1/78 - 1/1/79
22	661-NB-1940	1/1/79 - 1/1/80
23	661-NB-6062	1/1/80 - 1/1/81
24	661-NB-6062	1/1/81 - 1/1/82
25	661-NB-6062	1/1/82 - 1/1/83
26	661-NB-6062	1/1/83 - 1/1/84
27	659-NB-1238	1/1/84 - 1/1/85

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1           22. Defendant National Union issued at least the following liability insurance  
2 policy to the Thorpe Entities that cover the asbestos bodily injury claims and that  
3 contains no “aggregate” limits for claims alleging injurious exposure to asbestos during  
4 the Thorpe Entities’ business operations:

<u>Policy No.</u>	<u>Period</u>
GLA116-8146RA	1/1/85 - 1/1/86

7           23. Defendant AMICO issued at least the following liability insurance policies  
8 to the Thorpe Entities that cover the asbestos bodily injury claims and that contain no  
9 “aggregate” limits for claims alleging injurious exposure to asbestos during the Thorpe  
10 Entities’ business operations:

<u>Policy No.</u>	<u>Period</u>
F3M70249	1/1/53 - 1/1/54
3M426192	1/1/53 - 1/1/54
4ZM-70-249	1/1/54 - 1/1/55
5ZM-70-249	1/1/55 - 1/1/56
6ZM-70-249	1/1/56 - 1/1/57
7ZM-432-163	1/1/57 - 1/1/58
8ZM-432-163	1/1/58 - 1/1/59
9ZM-432-163	1/1/59 - 1/1/60
0ZM-432-163	1/1/60 - 1/1/61
1ZM-432-163	1/1/61 - 1/1/62
2ZM-432-163	1/1/62 - 1/1/63
3ZM-432-163	1/1/63 - 1/1/64
4ZM-432-163	1/1/64 - 1/1/65
5ZM-432-163	1/1/65 - 1/1/66

26           24. Defendant First State issued at least the following liability insurance policy  
27 to the Thorpe Entities that cover the asbestos bodily injury claims and that contains no  
28



1 “aggregate” limits for claims alleging injurious exposure to asbestos during the Thorpe  
2 Entities’ business operations:

<u>Policy No.</u>	<u>Period</u>
EU 002628	2/15/85 - 2/15/86

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6 25. Copies of the insurance policies at issue in this proceeding, or the available  
7 secondary evidence of policies that are presently “missing,” are contained on the CD-  
8 ROM attached to the original complaint and have been provided to defendants.

9  
10 ***FIRST CLAIM FOR RELIEF***  
***(Declaratory Relief Against All Defendants)***

11 26. The Thorpe Entities incorporate the allegations contained in paragraphs 1  
12 through 25, in full, by this reference.

13 27. The asbestos claimants typically allege injurious exposure to asbestos,  
14 progression of asbestos disease and/or manifestation of illness during the defendants’  
15 policy periods. Consistent with the “continuous trigger” of coverage under applicable  
16 law, the asbestos bodily injury claims are covered under each of the defendants’ policies  
17 in effect during any portion of the asbestos disease process -- *i.e.*, from first exposure to  
18 asbestos through death. Similarly, under the “all sums” rule under applicable law, each  
19 triggered insurance policy must pay for the Thorpe Entities’ entire loss up to its “per  
20 occurrence” limit, even though asbestos bodily injury continue over multiple policy  
21 periods.

22 28. To the extent that the defendants’ insurance policies contain “aggregate”  
23 limits of coverage, such “aggregate” limits apply solely with respect to claims for bodily  
24 injury that fall within the limitations of the “products-completed operations” coverage as  
25 defined by the policies. Claims fall within the limitations of the “products-completed  
26 operations” provisions of the policies *only* when the asbestos-related injury results from  
27 (i) (a) an actual defect in goods or products manufactured, handled, sold, distributed or  
28

1 disposed of by the Thorpe Entities, (b) the injuries occurred away from Thorpe Entities'  
2 premises, *and* (c) the injuries occurred after the Thorpe Entities relinquished physical  
3 possession of its "goods" or "products," *or* (ii) (a) the Thorpe Entities completed work  
4 where the injury occurred away from premises owned, rented or controlled by the Thorpe  
5 Entities, and (b) all of the injury occurred after the work was completed. Unless these  
6 specific events can be demonstrated by the insurers, an asbestos bodily injury claim is not  
7 subject to the limitations of the "product-completed operations" provisions of the  
8 policies.

