

WRG 001824

FEB 11 1986

February 11, 1986

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Asbestos*

**PLAINTIFF'S
EXHIBIT**
WRG-796

FEB 18 1986

Memorandum to Mr. J. Peter Grace

In my memo to you of November 12, 1985 on Grace's position in the asbestos problem, I recommended that Construction Products provide corporate management with quarterly reports of the status of litigation and government regulations and any other new developments in the asbestos situation as it applies to Grace.

Pursuant to that recommendation I have been furnished quarterly reports by V. M. Bakeman, R. J. Bettacchi, and Mario Favorito (counsel) of the Construction Products Division. I attach copies of these reports for your information. You will note considerable duplication in these reports but I enclose them for your background information. A summary of the reports is as follows.

(1) The number of lawsuits against Grace continues to increase. In my November memo it was pointed out that through November 12th Grace was named a defendant in 734 new cases during 1985. Since that time, 220 additional cases have been brought or a total of 954 new cases in 1985. Eliminating settlements and dismissals (103 cases), we now have 1,833 cases against us still pending compared to the 1,626 cases that were pending as of November 12th.

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(2) In the last quarter of 1985 among the new lawsuits brought against us, 7 were filed by ex-Libby employees or their widows. This is a significant increase in this type of lawsuit.

The weighted average of tremolite fiber exposure for all personnel at Libby shows no statistical difference from the exposure in 1984. In 1985 the fiber exposure was 0.068 fibers per cubic centimeter (f/cc) compared to 0.066 f/cc reported in the first half of 1984.

(3) One small favorable development during the year has been that we have discovered some Original Zonolite Company Liability Insurance policies for the years 1953 to 1956. Prior to this discovery, we had no evidence of insurance coverage for the years prior to our acquisition of Zonolite in 1963. These policies were written by the Royal Indemnity Co. who denied their existence. While the coverage from these policies is relatively small (\$400,000 for bodily injury and \$200,000 for property damage), they do obligate Royal to pay all defense costs.

(4) Government Regulatory Developments

Effective November 25, 1985, all chemical manufacturers became subject to the Hazard Communication Standard promulgated by the Occupational Safety & Health Administration (OSHA). As a result of the provisions of this Standard, employers on May 25, 1986 will be required to identify hazardous chemicals

produced by them and to inform customers and employees concerning any hazards.

The above requirements apply to all chemicals and we are subject to these regulations for any and all hazardous substances we manufacture. We have in place an organization which handles this for all the divisions of the Company. The provision, however, now will include asbestos.

In addition, the U.S. Environmental Protection Agency has announced that it will promulgate plans to require the gradual elimination of asbestos over a period of years. These regulations have not as yet been issued and have been promulgated for comment.

(5) Our legal liability in the property damage cases provides a greater vulnerability than the personal injury cases do. In this regard, our exposure is greater than we had assumed by virtue of the recent judgment against us in the property damage case in Greenville, S.C.

You are all aware of the adverse verdict against us in the property damage case in Greenville, S.C. which was reported in the New York Times on Sunday, January 26th. We were the sole defendant in this case which was brought by the City government of Greenville concerning their City Hall which was built in 1971 and which used Monokote 3 as fireproofing on the steel superstructure.

The judgment by the jury is not only unexpected and shocking but it is very puzzling. No hazard to the occupants of the building was established during the trial. We believe there is no hazard even though the Monokote 3 which was used contained about 12% commercial asbestos which we completely discontinued in 1973. Moreover, testimony was given that Greenville has no present plans to tear down its City Hall and the judgment had an effect of granting \$6.4 million in compensatory damages and \$2 million in punitive damages to finance the removal of the asbestos sometime in the indefinite future.

Other puzzling aspects of this judgment are that the \$6.4 million in compensatory damages appears to be a duplication for the same cost of removal as outlined in two different counts of the complaint.

No personal injury was established which makes the \$2 million punitive damage difficult to understand.

It may be that certain inflammatory remarks by the plaintiff's counsel had an effect on the jury specifically that we sold Greenville Monokote 3 with the asbestos in it at the same time we had developed Monokote 4 without any asbestos (but with traces of tremolite) which was being marketed in the north. This may have persuaded the jury that we were discriminating against the poor southerners while we were selling safer materials in the north.

Moreover, on the next to the last day of the trial, the EPA came out with proposed regulations, the details of which were carried at length in the press, regarding EPA's goal to abolish the use of asbestos in the U.S. over a period of time because of its dangers.

We, of course, intend to appeal the judgment. In the meantime, we are still contesting the Maryland Casualty Co.'s position that this sort of liability is not property damage within the meaning of their policy. In any event punitive damages are not insurable.

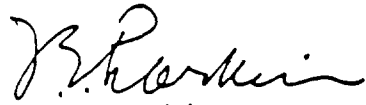
The judgment in this case is without question a real negative for future property damage cases.

Summary

All in all, the developments of the last quarter of 1985, with the prospect of increased government regulations, the loss of the Greenville case and the increased number of new lawsuits represent a bleaker picture. Our vulnerability may be increasing and is cause for greater concern. We, undoubtedly, will win a number of the cases and a considerably large number will be dismissed or settled but we now have the prospect of losing more cases than we thought possible in 1985.

Unfortunately, the emotionalism with which the asbestos problem is charged is resulting in courts and juries assigning

liability no matter how small or non-existent the exposure to asbestos has been. This seems to be the trend in all liability lawsuits and the damage claims and judgments are getting out of control.


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