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January 4, 1992

RE: Agreement Relative to Document Authentication

Mr. Roger Worthington VIA TELECOPIER
Silber, Pearlman &
Worthington
1000 Highland Park Place
4514 Cole Avenue, LB 34
Dallas, Texas 75205

Dear Roger:

The following reflects the agreement I made with respect to authentication of certain documents:

- (1) Please refer to the exhibit list attached to the First Request for Production and Interrogatories propounded in Alvin Stenzel, et al, Cause No. 91-6526. Those documents were the ones at issue in your Motion to Compel; your trial exhibit list is different and although some of the documents are the same, some are not and the numbers do not necessarily correspond.
- (2) The Broadnax answers to Request for Admissions correspond to the exhibit list you presented to Grace in your request for production (please refer to your copy of that document; if you do not have a copy, please let me know.

I agreed that W. R. Grace would not challenge documents on the basis of authentication that had been authenticated in Broadnax. Although Request for Admissions may not be used in other cases against a particular party, it is unnecessary for you to resubmit the same admissions in each case for the same documents. I did not agree to anything more than that. To make sure the agreement is clear, I will state it for each document.

WRG 1-7 - No Authentication by Grace (Dewey & Almay documents); Grace objects on that basis.

WRG 8-12 - Admitted except that documents not business record of W. R. Grace Company.

Mr. Roger Worthington
January 4, 1992

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- WRG 13 - No authentication-document somewhat different.
- WRG 14-17 - Admitted except that document not business record of W. R. Grace & Company.
- WRG 18 - No authentication; Grace objects on that basis.
- WRG 19-25 - Admitted except that document not business record of W. R. Grace & Company.
- WRG 26 - Not authenticated - document not complete.
- WRG 27-81 - Admitted except document not business record of W. R. Grace & Company.
- WRG 82 - No authentication; Grace objects on that basis.
- WRG 83 - No authentication; Grace objects on that basis.
- WRG 84-86 - Admitted except not a business record of W. R. Grace & Company.
- WRG 87 - No authentication; Grace objects on that basis.
- WRG 88-95 - Admitted except not a business record of W. R. Grace & Company.
- WRG 96 - No authentication; Grace objects on that basis.
- WRG 97 - No authentication; Grace objects on that basis.
- WRG 98-101 - Admitted except not a business record of W. R. Grace & Company.
- WRG 102-114 - No authentication; Grace objects on that basis.
- WRG 115-126 - Admitted.

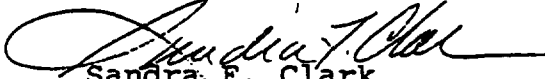
MEHAFFY & WEBER

Mr. Roger Worthington
January 4, 1992

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If you have any questions regarding these documents or this agreement, please call me. As you know the agreement relates to authenticity only; Grace may have and I am sure will have serious objections to the admissability of certain documents at the time such documents may be offered at trial.

Very truly yours,


Sandra F. Clark
For the Firm

SFC/alc
857SFC

SILBER, PEARLMAN & WORTHINGTON

A PROFESSIONAL CORPORATION

Attorneys and Counselors

1000 HIGHLAND PARK PLACE
4514 COLE AVENUE, LB 34
DALLAS, TEXAS 75205

TELEPHONE
(214) 528-2000

TELECOPIER
(214) 522-7400

January 7, 1992

Via Hand Delivery

Ms. Sandra Clark
Mehaffy & Weber
2615 Calder Avenue
Beaumont, TX 77702

Re: W.R. Grace Document Authentication and Prove Up

Dear Sandra:

I am in receipt of your letter of January 4, 1992. However, I believe your letter agreement differs from our agreement of November 8, 1991 (and later memorialized by my letter of November 20) in a few ways which I would like to clarify.

First, prior to my motion to compel in the Stenzel case, we agreed that you would authenticate all of the documents, save the Dewey & Almy Chemical Company documents. We would therefore appreciate it if you would agree to authenticate Plaintiff's Exhibits 18 and 112. If you cannot agree, I would appreciate knowing the basis of W.R. Grace's denial.

Secondly, the agreement we reached with respect to the Stenzel motion to compel also covered the elements of the Texas "business records" exception to the hearsay rule. Please see Interrogatory No. 2 [sub-parts (a) through (d)] in Plaintiff's First Request for Production and Interrogatories to Defendant W.R. Grace & Co.-Conn. in the Alvin Stenzel case. Again, your January 4, 1992 letter, according to my understanding, does not meet the spirit or letter of our agreement.

In your January 4 letter, for a number of specific documents W.R. Grace has declined to agree that the respective document meets the business record exception. For each such document other than the Dewey & Almy Chemical documents that Grace does not agree meets the business record exception, please answer each of the four sub-parts (i.e., was the document kept, generated or received by W.R. Grace and/or its predecessor in the regular course of business, etc.) pursuant to the Stenzel interrogatories and motion to compel.

Ms. Sandra Clark
January 7, 1992
Page 2

It is not clear from your letter whether W.R. Grace has agreed to stipulate that the exhibit is a business record if it has not expressly declined to do so in your letter of January 4. Can you please clarify this?

Finally, as we discussed on January 6th in Judge Tyson's courtroom, you are willing to evaluate Plaintiff's Exhibits 127 through 179 for the purpose of stipulating to the authenticity of the document as well as the three elements of the business record exception (See the Stenzel interrogatories, No. 2), i.e.

