

10/30/2018

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AC 17-0694

Roger Sullivan
Allan M. McGarvey
John F. Lacey
Ethan A. Welder
Dustin A. Leftridge
Jinnifer Jerecek Mariman
McGarvey, Heberling, Sullivan & Lacey, P.C.
345 First Avenue East
Kalispell, MT 59901
(406) 752-5566

Attorneys for MHSL Plaintiffs

IN THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA

IN RE ASBESTOS LITIGATION,

Consolidated Cases

Cause No. AC 17-0694

AFFIDAVIT OF
JOHN LACEY

Applicable to
Hutt v. Maryland Casualty Co. et al.,
DDV-18-0175

STATE OF MONTANA)
) SS
County of Flathead)

John Lacey, being first duly sworn, deposes and states:

1. I am an attorney for the Plaintiff in this action. I have personal knowledge of the matters stated herein.

2. All of the documents attached hereto are true and correct copies of the documents designated Exhibit C through Exhibit D (continuing the order of Exhibits submitted by Affidavit of Allan McGarvey, 10/19/18).

3. Attached hereto as Exhibit C is the relevant portion of the First Amended Joint Plan of Reorganization for W.R. Grace in the United States Bankruptcy Court for the District of Delaware, Case No. 01-1139.

4. Attached hereto as Exhibit D is the May 24, 2004, Order Regarding Plaintiffs' Motion to Find Counsel for Gerard in Contempt of Court, filed in the United States Bankruptcy Court for the District of Delaware, Case No. 01-1139.

5. Attached hereto are the following individually designated MCE Exhibits:

MCE 11

MCE 16

MCE 13

MCE 37

MCE 15

MCE 73

6. All of the documents attached hereto which bear an "MCE" Exhibit label are records that (a) were produced by MCC in this action, or (b) were produced by W.R. Grace in litigation in Montana State District Court (Lincoln County) and authenticated by deposition or trial testimony in such litigation. To the best of my knowledge these "MCE" exhibits are all authentic and their authenticity has never been questioned.

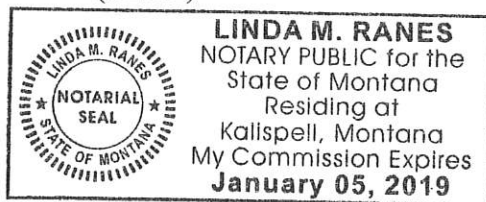
Further the affiant sayeth not.

RESPECTFULLY SUBMITTED this 30th day of October 2018.

By: 
JOHN F. LACEY

SUBSCRIBED AND SWORN to before me this 30th day of October, 2018.

(SEAL)





Notary Public for the State of Montana
Residing at: _____, Montana
My Commission Expires: _____

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
W. R. GRACE & CO., <i>et al.</i>)	Case No. 01-1139 (JKF)
)	Jointly Administered
Debtors.)	
)	

FIRST AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF
THE BANKRUPTCY CODE OF W. R. GRACE & CO., ET AL., THE OFFICIAL
COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, THE ASBESTOS PI
FUTURE CLAIMANTS' REPRESENTATIVE, AND THE OFFICIAL COMMITTEE OF
EQUITY SECURITY HOLDERS AS MODIFIED THROUGH DECEMBER 23, 2010

John Donley
Adam Paul
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Telephone: (312) 862-2000

-- and --

Deanna D. Boli
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800

Janet S. Baer
BAER HIGGINS FRUCHTMAN LLC
111 East Wacker Drive, Suite 2800
Chicago, IL 60601
Telephone: (312) 836-4022

Laura Davis Jones (#2436)
James E. O'Neill (#4042)
Timothy Cairns (#4228)
PACHULSKI STANG ZIEHL & JONES LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705 (Courier 19801)
Telephone: (302) 652-4100

Counsel for the Debtors and Debtors in Possession

Philip Bentley
Douglas Mannal
David E. Blabey, Jr.
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Avenue of the Americas
New York, NY 10036
Telephone: (212) 715-9100

Teresa K.D. Currier (#3080)
SAUL EWING LLP
222 Delaware Avenue, Suite 1200
Wilmington, DE 19801
Telephone: (302) 421-6800

Counsel for the Official Committee of Equity Security Holders

Elihu Inselbuch
CAPLIN & DRYSDALE, CHARTERED
375 Park Avenue, 35th Floor
New York, NY 10152-3500
Telephone: (212) 319-7125

Peter Van N. Lockwood
Ronald Reinsel
Jeffrey Liesemer
CAPLIN & DRYSDALE, CHARTERED
One Thomas Circle, NW
Washington, DC 20005
Telephone: (202) 862-5000

Marla R. Eskin (#2989)
Mark T. Hurford (#3299)
CAMPBELL & LEVINE, LLC
800 King Street, Suite 300
Wilmington, DE 19801
Telephone: (302) 426-1900