9       29. Accordingly, to the extent that a claimant alleges injurious exposure to  
10 asbestos while the Thorpe Entities' refractory or insulation work was proceeding, such a  
11 claim would properly be characterized as a "premises operations" claim to which no  
12 "aggregate" limit applies under the defendants' policies. A substantial majority of the  
13 asbestos bodily injury claims asserted against the Thorpe Entities are indeed "premises  
14 operations" claims, resulting from multiple "occurrences" and are not subject to any  
15 "aggregate" limits.

16       30. Defendants dispute that their policies cover the asbestos bodily injury  
17 claims currently pending against the Thorpe Entities, and deny that their policies will  
18 cover the future asbestos bodily injury claims. The defendants also claim that they have  
19 paid the "aggregate" limits available under each of their policies, that their policies are  
20 "exhausted," and that their policies are unavailable to pay the present or future asbestos  
21 bodily injury claims. Accordingly, an actual and justiciable controversy exists between  
22 the Thorpe Entities and defendants concerning the appropriate characterization of the  
23 asbestos bodily injury claims as "products-completed operations," which may be subject  
24 to applicable aggregate limits, or "premises operations," which are not subject to  
25 aggregate limits. A judicial declaration is necessary to resolve this controversy.

26       31. In addition, the defendants dispute the application of their policies to the  
27 asbestos claims on various inappropriate grounds. Accordingly, the Thorpe Entities seek  
28 a declaration regarding the following disputed issues:

1 (a) That each of the defendant's policies responds to claims for asbestos-  
2 related bodily injury that occurred during their respective policy periods, and that such  
3 asbestos-related injury occurs upon first exposure to asbestos and continues thereafter  
4 until death, thereby triggering all policies on a "continuous trigger" basis;

5 (b) That, once triggered, each of the defendant's policies provides full  
6 coverage up to its "per occurrence" limits for each asbestos claim, and that such coverage  
7 is not limited to the portion of bodily injury that occurred during their respective policy  
8 periods;

9 (c) That, where multiple policies are triggered by an asbestos claim, the  
10 Thorpe Entities are entitled to select the policy or policies responsive to such claim; and

11 (d) That the asbestos bodily injury claims asserted, or to be asserted,  
12 against the Thorpe Entities constitute multiple "occurrences" as that term is defined in the  
13 defendants' policies or by applicable law, and that the defendants cannot limit their  
14 coverage through artificially treating the asbestos bodily injury claims as a "single  
15 occurrence."

16 32. Defendants dispute their insuring obligations as set forth in paragraphs 26  
17 through 31. Accordingly, an actual and justiciable controversy thus exists between the  
18 Thorpe Entities and defendants concerning whether, and to what extent, the policies  
19 issued by these insurers are available to pay the asbestos bodily injury claims presently  
20 asserted, or which will be asserted, against the Thorpe Entities. A judicial declaration is  
21 therefore necessary and appropriate at this time, and under the circumstances described  
22 herein, so that the Thorpe Entities may ascertain their rights under the defendants'  
23 policies and determine the extent to which insurance coverage exists to pay the asbestos  
24 bodily injury claims.

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**SECOND CLAIM FOR RELIEF**  
**(Declaratory Relief Against AMICO)**

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2  
3       33. The Thorpe Entities incorporate the allegations contained in paragraphs 1  
4 through 25, in full, by this reference.

5       34. The Thorpe Entities have been unable to locate complete copies of the  
6 actual insurance policies that it purchased from AMICO during the 1950s and 1960s, as  
7 referenced above, despite conducting several reasonable and diligent searches. Instead,  
8 the Thorpe Entities have located secondary evidence that defendant AMICO issued  
9 policies providing substantial liability insurance to the Thorpe Entities that would cover  
10 the asbestos claims.

11       35. Under applicable law, it is not necessary that the actual insurance policies  
12 be available in order to demonstrate coverage. Instead, a policyholder need only prove (i)  
13 the fact that he or she was insured under the lost policy during the period in issue, and (ii)  
14 the substance of each policy provision essential to the claim for relief, *i.e.*, essential to the  
15 particular coverage that the insured claims.

