

GRACE

APR 2 1985

W.R. Grace & Co.
W R Grace & Co.
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0626629

March 29, 1985

James J. Restivo, Esq.
Reed, Smith, Shaw & McClay
Two Mellon Bank Center
Pittsburg, PA 15219-4407

Re: W. R. Grace & Co. - Conditional Subscription

Dear Jim:

Enclosed is W. R. Grace & Co.'s Conditional Subscription to the Wellington Agreement. We look forward to learning more about Wellington and how it will operate.

The insurance summary sheet relating to Grace's coverage has been forwarded to you by Grace's Risk Management Department by separate correspondence.

Grace understands that by tendering its conditional subscription, it assumes no obligation, legal or otherwise, to finally subscribe to the Agreement or to participate in the Asbestos Claims Handling Facility.

Very truly yours,

Mario
O. Mario Favorito
Counsel

OMF:mlp

cc: Scott Gilbert, Esq.
Kevin T. O'Reilly, Esq.
Jeffrey M. Posner

bcc: Albert A. Eustis, Esq.
Charles F. Krauter
Carl W. Lorentzen
Gerold Oshinsky, Esq.
Robert C. Walsh
Irene C. Warshauer, Esq.
Rodney M. Vining

March 29, 1985

To the Producers and Insurers subscribing to the Agreement Concerning Asbestos-Related Claims:

W. R. Grace & Co. ("Grace") hereby tenders its conditional subscription to the Agreement Concerning Asbestos-Related Claims, dated September 13, 1984 (the "Agreement"), subject to the following terms and conditions, some of which may require revisions in or amendments to the Agreement, and some of which require explanations, clarifications or collateral understandings:

1. Grace's conditional subscription will be maintained Confidential and disclosure and distribution of this letter will be restricted to those subscribing Producer's and Insurer's representatives having a reasonable need to know.
2. None of the amounts realized by Grace as a result of settling disputes with any of its insurance carriers, and no expenses incurred by such carriers in connection with any litigation with Grace need be disgorged, refunded, contributed, credited or applied in connection with the Agreement and neither Article XIX nor any other provision of the Agreement shall operate to deprive Grace of the benefits of any judgments or settlements effected prior to its becoming a Subscribing Producer, as defined in the Agreement.
3. Grace and its Subscribing Insurers shall be in agreement on the policies, policy provisions and coverage amounts to be included in the Grace "Coverage block" described in s. IX (1) of the Agreement.
4. The Wellington Group Producer Share Steering Committees letter dated November 15, 1984 shall have no effect, and Grace's allocation percentage shall not change by more than 15% of its initial allocation percentage as the result of any one prospective adjustment.

5. Notwithstanding Article IV of the Agreement a procedure shall be established to permit Subscribing Producers to withdraw existing claims from the facility's control in the event of the Producer's withdrawal from the facility.
6. The facility shall defend the punitive damage aspect of cases where such damages are sought regardless of whether indemnity is available, and in such cases, Grace will have the right but not the obligation to associate counsel with Wellington counsel.
7. The Agreement will have the effect of insuring periods or layers in the initial coverage block that are uninsured or which insurance can not be established or was insured by a non-Subscribing carrier, such that no liability payments or allocated expenses will be charged to Grace for that period if any coverage block policies are available to pay for such liability payments or allocated expenses.
8. Producers and Insurers subscribing to the Agreement, or a representative thereof, shall satisfactorily explain and/or confirm Grace's understanding of the following questions and statements concerning the meaning and operation of the Agreement.
 - A. Coverage gaps created by non-subscribing Insurers will first be covered "horizontally" by subscribing Insurers on the same layer of coverage and that whenever the layer containing such gaps has been exhausted or can not be established, or where an entire coverage layer within the coverage block has been uninsured by non-subscribers, Insurers above that layer will then drop down and provide coverage. The status of policies issued by non-subscribing Insurers shall in this and every other respect, have no effect on the operation of the Agreement.
 - B. Pre-1966 Standard form policies triggering the lifetime defense program described in s. XII (2) of the Agreement, pay 100% of the allocated expenses for any claim triggering such a policy.

- C. Under s. XI of the Agreement, whenever a subscribing Producer has no insurance paying allocated expenses for a particular period within the coverage block or where these payments apply against aggregate limits, expenses otherwise allocable to that period are allocated to periods within the coverage block having insurance where such payments do not apply against aggregate limits. Does such a reallocation trigger the lifetime defense program and obligate the program to pay 100% of the expense costs for such a claim?
- D. If a claim triggers any policy within the coverage block, the entire aggregate amount of the claim will be allocated to such policies regardless of whether parts of the exposure period fall outside the coverage block.
- E. Coverage block policies may be utilized for non-asbestos claims and property damage claims.
- F. If, in the future, Grace adds another policy to the coverage block, are the liability payments and allocated expenses already paid reallocated to this new policy?
- G. If Johns-Manville Corp. ("Manville") becomes a Subscribing Producer, will Grace's subscription discharge its claims against Manville for contribution and/or indemnity?
- H. Articles X and XI of the Agreement require payment by Grace of an allocated share of all liability and allocated expense payments made by the facility regardless of whether the claim is asserted against Grace. Grace's subscribing Insurers will pay Grace's allocated share.
- I. Will liability payments awarded through the claims handling facility reflect the relative exposure of the claimant to Subscribing Producers products as compared to all Asbestos Producers?
- J. As a prerequisite to any award or settlement within the facility, claimants will be required to demonstrate exposure to at least one of the Subscribing Producers products.

- K. The facility will dismiss claims where the claim would be barred by the statute of limitations of the appropriate jurisdiction or is otherwise untimely.
- L. Are there any circumstances under which Grace would be required to reimburse carriers for monies expended in the negotiation or implementation of the Agreement or for start-up costs or operating expenses as described in sections XIII and XIV of the Agreement.
- M. Will the facility furnish subscribing Producers with such information as they may require from time to time including (i) number of cases, (ii) costs per case; (iii) identity of claimants, (iv) indemnity payments to each claimant in the aggregate and by carrier, (v) defense costs allocable to each case in the aggregate and by carrier and (vi) dates of first exposure to asbestos products, Grace products and manifestation of disease in each case?
- N. What provisions are being made for the handling of pending cases during the "start-up" or transition period between the effective date of the Agreement and full operation of the facility?
- O. What is Manville's aliquot share, and how is it to be determined?
- P. Do any of the Subscribing Producers have "collateral" understandings with each other, their carriers or claimants' counsel and, if so, what these understandings are and what is the status of such understandings under the Agreement?

Grace understands that by tendering its conditional subscription, it assumes no obligation, legal or otherwise, to finally subscribe to the Agreement or to participate in the Asbestos Claims Handling Facility.