*Counsel for the Official Committee of
Asbestos Personal Injury Claimants*

Roger Frankel
Richard H. Wyron
Debra L. Felder
ORRICK, HERRINGTON & SUTCLIFFE
LLP
Columbia Center
1152 15th Street, NW
Washington, DC 20005-1706
Telephone: (202) 339-8400

John C. Phillips, Jr. (#110)
PHILLIPS, GOLDMAN & SPENCE, P.A.
1200 North Broom Street
Wilmington, DE 19806
Telephone: (302) 655-4200

*Counsel for David T. Austern,
Asbestos PI Future Claimants' Representative*

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS, CONSTRUCTION OF TERMS, EXHIBITS AND ANCILLARY DOCUMENTS.....	2
1.1 DEFINED TERMS	2
1.2 OTHER TERMS/INTERPRETATION	42
1.3 THE PLAN DOCUMENTS	43
1.4 ANCILLARY DOCUMENTS	43
ARTICLE 2 PROVISIONS FOR PAYMENT OF ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS	43
2.1 UNCLASSIFIED CLAIMS.....	43
2.1.1 PAYMENT OF ALLOWED ADMINISTRATIVE EXPENSE CLAIMS	44
2.1.2 PRIORITY TAX CLAIMS.....	45
ARTICLE 3 CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS	45
3.1 SUMMARY	45
3.1.1 Class 1. Priority Claims	46
3.1.2 Class 2. Secured Claims.....	46
3.1.3 Class 3. Employee Benefit Claims.....	47
3.1.4 Class 4. Workers' Compensation Claims	47
3.1.5 Class 5. Intercompany Claims	48
3.1.6 Class 6. Asbestos PI Claims.....	48
3.1.7 Class 7. Asbestos PD Claims.....	49
3.1.8 Class 8. CDN ZAI PD Claims	51
3.1.9 Class 9. General Unsecured Claims.....	52
3.1.10 Class 10. Equity Interests in the Parent	56
3.1.11 Class 11. Equity Interests in the Debtors other than the Parent.....	56
ARTICLE 4 MODIFICATION OR WITHDRAWAL OF THIS PLAN	57
4.1 MODIFICATION OF THE PLAN; AMENDMENT OF PLAN DOCUMENTS.....	57
4.1.1 Modification of the Plan	57
4.1.2 Post-Effective Date Amendment of Other Plan Documents.....	57
4.2 WITHDRAWAL OF THIS PLAN	58

TABLE OF CONTENTS

(continued)

	Page
4.2.1 Right to Withdraw this Plan.....	58
4.2.2 Effect of Withdrawal.....	58
ARTICLE 5 PROVISIONS FOR TREATMENT OF DISPUTED CLAIMS AND ASBESTOS CLAIMS GENERALLY	58
5.1 OBJECTION TO CLAIMS (OTHER THAN ASBESTOS PI CLAIMS, ASBESTOS PD CLAIMS, AND CDN ZAI PD CLAIMS); PROSECUTION OF DISPUTED CLAIMS	58
5.2 RESOLUTION OF ASBESTOS PI CLAIMS	59
5.3 RESOLUTION OF ASBESTOS PD CLAIMS	59
5.4 RESOLUTION OF CDN ZAI PD CLAIMS	59
ARTICLE 6 ACCEPTANCE OR REJECTION OF THIS PLAN	59
6.1 IMPAIRED CLASSES TO VOTE	59
6.2 ACCEPTANCE BY IMPAIRED CLASSES OF CLAIMS	59
6.3 PRESUMED ACCEPTANCE OF THIS PLAN	60
6.4 ACCEPTANCE PURSUANT TO SECTION 524(G) OF THE BANKRUPTCY CODE	60
6.5 NONCONSENSUAL CONFIRMATION	60
6.5.1 Cram Down.....	60
6.5.2 General Reservation of Rights.....	60
ARTICLE 7 IMPLEMENTATION OF THIS PLAN	61
7.1 CORPORATE GOVERNANCE	61
7.1.1 Amendment of Certificates of Incorporation of the Debtors.....	61
7.1.2 Amendment of By-Laws of the Parent.....	61
7.1.3 Precedence of Share Issuance Obligations.....	61
7.1.4 Warrants.....	62
7.2 THE ASBESTOS PI TRUST	63
7.2.1 Creation of the Asbestos PI Trust.....	63
7.2.2 Funding of the Asbestos PI Trust.....	63
7.2.3 Transfer of Claims and Demands to the Asbestos PI Trust.....	65
7.2.4 Assignment and Enforcement of Asbestos PI Trust Causes of Action.....	65
7.2.5 Appointment and Termination of Asbestos PI Trustees.....	65

TABLE OF CONTENTS

(continued)