16       36. The Thorpe Entities assert that the secondary evidence imaged to the CD-  
17 ROM attached to the original complaint establishes the existence and, at the very least,  
18 the substance of the material terms and conditions essential to the coverage it seeks from  
19 AMICO for the asbestos bodily injury claims. Indeed, the attached Certificates of  
20 Insurance alone establish that AMICO provided the Thorpe Entities with “general  
21 liability” coverage of \$250,000 “each person,” \$500,000 “each occurrence,” or “each  
22 accident,” and \$500,000 “aggregate products” at the primary level during the relevant  
23 time periods. The “general liability” coverage afforded by the AMICO policies responds  
24 to claims, such as the asbestos bodily injury claims asserted against the Thorpe Entities,  
25 seeking the recovery of money damages resulting from bodily injury that occurs, in any  
26 respect, during the AMICO policy periods.  
27  
28

1 37. AMICO nevertheless asserts that the Thorpe Entities have not, to AMICO's  
2 satisfaction, adduced sufficient evidence either of the existence or the material terms and  
3 conditions of the AMICO policies described herein.

4 38. An actual and justiciable controversy thus exists between the Thorpe  
5 Entities and AMICO concerning whether the Thorpe Entities have, or can, establish their  
6 right to coverage under the AMICO policies. A judicial declaration is therefore  
7 necessary and appropriate at this time, and under the circumstances alleged above, so that  
8 the Thorpe Entities may ascertain their rights under the AMICO policies and determine  
9 whether, and to what extent, AMICO coverage is available to pay the asbestos bodily  
10 injury claims.

11  
12 ***THIRD CLAIM FOR RELIEF***  
***(Declaratory Relief Against First State)***

13 39. The Thorpe Entities incorporate the allegations contained in paragraphs 1  
14 through 25, in full, by this reference.

15 40. Defendant First State issued an excess policy to the Thorpe Entities that, by  
16 its terms and applicable law, is responsive to the asbestos claims once (i) the coverage  
17 specifically underlying the First State policy has been exhausted or is otherwise  
18 unavailable, or (ii) the asbestos liabilities faced by the Thorpe Entities reach the  
19 attachment point of First State's policies. First State contends that its policy does not  
20 respond to asbestos claims inasmuch as one of the policies underlying the First State  
21 excess policy was issued by a currently insolvent insurance company, and that the Thorpe  
22 Entities are responsible for the gap in coverage resulting from such insolvency. The  
23 Thorpe Entities dispute First State's position and contend that the Thorpe Entities have no  
24 responsibility to pay asbestos claims that would otherwise be covered by the insolvent  
25 policy underlying the First State excess policy.

26 41. An actual and justiciable controversy thus exists between the Thorpe  
27 Entities and First State whether, and to what extent, the First State policy is available to  
28

1 pay the asbestos bodily injury claims presently asserted, or which will be asserted,  
2 against the Thorpe Entities. A judicial declaration is therefore necessary and appropriate  
3 at this time, and under the circumstances described here, so that the Thorpe Entities may  
4 ascertain their rights under the First State policy and determine the extent to which this  
5 insurance coverage is available to pay the asbestos bodily injury claims.

6  
7 ***FOURTH CLAIM FOR RELIEF***  
8 ***(Breach Of Contract Against Federal, St. Paul, National Union and AMICO)***

9 42. The Thorpe Entities incorporate the allegations contained in paragraphs 1  
10 through 25, in full, by this reference.

11 43. Each of the specified defendants issued contracts of insurance covering the  
12 Thorpe Entities for the asbestos claims. The Thorpe Entities have satisfied all of the  
13 terms and conditions under the insurance contracts referenced in this complaint, including  
14 payment of substantial policy premiums, such that they are entitled to all of the benefits  
15 of these insurance policies.

16 44. As described above, the specified defendants have refused to honor their  
17 contractual obligations under their respective policies of insurance and have disputed  
18 coverage for the asbestos bodily injury claims asserted, and to be asserted, against the  
19 Thorpe Entities.

20 45. The specified defendants thus have breached their contracts of insurance  
21 they entered with the Thorpe Entities, as described herein.

22 46. As a direct and proximate cause of the specified defendants' breaches of  
23 contract, the Thorpe Entities have been damaged in an amount subject to proof at trial.

24 ***FIFTH CLAIM FOR RELIEF***  
25 ***(Tortious Breach Of The Implied Covenant***  
26 ***Of Good Faith And Fair Dealing Against AMICO)***

27 47. The Thorpe Entities incorporate the allegations contained in paragraphs 1  
28 through 25 and 42 through 46, in full, by this reference.

1           48. As described above, the Thorpe Entities have adduced more than sufficient  
2 evidence of the existence and the substance of the material terms and conditions of the  
3 AMICO policies to establish this coverage.

4           49. AMICO, however, has asserted that the Thorpe Entities' evidence is  
5 insufficient to demonstrate coverage and has denied the existence of a contractual  
6 relationship with the Thorpe Entities.

