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GRACE

W. R. Grace & Co.
Grace Plaza
1114 Avenue of the Americas
New York, NY 10036

PLAINTIFF'S EXHIBIT WRG-779

September 10, 1984

Mr. Horace Passananti
Marsh & McLennan Incorporated
1221 Avenue of the Americas
New York, N.Y. 10020

Re: School District Litigation

Dear Horace:

This is intended to serve as an update of the negotiations that are continuing in the School District litigation.

Dan Speights of the law firm of Blatt & Foles represents various school districts and his cases can be categorized as follows; those filed and excluded from the class action injunction from prosecution and those that are unfiled. The plaintiffs in the class action are being represented by David Berger and Herbert Newburg who have been designated co-lead counsel.

The defendants at this time are attempting to negotiate with Speights and Berger separately as Speights will not allow his filed cases to be included in any class action settlement. It is hoped that a settlement with Speights would encourage resolution of the class action.

All negotiations are confidential, however, please advise our carriers that we will submit to them any proposal for settlement at the appropriate time. I wish to reiterate that we recognize the insurer's right to participate in these negotiations and invite them to do so.

Please call me should you have any questions.

Yours very truly,

W. R. GRACE & CO.

Jeffrey M. Posner

JMP:tg

cc: Mr. S. A. Ahern
Mr. F. Codey III
Mr. T. Clarke
Mr. W. Delaney
Mr. O. M. Favorito
Mr. R. Leach
Mr. F. Nasella
Mr. G. Olcott
Mr. K. O'Reilly
Mr. S. Remis
Mr. R. S. Strange
Mr. R. Walsh

HLB, HMB, BRH, CFK

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MARYLAND CASUALTY COMPANY
AN AMERICAN GENERAL COMPANY

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BALTIMORE, MARYLAND 21203

TELEPHONE (301) 366-1000
TELEX 8-7964 MDCAS CO BAL

February 15, 1983

Mr. Harry L. Bauer,
Claims Manager
W. R. Grace & Company
Grace Plaza
1114 Avenue of the Americas
New York, NY 10036

Re: W. R. Grace Environmental Litigation

Dear Harry:

I acknowledge receipt of and thank you for your letter of February 7 concerning the Collins case, which matter brought to our attention certain actions by Grace which we believe represent serious departures from the Conditions recited in your insurance contracts with Maryland Casualty and standard insurance claim procedure.

Mr. Kappus and myself had the opportunity to meet with you and Messrs. Favorito and Ahern from your Construction Products Division on January 28 to discuss the Collins matters in particular and claim handling procedure for these matters in general. Our strong objection concerning the Collins case concerns the negotiation over some weeks/months of a structured settlement by defense counsel appointed by Grace, with Grace's knowledge, but without the prior authorisation of Maryland Casualty and without any notification to us until January 17, by which time the settlement terms were finalized (you have defense counsel Harris' report of January 17).

You and I were able to reach a mutually acceptable compromise concerning our claim of breach of condition in Collins, which included certain understandings regarding handling procedure for future claims, and the sharing of a mutually agreeable settlement as is accurately set forth in your letter to me of February 7. More important than this single case, the January 28 meeting gave us the opportunity to express clearly our position concerning appropriate claim handling procedure in accord with the contract, procedure with which you were in basic agreement at the meeting and which we discussed in additional detail on the 14th.

W. R. Grace's last liability policy with Maryland was #31R-911051 covering the period June 30, 1970 - June 30, 1973. On page 2, that policy outlines the language with which we are both familiar, regarding covered damage caused by an occurrence arising out of the insured's operations, by indicating "the company (Maryland Casualty) shall have the right and duty to defend any suit against the insured...and may make such investigation and settlement of any claim or suit as it deems expedient (emphasis added)". The Conditions of the policy are

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found on pages 11-15. Page 12, section 4 outlines the "Insured's Duties in the Event of an Occurrence, Claim or Suit". Included among these duties are written notice of claim or suit and forwarding of suit as soon as practicable and the cooperation outlined in clause 4 (c), which reads in pertinent part:

> "the insured shall cooperate with the company and upon the company's request, assist in making settlements, in the conduct of suits...the insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others at the time of the accident".