	Page
7.2.6 Creation and Termination of the Asbestos PI TAC	65
7.2.7 Cooperation Agreement	66
7.2.8 Institution and Maintenance of Legal and other Proceedings	66
7.2.9 Authority of Asbestos PI Trust to Extend Asbestos PI Channeling Injunction to Asbestos Insurance Entities After the Effective Date	66
7.3 THE ASBESTOS PD TRUST	66
7.3.1 Creation of the Asbestos PD Trust	66
7.3.2 Funding of the Asbestos PD Trust	67
7.3.3 Transfer of Claims and Demands to the Asbestos PD Trust	68
7.3.4 Assignment and Enforcement of Asbestos PD Trust Causes of Action	68
7.3.5 Appointment and Termination of Asbestos PD Trustees	68
7.3.6 Creation and Termination of the Zonolite Attic Insulation TAC	69
7.4 PAYMENTS AND DISTRIBUTIONS UNDER THIS PLAN	69
7.4.1 Asbestos PI Trust Payments, Asbestos PD Trust Payments and Plan Distributions	69
7.4.2 Timing of Plan Distributions	70
7.5 DELIVERY OF DISTRIBUTIONS AND UNDELIVERABLE OR UNCLAIMED DISTRIBUTIONS	70
7.5.1 Delivery by the Reorganized Debtors of Distributions in General	70
7.5.2 Undeliverable Distributions by the Reorganized Debtors	70
7.6 PAYMENTS UNDER THIS PLAN	71
7.6.1 Manner of Cash Payments under this Plan	71
7.6.2 Fractional Payments under this Plan	71
7.7 CONDITIONS TO OCCURRENCE OF THE CONFIRMATION DATE	71
7.8 CONDITIONS TO OCCURRENCE OF THE EFFECTIVE DATE	83
7.9 MANAGEMENT OF THE REORGANIZED DEBTORS	87
7.10 CORPORATE ACTION	87
7.11 EFFECTUATING DOCUMENTS AND FURTHER TRANSACTIONS	87

TABLE OF CONTENTS
(continued)

	Page
7.12 ALLOCATION OF PLAN DISTRIBUTIONS BETWEEN PRINCIPAL AND INTEREST	87
7.13 NO SUCCESSOR LIABILITY	88
7.14 DEEMED CONSOLIDATION OF THE DEBTORS FOR PLAN PURPOSES ONLY	89
7.15 INSURANCE NEUTRALITY	89
ARTICLE 8 INJUNCTIONS, RELEASES & DISCHARGE	93
8.1 DISCHARGE	93
8.1.1 Discharge of the Debtors and Related Discharge Injunction.....	93
8.1.2 Discharge of Liabilities to Holders of Asbestos PI Claims	94
8.1.3 Discharge of Liabilities to Holders of Asbestos PD Claims.....	94
8.1.4 Discharge of Liabilities to Holders of CDN ZAI PD Claims	94
8.1.5 Disallowed Claims	94
8.1.6 Non-Dischargeable ERISA Liability	95
8.2 THE ASBESTOS PI CHANNELING INJUNCTION	95
8.2.1 Asbestos PI Channeling Injunction.....	95
8.2.2 Reservations from Asbestos PI Channeling Injunction	97
8.3 THE ASBESTOS PD CHANNELING INJUNCTION	99
8.3.1 Asbestos PD Channeling Injunction.....	99
8.3.2 Reservations from Asbestos PD Channeling Injunction	100
8.4 ASBESTOS INSURANCE ENTITY INJUNCTION	102
8.4.1 Asbestos Insurance Entity Injunction	102
8.5 SUCCESSOR CLAIMS INJUNCTION	104
8.5.1 Injunction	104
8.5.2 Reservations from the Injunction for the Benefit of Holders of Grace-Related Claims	105
8.5.3 Reservations from the Injunction for the Benefit of OneBeacon and CNA	106
8.6 INJUNCTIONS AND RELEASES RELATED TO THE SEALED AIR INDEMNIFIED PARTIES AND FRESNIUS INDEMNIFIED PARTIES	107
8.7 TERM OF CERTAIN INJUNCTIONS AND AUTOMATIC STAY	107

TABLE OF CONTENTS

(continued)

