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GRACE

Construction Products Division
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TO: H. C. Duecker
FROM: R. H. Locke
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DATE: June 30, 1977
SUBJECT: California Laboratories
RE: RHL to HCD 20 June 77
Same Subject

1. Concerning the submittal of MK Samples to one or more California labs for outside analysis, I understand we are confident that the results will be such we can use them in confidence with the California Department of Health. However, the possibility exists the results might also prove unusable, for reasons of procedural, sampling, or other errors. I believe we can think of some past outside laboratory results which were either erroneous at the time or misleading later. This is not a big risk; it is a little risk. But, its there.

The results of these laboratory analyses we will obtain - erroneous or accurate - will be subject to discovery in any subsequent relevant litigation, and we are talking about MK in California.

I believe, however, that if a client were to ask an attorney to undertake such an investigation of the subject area, he on his own judgement might ask laboratories to make such analyses. The resulting data would probably be held to within the attorney: client relationship, and would not be discoverable unless the client agreed to waive the relationship.

2. While the above discussion concerns the quantitative analysis samples we've talked about it should be noted that the California Department of Health made their decision based on airborne concentrations, not quantitative analysis, in the instance of the California manufacturer of 0.5% cementitious asbestos Portland Cement Stucco. While the Marks Act is based on quantitative analysis, its instead the airborne concentrations associated with production which the MK case must rest.

R. H. Locke