7           50. AMICO's position is objectively, and subjectively, unreasonable in that  
8 documents provided to the Thorpe Entities for the first time in the summer of 2003 show  
9 that AMICO determined internally (i) that the Thorpe Entities have indeed presented  
10 sufficient evidence to secure, at the very least, a defense obligation from AMICO, (ii)  
11 that, consistent with applicable law, the Thorpe Entities only needed to produce evidence  
12 of the mere "substance" of the material terms and conditions of the AMICO policies to  
13 obtain the policy benefits due, (iii) that certificates of insurance, of the type imaged to the  
14 CD-ROM attached to the original complaint, were sufficient evidence of coverage, and  
15 (iv) that policy specimens, of the type imaged to the CD-ROM, were sufficient evidence  
16 of coverage. AMICO's assertions to the contrary to the Thorpe Entities, and its refusal to  
17 provide policy benefits to the Thorpe Entities that admittedly are due, constitutes a  
18 tortious breach of the implied covenant of good faith and fair dealing that is inherent in  
19 all insurance contracts.

20           51. As a direct and proximate result of AMICO's tortious breach of the implied  
21 covenant, the Thorpe Entities have been damaged in an amount subject to proof at trial.

22           52. AMICO's conduct, as alleged, was undertaken maliciously, fraudulently,  
23 oppressively and in conscious disregard of the Thorpe Entities' known rights under the  
24 AMICO policies. Indeed, in another document, also made available to the Thorpe  
25 Entities for the very first time in the summer of 2003, AMICO noted internally that the  
26 Thorpe Entities' asbestos liability presented a "large potential exposure" to AMICO, thus  
27 providing a reason why AMICO has withheld policy benefits wrongfully from the Thorpe  
28 Entities. Consequently, the Thorpe Entities are entitled to recover punitive and

1 exemplary damages from AMICO to punish and to deter this defendant, and to deter  
2 other insurance companies, from knowingly and callously disregarding the rights of their  
3 policyholders in the manner that AMICO has done here.

4  
5 ***SIXTH CLAIM FOR RELIEF***  
6 ***(Tortious Breach Of The Implied Covenant***  
7 ***Of Good Faith And Fair Dealing Against AMICO, St. Paul,***  
8 ***National Union and First State)***

9 53. The Thorpe Entities incorporate the allegations contained in paragraphs 1  
10 through 25 and 42 through 46, in full, by this reference.

11 54. As described above, after issuing policies that provide coverage for bodily  
12 injury to the Thorpe Entities and, in the case of St. Paul and National Union, providing  
13 defense and indemnity for bodily injury claims filed against the Thorpe Entities over  
14 many years, each of the specified defendant insurers presently denies the existence of a  
15 contractual relationship with the Thorpe Entities based on a 1986 corporate transaction.

16 55. The position of defendants AMICO, St. Paul, National Union and First  
17 State is objectively, and subjectively, unreasonable in that the documents provided to  
18 each of the defendants confirm that:

19 (1) That the transactions involving the Thorpe Entities are merely a  
20 continuation of the ongoing business;

21 (2) That the transactions between the Thorpe Entities amount to a “de  
22 facto” merger;

23 (3) That the transactions between the Thorpe Entities do not increase or  
24 change the liabilities owed for asbestos liabilities that are recovered under each of the  
25 defendant insurer’s insurance contracts;

26 (4) That the transactions between the Thorpe Entities were concluded in  
27 good faith;



1 (5) That the specified defendant insurers never raised such a defense  
2 during the prior 15 years after the first asbestos claims were filed against the Thorpe  
3 Entities;

4 (6) Such a defense was only raised once the specified named insurers  
5 were asked to acknowledge and inform Thorpe Entities as to what coverages they would  
6 make available to cover the asbestos liabilities. The specified named insurers' wrongful  
7 denial of contractual obligation was done purposely, without a reasonable basis, and has  
8 caused significant damage to the Thorpe Entities; and

9 (7) the liabilities incurred by the Thorpe Entities had already accrued at  
10 the time of the 1986 transaction.

11 56. As a direct and proximate result of the tortious breach of the implied  
12 covenant by AMICO, St. Paul, National Union and First State, the Thorpe Entities have  
13 been damaged in an amount subject to proof at trial, including claims for business loss.