	Page
8.7.1 Injunctions and/or Automatic Stays in Existence Immediately prior to Confirmation.....	107
8.7.2 Injunctions Provided for in this Plan	107
8.8 ADDITIONAL RELEASES AND INDEMNIFICATION.....	107
8.8.1 Release of Sealed Air Indemnified Parties	107
8.8.2 Reservation of Rights With Respect to Cryovac Transaction Contractual Obligations	109
8.8.3 Release of Fresenius Indemnified Parties.....	109
8.8.4 Assumption of 1998 Tax Sharing Agreement and Section 4.04 of the TSIA.....	110
8.8.5 Effect of the Fresenius Settlement Agreement, the Fresenius Settlement Order, and the Sealed Air Settlement Agreement.....	110
8.8.6 Release of Avoidance Actions.....	111
8.8.7 Specific Releases by Holders of Claims or Equity Interests.....	111
8.8.8 Release by Debtors and Estate Parties.....	111
8.8.9 Indemnification of Representatives of the Debtors and Non-Debtor Affiliates.....	112
8.8.10 Indemnification of Reorganized Debtors and Their Representatives by the Asbestos PI Trust.....	112
8.8.11 Indemnification of the Reorganized Debtors and Their Representatives by the Asbestos PD Trust.....	113
ARTICLE 9 EXECUTORY CONTRACTS, UNEXPIRED LEASES, LETTERS OF CREDIT, SURETY BONDS, COMPENSATION, INDEMNITY AND BENEFIT PROGRAMS	114
9.1 ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES	114
9.1.1 Assumption Generally.....	114
9.1.2 Assumption Procedures.....	114
9.1.3 Rejection of Certain Executory Contracts and Unexpired Leases.....	115
9.2 LETTERS OF CREDIT AND SURETY BONDS	117
9.3 COMPENSATION, INDEMNITY AND BENEFIT PROGRAM	117
9.3.1 Employee Benefits.....	117
9.3.2 Retiree Benefits.....	118

TABLE OF CONTENTS
(continued)

	Page
9.3.3 Workers' Compensation Benefits.....	118
ARTICLE 10 RETENTION OF JURISDICTION.....	118
10.1 PLAN DOCUMENTS.....	118
10.2 EXECUTORY CONTRACTS AND UNEXPIRED LEASES.....	118
10.3 DISPUTED CLAIMS ALLOWANCE/DISALLOWANCE	119
10.4 ENFORCEMENT/MODIFICATION OF THIS PLAN AND THE RELEASES, INJUNCTIONS AND DISCHARGE PROVIDED UNDER THE PLAN	119
10.5 COMPENSATION OF PROFESSIONALS.....	120
10.6 SETTLEMENTS.....	120
10.7 TAXES.....	120
10.8 SPECIFIC PURPOSES.....	120
10.9 INSURANCE MATTERS.....	120
10.10 EXCLUSIVE JURISDICTION OF DISTRICT COURT.....	121
ARTICLE 11 121	
MISCELLANEOUS PROVISIONS.....	121
11.1 AUTHORITY OF THE DEBTORS.....	121
11.2 AUTHORITY OF THE REORGANIZED DEBTORS TO GRANT NEW STOCK INCENTIVE PLAN AND IMPOSE STOCK TRADING RESTRICTIONS	121
11.3 PAYMENT OF STATUTORY FEES.....	121
11.4 RETAINED CAUSES OF ACTION.....	121
11.4.1 Maintenance of Causes of Action.....	121
11.4.2 Preservation of All Causes of Action not Expressly Settled or Released.....	122
11.5 THIRD-PARTY AGREEMENTS.....	123
11.6 REQUIREMENTS OF THE FRESenius SETTLEMENT AGREEMENT	123
11.7 REQUIREMENTS OF THE SEALED AIR SETTLEMENT AGREEMENT	123

TABLE OF CONTENTS
(continued)

Page

11.8	DISSOLUTION OF THE UNSECURED CREDITORS' COMMITTEE, THE ASBESTOS PI COMMITTEE, THE ASBESTOS PD COMMITTEE AND THE EQUITY COMMITTEE; CONTINUED RETENTION OF THE ASBESTOS PI FUTURE CLAIMANTS' REPRESENTATIVE AND THE ASBESTOS PD FUTURE CLAIMANTS' REPRESENTATIVE.....	123
11.9	EXCULPATION.....	124
11.10	TITLE TO ASSETS; DISCHARGE OF LIABILITIES.....	125
11.11	ENTIRE AGREEMENT	125
11.12	NOTICES.....	125
11.13	HEADINGS	129
11.14	GOVERNING LAW.....	129
11.15	FILING OF ADDITIONAL DOCUMENTS.....	129
11.16	COMPLIANCE WITH TAX REQUIREMENTS	129
11.17	EXEMPTION FROM TRANSFER TAXES.....	129
11.18	FURTHER ASSURANCES	129
11.19	FURTHER AUTHORIZATIONS.....	130

8.6. INJUNCTIONS AND RELEASES RELATED TO THE SEALED AIR INDEMNIFIED PARTIES AND FRESERIUS INDEMNIFIED PARTIES

As required by the Sealed Air Settlement Agreement, the Sealed Air Settlement Order, the Fresenius Settlement Agreement, and the Fresenius Settlement Order, the injunctions and releases outlined in this Plan, including the Asbestos PI Channeling Injunction and Asbestos PD Channeling Injunction provided under Bankruptcy Code § 524(g) and the Successor Claims Injunction provided under Bankruptcy Code § 105(a), shall absolutely and unequivocally extend to and protect the Sealed Air Indemnified Parties and the Fresenius Indemnified Parties.