In consideration of these and other relevant provisions of your policies, we have requested that the following procedures be adhered to:

1. Upon receipt of notice of claim or suit by Grace, or any of its subsidiaries or divisions, which in Grace's opinion may involve any coverage which may have been afforded by Maryland Casualty, such suit or notice of claim should be forwarded promptly to D. N. Kappus, Claims Counsel at Maryland Casualty's Home Office and to CNA and any other insurer whose coverage is felt by Grace to be applicable. Such notice should not be mailed to any branch office of Maryland Casualty unless otherwise requested.

2. Should CNA and Maryland Casualty agree that the duty to defend Grace is present based upon the facts of the particular claim, it will be the responsibility of CNA and Maryland Casualty (and any other applicable insurance carrier) to promptly assign the matter for defense to mutually acceptable counsel of their choice, each making such reservations or policy defenses as may apply. W. R. Grace should not make assignment of any suit for which its insurer(s) acknowledge responsibility for defense.

3. Assigned defense counsel will be advised to correspond directly with Maryland Casualty's Home Office Environmental Claim Department and the appropriate representative of any other applicable insurer with a carbon copy to the local Maryland Casualty Claim Representative indicated, along with a copy to W. R. Grace, should they so desire. Not only do we have no objection to Grace receiving copies of defense counsel's correspondence, it would appear especially appropriate where any portion of the claim may be uninsured or the responsibility of Grace, or subject to exclusions or policy defenses.

4. In keeping with the cooperation provisions outlined in part on page 12, section 4 (C), we solicit and appreciate Grace's cooperation and technical product expertise in providing such reasonable assistance <u>as may be requested</u> by the insurers, or by defense counsel at the request of the insurers. This would certainly include, but not be limited to, assistance in the furnishing of product identification information, records of sales or supplies,

technical information concerning the manufacture of the product and its composition and such information from in-house technical personnel as may be requested and appropriate. Grace should refrain, however, from making any undertaking or granting authorization to defense counsel or others concerning the hiring of experts, consultants or any personnel outside of the Grace organization.

5. It is the responsibility of the insurance carriers to reasonably direct the progress of the claim or suit and coordinate the activities of defense counsel to assure an appropriate defense. Should Grace refer any claim or suit to Maryland Casualty (and/or its other insurers) it should refrain from directing the activities of defense counsel. Should Maryland Casualty's coverage be applicable or potentially applicable to the responsibility for settlement, judgment or any other form of loss payment, Grace shall specifically refrain from becoming involved in any manner in the initiation of settlement negotiations, the negotiations themselves, settlement authorization or any activity which may be construed by counsel as the authorization to make a disposition of a case for which insurance coverage is or potentially may be applicable.

6. Maryland Casualty recognizes that environmental litigation may involve considerations which are important to W. R. Grace aside from the particular issues of a specific litigation matter. Grace is in all cases invited to communicate with Maryland Casualty and its other insurers in order that any such concerns may be given full consideration, consistent with the provisions of the insurance contracts.

Harry, the above is not intended to represent an all-inclusive list, but does represent the basic areas in which it was agreed that specific understanding was necessary. They are in no way intended to modify the insurance contracts in any respect; they are intended to avoid any future misunderstandings, promote communication and help all of us work better together within the specific roles dictated by the insurance contracts.

You and I have discussed these areas on several occasions within the last several weeks and I believe that we are in basic agreement on the above. Certainly additional communication with CNA will be necessary. I respectfully ask that you communicate the substance of this letter to any Grace employee who may become involved in cooperating in the defense of these claims where insurance coverage may be applicable. Lastly, and in consideration of the mutual agreements comprising our compromise of the Collins case, I would appreciate your written confirmation that these general guidelines and procedures are acceptable to Grace.

You and I also discussed briefly the necessity that Grace complete its documentation of products liability coverages with Maryland Casualty for the earlier years which our internal records do not readily produce

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confirmation. I look forward to your response and appreciate your generous cooperation in this important area.

Very truly yours,

John D. Cole, Director
Environmental Claims

cc: D. N. Kappus, Esq.

JDC/djr