14 57. The conduct of AMICO, St. Paul, National Union and First State, as  
15 alleged, was undertaken maliciously, fraudulently, oppressively and in conscious  
16 disregard for the Thorpe Entities' known right under each of the specified defendant  
17 insurers' policies. Consequently, Thorpe is entitled to recover punitive and exemplary  
18 damages from AMICO, St. Paul, National Union and First State to punish and deter these  
19 defendants, and deter other insurance companies from knowingly and callously  
20 disregarding the rights of their policyholders in the manner that the specified defendant  
21 insurers have done here.

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1           **WHEREFORE**, the Thorpe Entities pray for judgment against the defendants, as  
2 follows:

3  
4                           **On The First Claim For Relief As To All Defendants**

5           1.     For a declaratory judgment establishing the following:

6                   (a)     That each of the defendant's policies responds to claims for asbestos-  
7 related bodily injury that occurred during their respective policy periods, and that such  
8 asbestos-related injury occurs upon first exposure to asbestos and continues thereafter  
9 until death, thereby triggering all policies on a "continuous trigger" basis;

10                   (b)     That, once triggered, each of the defendant's policies provides full  
11 coverage up to its "per occurrence" limits for each asbestos claim, and that such coverage  
12 is not limited to the portion of bodily injury that occurred during their respective policy  
13 periods;

14                   (c)     That, where multiple policies are triggered by an asbestos claim, the  
15 Thorpe Entities are entitled to select the policy or policies responsive to such claim;

16                   (d)     That each of the defendant's policies does not contain aggregate  
17 limits for asbestos claims alleging injurious exposure to asbestos during the Thorpe  
18 Entities' business operations, and that such claims do not fall within the limitations of the  
19 products-completed operations coverage afforded by the defendants' policies; and

20                   (e)     That the asbestos bodily injury claims asserted, or to be asserted,  
21 against the Thorpe Entities constitute multiple "occurrences" as that term is defined in the  
22 defendants' policies or by applicable law, and that the defendants cannot limit their  
23 coverage through artificially treating the asbestos bodily injury claims as a "single  
24 occurrence."

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1                                   **On The Second Claim For Relief As To Defendant AMICO**

2           2.     For a declaratory judgment establishing that the Thorpe Entities have  
3 proven the existence and substance of the material terms and conditions of all, or at least  
4 some, of the AMICO policies such that they provide coverage for the asbestos bodily  
5 injury claims as alleged herein.  
6

7                                   **On The Third Claim For Relief As To Defendant First State**

8           3.     For a declaratory judgment that the First State policy responds to the  
9 asbestos claims against the Thorpe Entities as alleged herein, and that the Thorpe Entities  
10 have no financial responsibility for any gap in underlying insurance caused by the  
11 insolvency of an underlying insurer.

12                                   **On The Fourth Claim For Relief As To Defendants**  
13                                   **Federal, St. Paul, National Union and AMICO**

14           4.     For compensatory damages, according to proof at trial.  
15

16                                   **On The Fifth Claim For Relief As To Defendant AMICO**

17           5.     For compensatory damages, including business loss, according to proof at  
18 trial.

19           6.     For punitive and exemplary damages in an amount sufficient to punish  
20 AMICO and to deter AMICO, and other insurance companies, from engaging in the  
21 malicious, fraudulent and oppressive conduct described in this complaint.  
22

23                                   **On The Sixth Claim For Relief As To Defendants AMICO, St. Paul,**  
24                                   **National Union and First State**

25           7.     For compensatory damages, including business loss, according to proof at  
26 trial.

27           8.     For punitive and exemplary damages in an amount sufficient to punish  
28 AMICO, St. Paul, National Union and First State and to deter AMICO, St. Paul, National

1 Union and First State and other insurance companies, from engaging in the malicious,  
2 fraudulent and oppressive conduct described in this complaint.

3  
4 **On All Claims For Relief**

- 5 9. Prejudgment interest.  
6 10. Costs of suit.  
7 11. Reasonable attorneys fees.  
8 12. Any further relief that the Court deems just and proper.

9 Dated: April 5<sup>1</sup>, 2005

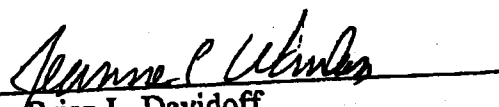
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10  
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15 J.T. Thorpe, Inc., a California Corporation,  
16 and J.T. Thorpe, Inc., a Dissolved California  
17 Corporation

18 Dated: April 5, 2005

RUTTER HOBBS & DAVIDOFF INCORPORATED

19  
20 By: 

21 Brian L. Davidoff  
22 Jeanne C. Wanlass  
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27 and J.T. Thorpe, Inc., a Dissolved California  
28 Corporation