8.7. TERM OF CERTAIN INJUNCTIONS AND AUTOMATIC STAY

8.7.1 Injunctions and/or Automatic Stays in Existence Immediately prior to Confirmation

All of the injunctions and/or automatic stays provided for in or in connection with the Chapter 11 Cases, whether pursuant to Bankruptcy Code §§ 105, 362, or any other provision of the Bankruptcy Code or other applicable law, in existence immediately prior to the Confirmation Date shall remain in full force and effect until the injunctions set forth in this Plan become effective, and thereafter if so provided by this Plan, the Confirmation Order, or by their own terms. In addition, on and after the Confirmation Date, the Reorganized Debtors or the Plan Proponents, acting together, may seek such further orders as they may deem necessary or appropriate to preserve the status quo during the time between the Confirmation Date and the Effective Date.

8.7.2 Injunctions Provided for in this Plan

Each of the injunctions provided for in this Plan shall become effective on the Effective Date and shall continue in effect at all times thereafter unless otherwise provided by this Plan. Notwithstanding anything to the contrary contained in this Plan, all actions in the nature of those to be enjoined by such injunctions shall be enjoined during the period between the Confirmation Date and the Effective Date.

8.8. ADDITIONAL RELEASES AND INDEMNIFICATION

8.8.1 Release of Sealed Air Indemnified Parties

On or prior to the Effective Date, (i) the SA Debtors, the Asbestos PD Committee, and the Asbestos PI Committee shall execute and deliver the "Release" (as defined in the Sealed Air Settlement Agreement); (ii) the "Government Plaintiff" (as defined in the Sealed Air Settlement Agreement) shall execute and deliver the "Government Release" (as defined in the Sealed Air Settlement Agreement); and (iii) the Asbestos PI Committee and the Asbestos PD Committee shall deliver the "Fresenius Release" (as defined in the Sealed Air Settlement Agreement), all as provided for in the Sealed Air Settlement Agreement. In addition, in consideration for the Cryovac Payment, each of the SA Non-Debtor Affiliates shall irrevocably release, acquit, and forever discharge the Sealed Air Indemnified Parties from any and all present and future

EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
W. R. GRACE & CO., <u>et al.</u> ,)	Case No. 01-01139 (JKF)
Debtors.)	Jointly Administered
<hr/>		
W. R. GRACE & CO., <u>et al.</u> ,)	
Plaintiffs,)	
v.)	Adversary No. A-01-771
MARGARET CHAKARIAN, <u>et al.</u> ,)	Re: 5/24/04 Agenda Item 8
And John Does 1-1000,)	Docket No. 189
Defendants.)	

**ORDER REGARDING PLAINTIFFS' MOTION TO
FIND COUNSEL FOR GERARD IN CONTEMPT OF COURT**

Upon consideration of the Motion of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for an Order Finding Counsel for Gerard in Contempt of Court (the "Motion")¹; and due and proper notice having been given and, in light of the nature of the relief requested in the Motion, no further notice or hearing on the Motion being required; and the Court having considered the relief requested in the Motion and arguments of counsel at the February 23, 2004 hearing; and after due deliberation and sufficient cause appearing therefor;

¹ Capitalized terms not otherwise defined in this Order have the meaning given in the Motion.

IT IS HEREBY ORDERED THAT:

1. Brian C. Parker, Parker, Dumler & Kiely LLP, Jon L. Heberling, and McGarvey, Heberling, Sullivan & McGarvey, P.C. (collectively, "Gerard Counsel") shall immediately withdraw (a) the Amended Complaint and Demand for Jury Trial and (b) the Motion Requesting Entry of Scheduling Order filed in the Baltimore Litigation. Such withdrawal is without prejudice to the right of the plaintiffs therein to refile such pleadings to the extent that this Court issues an order revising the Preliminary Injunction, or the Court of Appeals for the Third Circuit in Appeal No. 03-3453 or otherwise issues an order, so as to expressly permit commencement or continuation of such an action. To the extent that the automatic stay of 11 U.S.C. § 362(a) remains in effect as to the Debtors or the Preliminary Injunction remains in effect as to any other party at such time as the Amended Complaint and Demand for Jury Trial and the Motion Requesting Entry of Scheduling Order are refiled, such refiled documents should clarify with specificity that no relief is being sought against the Debtors or any other party protected by the Preliminary Injunction, and that the Debtors have no obligation to participate as parties in such proceedings.

2. Any such refiled pleadings should not include CNA as a party unless and until this Court carves out CNA from the Preliminary Injunction upon proper motion and hearing.

3. Counsel for the Debtors ^{has} ~~shall~~ provided Gerard Counsel an itemization of the relevant fees and expenses incurred in connection with the creation, filing, and pursuit of the Motion on or before April 5, 2004.

4. Pursuant to sections 105(a) and 362(h) of the Bankruptcy Code, this Court ~~shall~~ at the ^{May 25} April 26, 2004 hearing determine the amount of legal fees and expenses of Debtors' counsel to be paid by Gerard Counsel to the Debtors' estate, ^{to be \$52,281. Further} and consider ^{and} this Court's ruling as to ^{is} ~~is~~ ⁱⁿ ~~in~~

contempt. ~~The April 26, 2004 hearing on this matter may be continued by agreement of the parties.~~ *For the reasons expressed on the record today and at prior hearings, Gerard Counsel is in contempt of court and sanctions*

5. The stay of the commencement of litigation and the tolling of the statutes of *are appropriate* limitation (or other applicable time bar established by statute or order) with respect to any suit or potential claim against any Insurance Carrier (as defined in the Preliminary Injunction), including any suit or potential claim based on alleged torts of such Insurance Carrier, ordered by this Court on June 20, 2002, remain in full force and effect.

6. This Order is consented to by the Debtors and Gerard Counsel, *provided*, however, that as to Gerard Counsel such consent is only as to form and with full reservation of the right to seek review of this Order by appeal or otherwise. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order, which is final.

Dated: March ____, 2004

May 27

JK Fitzgerald

The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

MCE EXHIBITS

WOODROW NELSON, M.D.

111 EAST BROAD

LIBBY, MONTANA 59323

RECEIVED AUG 27 1964

LIBBY ZENOLITE DIVISION

8/25/64

PHONE 663-4157

Joseph Kolley, President
Zenolite Division
W.R. Grace & Company
135 So. LaSalle Street
Chicago, Ill.

Dear Mr. Kolley,

In 1959 an x-ray survey of all Zenolite employees at Libby was carried out under Wm. Little, M.D., (Radiologist), of Kalispell, Montana, and James Cairns, M.D., of Libby. An unusually high incidence, (approximately 1/3), of basilar fibrosis was found in this series.

This survey was repeated this year, after a meeting of the local doctors and Libby Zenolite administration. At this meeting, the consensus of local medical opinion was that an important increased incidence of chronic respiratory disease existed in Zenolite employees who had prolonged exposure to dust.

As a result of this, I suggested and offered to carry out studies of lung function by respiratory capacity measurements, to be compared with lung pathology as measured by the x-ray survey.

The x-ray summary has been completed and films read by Dr. Little, including comparisons with the films of 1959. Total and timed respiratory capacity studies have been completed under my supervision and % standards computed on the employees. I have begun analysis of results and correlation with x-ray findings.

In my opinion the analysis of data so far obtained should be carried out to a stage of reasonable clinical completeness because preliminary analysis shows distinct and important change in respiratory function and pathology.

NOTICE ONLY

EXHIBIT
MCE 011

WOODROW NELSON, M.D.

111 EAST C'ROAD

CHICAGO, ILLINOIS 60603

ATTENTION: STAFF OF CURSLEY

PHONE 893-4127

So far, I have conducted the above function studies in spare time, without charge to the company. I intend to continue the analysis and will be happy to send you the data which I have obtained and results of my analysis of the same. You perhaps have men in the research division qualified and interested in completing the study.

If not however, I am qualified by training and past research experience to carry out an analysis of the data we have from a standpoint of clinical importance and with reasonable completeness and would be interested in doing it. I would need however to leave practice and spend from two to four weeks in a medical center such as Chicago with library, consultation facilities, etc. For this I would need reimbursement for expenses including income loss for the time involved. I could probably take the time, this fall.

Please let me know whether you think Zenolite Division of Grace Company would be interested in pursuing this further. There are many facets to this inhalation problem but this letter is long enough already. Sorry I did not get to see you on your last visit here. My contacts with you and the other members of the company have always been most pleasurable.

Sincerely yours,

W. Nelson

WN/ph

Woodrow Nelson, M.D.

110-4 JM

GRACE

ZONOLITE

DIVISION W. R. GRACE & CO.
126 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603

TELEPHONE CENTRAL BRIDGE

06000749

DEC 15

Dr. Woodrow Nelson, M.D.
111 East Cedar
Libby, Montana 59923

Dear Dr. Nelson:

Thank you for your interest and study of our employees.

I have discussed your work and your recommendations in part with the Maryland Casualty Company, our insurance carriers, and requested that they contact you.

Dr. Robert F. Chenowith, M.D. of the Maryland Casualty Company, P. O. Box 1228, Baltimore 3, Maryland, is interested in this problem. I am forwarding copy of your letter and report to Dr. Chenowith.

The Zonolite Division is definitely interested in the welfare of its employees. Maryland Casualty Company is formulating a program for control and prevention in relation to the dust problem. They, of course, as our insurance carriers, will no doubt take an active interest in the studies and contact you.

Sincerely,

F. W. Rupp
Treasurer

FWR:ML

cc: Dr. Robert F. Chenowith
Mr. J. Paul Cahalane
Mr. T. A. Keating
Mr. V. W. Zancos

15110928

EXHIBIT
MCE-013

NEW YORK
BOSTON
PITTSBURGH
PHILADELPHIA
BUFFALO
ATLANTA
MIAMI
SYRACUSE
CLEVELAND
CHARLESTON
RICHMOND
MONTREAL
TORONTO
VANCOUVER
CALGARY
EDMONTON
WINNIPEG
CANACAS
LONDON

MARSH & McLENNAN

INCORPORATED
INSURANCE

70 PINK STREET
NEW YORK 10003

NEW YORK
BOSTON
PITTSBURGH
PHILADELPHIA
BUFFALO
ATLANTA
MIAMI
SYRACUSE
CLEVELAND
CHARLESTON
RICHMOND
MONTREAL
TORONTO
VANCOUVER
CALGARY
EDMONTON
WINNIPEG
CANACAS
LONDON

September 8, 1964

Mr. V. W. Zanone
Maryland Casualty Company
111 William Street
New York, New York

Zonolite Division
Libby, Montana

Dear Mike:

May we refer to our recent conversation. Enclosed are copies of a letter dated August 25th addressed to Zonolite from Woodrow Nelson, M.D., a copy of Zonolite's interoffice memorandum to Dewey and Almy dated August 31st and a letter from Dewey and Almy to Fred Swits dated September 2nd.

The subject of the correspondence is, of course, the potential disease hazards to employees growing out of the Vermiculite mine operation at Libby, Montana. As you know, we have been exploring the possibility of voluntarily covering the disease known as Asbestosis. I don't know whether the disease problem outlined here would fall in the Asbestosis area.

Would you kindly arrange for one of your very competent Safety Engineers to get together with plant management in Libby, Montana. You will note that there is some urgency in attempting to establish a course of action for the future.

Please keep us fully advised.

Very truly yours,

MARSH & McLENNAN

T. A. Keating

TAK:MC
Encls.

MCC-001808

EXHIBIT
MCE-015

12

Mr. L.E. Park, Supervisor
Accident Prevention Division
Home Office
New York Office

9-10-64

11910

W.R. Grace & Company - Zonolite Division, Libby, Montana

Dear Mr. Park:

Attached are copies of correspondence reflecting the insured's concern regarding a potential occupational disease problem resulting from their mining operations. Their doctors find an important increased incidence of chronic respiratory disease in employees with prolonged exposure to dust.

What can we do to assist the insured in this matter?

Very truly yours,

VWZ:PP

V.W. Zanone
Assistant Res. Mgr.

MCC-001807

EXHIBIT

MCE-016

MARYLAND CASUALTY COMPANY

To Mr. L. E. Park, Supervisor
Accident Prevention Department
Baltimore, Maryland

Date November 2, 1964

From W. C. Trimmer

File No.

119/0

Field No.

Subject W. R. Grace & Company Zonolite Division - Safety Program

Please refer to your letter of

Signed by Mr.

Dear Larry:

Last Friday, October 30, Mr. Gerlinger met with Mr. Rupp and Mr. Mac Arthur and it is my understanding came to final agreement on a format for the proposed Zonolite Division Safety Program. Mr. Gerlinger is now in the process of preparing this program for submission to your people in Baltimore. It should be in your hands by the end of this week or at least by the first part of next week.

Mr. Rupp indicated that as a matter of record he would like to submit copies of this format to the managers of several of the Zonolite locations for their approval. For this reason, I have arranged to send a copy over to him at the same time the program is sent on to your people in Baltimore.

During Mr. Gerlinger's negotiation with Mr. Rupp and Mr. Mac Arthur several questions arose.

1. To what extent will we be able to provide service and assistance directly to the Libby Mine location.

2. Do we have a standardized form which could be used by Zonolite in connection with pre-employment medical examinations.

Monthly service from Seattle
we have suggested an outline of a working pre-employment medical examination procedure
Your comments on these questions will be appreciated.

Yours very truly,

W.C. Trimmer

W. C. Trimmer

WCT/rw

RECEIVED
NOV 4 1964
DEPARTMENT

MARYLAND CASUALTY COMPANY

To: New York Office
Mr. J. H. Zallie, Asst. Pres.

From: AP Ho

Remarks: Your info & file -
Best regards,
Larry

S & S 42010. Ed. 3-64



MCC-D01850

MARYLAND CASUALTY COMPANY

M. ELLSWORTH MILLER, President
BALTIMORE, MARYLAND 21203

INSPECTION DEPARTMENT
J. J. BARRANGER, Manager

0603378

December 28, 1965

11910

Zonolite Division
W. R. Grace and Co.
135 South LaSalle Street
Chicago, Illinois 60603

Attn: Mr. F. W. Rupp, Treasurer

Dear Mr. Rupp:

Policy No. R-001594
Your Correspondence December 10, 1965

The delay in replying to your correspondence has been deliberate in order that I may discuss personally with our regional supervisor, Mr. F. W. Schmidt, your Libby, Montana operations.

Mr. Schmidt was in our office yesterday and we are agreed that progress is being made in the ventilation and control of dust at the Libby Plant. At the same time, it is believed not only possible but practical that positive control of certain dusty operations will establish and maintain the dust concentration below the maximal acceptable threshold adopted by the American Standards Association and based upon the study by the American Conference of Governmental Industrial Hygienists.

In the event you are not familiar with the Threshold Limit Values and Maximal Acceptable Concentrations adopted by the ACGIH, these limits are based on the best available information from industrial experience, from experi-

Affiliated Companies: NORTHERN INSURANCE COMPANY OF NEW YORK • ASSURANCE COMPANY OF AMERICA
AUTOPLAN INSURANCE COMPANY • MAINE BONDING AND CASUALTY COMPANY • VALIANT INSURANCE COMPANY

20152575

EXHIBIT
MCE-073

- 2 -

December 28, 1965

mental studies, and, when possible, from a combination of the two. They are intended for use in the field of industrial hygiene and should be interpreted and applied only by persons trained in this field. They are not intended for use, or for modification for use, (1) As a relative index of toxicity, by making a ratio of two limits, (2) In the evaluation or control of community air pollution or air pollution nuisances, or (3) In estimating the toxic potential of continuous uninterrupted exposures.

These values are reviewed annually by the Committee on Threshold Limits for revisions or additions, as further information becomes available.

Since it is not practical to maintain completely uncontaminated air in most industrial situations, it is necessary to establish maximal acceptable concentrations of atmospheric contaminants encountered in industrial operations. These concentrations are usually based upon data obtained by one or more of the following procedures:

1. Laboratory tests on animals.
2. Laboratory tests using human subjects.
3. Environmental and medical investigations in plants.

Three criteria have governed the establishment of these concentrations:

1. Organic or other tissue changes.
2. Functional reactions which have no discernible untoward effects on health but cause impairments, such as incoordinations and increased proneness to accidents.
3. Discomfort or adverse sensory effects.

In those cases in which the concentrations have been established on the basis of organic changes, it is logical to assume that repeated exposure to concentrations significantly in excess of the acceptable concentration probably

20152576

December 28, 1965

would produce injury.

Comparison of the results of air analyses with maximal acceptable concentrations indicates acceptable conditions or otherwise the need, extent, and urgency of control measures.

In the application of the standards it should be kept in mind that:

1. The acceptable concentrations serve as standards for good industrial hygiene practice.
2. They serve as engineering guides. Design and operation should aim at maintaining all concentrations below the acceptable maximum.
3. They should be applied and interpreted by competent individuals with a full understanding of the basis and limitations of the information from which the standard has been developed.
4. It is advised that these standards are considered to be guides toward good industrial hygiene and are not intended as legal requirements.
5. The levels are applicable only for exposure to a single substance. In the case of exposure to mixtures, the effect may be increased or decreased, and controls should be based on a specific situation. The 1963 Threshold Limit Value for Mineral Dusts containing less than 1% Crystalline Silica and asbestos is 5,000,000 particles per cubic foot of air. This is the evaluation upon which Mr. Walker has made his recommendation.

I trust that the benefits to be derived from recovery of product along with the benefits to the health of your employees will warrant your early acceptance of this recommendation.

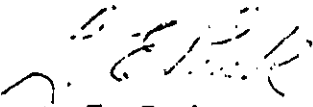
20152577

- 4 -

December 28, 1965


Our survey is not intended to cover every accident potential; it relates only to the hazards referred to herein.

Very truly yours,


L. E. Park
Supervisor

1

20152578



CERTIFICATE OF SERVICE

I, Allan M. McGarvey, hereby certify that I have served true and accurate copies of the foregoing Affidavit - Other to the following on 10-30-2018:

Amy Poehling Eddy (Attorney)
920 South Main
Kalispell MT 59901
Representing: Amy Eddy
Service Method: eService

Roger M. Sullivan (Attorney)
345 1st Avenue E
MT
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Jon L. Heberling (Attorney)
345 First Ave E
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

John F. Lacey (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Ethan Aubrey Welder (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Dustin Alan Richard Leftridge (Attorney)
345 First Avenue East
Montana
Kalispell MT 59901
Representing: Adams, et al

Service Method: eService

Kennedy C. Ramos (Attorney)
1717 Pennsylvania Avenue NW
1200
wash DC 20006
Representing: Maryland Casualty Corporation
Service Method: eService

Edward J. Longosz (Attorney)
1717 Pennsylvania Avenue NW
Suite 1200
Washington DC 20006
Representing: Maryland Casualty Corporation
Service Method: eService

Electronically Signed By: Allan M. McGarvey
Dated: 10-30-2018