(a) was said document kept, generated or received in the regular course of business;

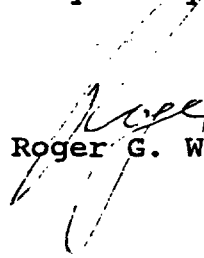
(b) was the document recorded at or near the time of the event or soon thereafter; and

(c) was the document kept, generated, or received by a person with knowledge of the act, event, etc.

I have provided all the documents in our exhibit list. Please let me know at your earliest opportunity whether you can stipulate to the new exhibits or whether I need to serve interrogatories.

Thank you for your attention to this matter.

Very truly yours,


Roger G. Worthington

RGW:ms

enclosures

wrg\exhib.stp

(713) 655-1200

FAX (713) 655-0222

VAN A. WIGGINTON
ATTORNEY AT LAW

MEHAFFY & WEBER
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ONE ALLEN CENTER
500 DALLAS, SUITE 1200
HOUSTON, TEXAS 77002

SILBER, PEARLMAN & WORTHINGTON

A PROFESSIONAL CORPORATION

Attorneys and Counselors

1000 HIGHLAND PARK PLACE

4514 COLE AVENUE, LB 34

DALLAS, TEXAS 75205

November 20, 1991

TELEPHONE
(214) 526-2000

TELECOPIER
(214) 522-7400

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sandra F. Clark
Mehaffy & Weber
P.O. Box 16
Beaumont, TX 77704

RE: Plaintiff's Motion To Compel in the Stenzel and Shipley Cases

Dear Sandra:

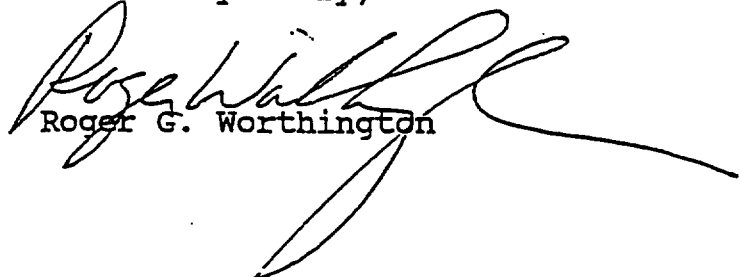
This will confirm our agreement of November 8, 1991, with respect to Plaintiff's Motion To Compel W. R. Grace in the Alvin Stenzel case. I have agreed to withdraw the motion. In return, you have agreed that W. R. Grace will not challenge or object to the authenticity of the documents appearing on Plaintiff's exhibit list (attached to the Motion as an Exhibit) in any lawsuit against W. R. Grace tried by my law firm, except for the Dewey & Almy chemical and Multibestos correspondence documents in the 1930's. Additionally, you have agreed that the above documents qualify as "business records", as that term is used in the Texas Rules of Civil Procedure. In short, you have agreed that W. R. Grace will not challenge the admissibility of the W. R. Grace and Zonolite Company documents in our exhibit list on authenticity or hearsay.

With respect to Plaintiff's Motion To Compel in the Wally Shipley case, W. R., Grace has agreed to answer Interrogatories 1, 3-7, 9, 13-15, 18, 20 and 22. Judge Rhea has ordered Grace to answer Interrogatories 2, 8, 10-12, 16-17, 19 and 21.

These interrogatories were served on September 4, 1991. Please provide me with the answers by December 7 if you can.

If I have misstated our agreements in any way, please let me know upon receipt of this letter.

Yours very truly,


Roger G. Worthington

RGW:ms
urg\authen.agr

1 NO. 91-04588-K
2 EUGENE PERKINS, JAMES * IN THE DISTRICT COURT
3 KUCCHAR, FRANK IAZEOLLA, *
4 STEPHEN HNETKA, ROY JONES, *
5 RICHARD KRAHN, MARTIN *
6 KUNTZ, ROBERT NIELSEN, *
7 DONALD WOLFER and JOHN *
8 NEWMAN, * DALLAS COUNTY, TEXAS
9 Plaintiffs, *
10 vs. *
11 ARMSTRONG WORLD INDUSTRIES, *
12 ET AL., *
13 Defendants. * 192nd JUDICIAL DISTRICT

14
15
16 STATEMENT OF FACTS
17 SETTLEMENT AGREEMENT

ORIGINAL

18
19
20 BE IT REMEMBERED that on the 11th day of
21 March, A.D., 1992, the above entitled and numbered cause came
22 on for hearing before the HONORABLE MERRILL HARTMAN, Judge of
23 the 192nd Judicial District Court of Dallas County, State of
24 Texas, and a Jury, and the following is an excerpt from
25 proceedings held:

PATRICIA R. COLVIN, C.S.R.

A P P E A R A N C E S

Mr. Roger Worthington

Mr. Joseph F. Bruegger

SILBER, PEARLMAN & WORTHINGTON

1000 Highland Park Place

4514 Cole Avenue - LB 34

Dallas, Texas 75205

APPEARING FOR PLAINTIFFS

Mr. David W. Crowe

DEHAY & BLANCHARD, L.L.P.

Plaza of the Americas

2500 South Tower - LB 201

600 North Pearl Street

Dallas, Texas 75201-2880

APPEARING FOR DEFENDANTS

ARMSTRONG WORLD INDUSTRIES,

INC., NATIONAL GYPSUM, U.S.

GYPSUM, GAF CORPORATION,

CERTAINTED CORPORATION and

GEORGIA PACIFIC CORPORATION

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A P P E A R A N C E S - C o n t i n u e d

Ms. Sandra F. Clark

MEHAFFY & WEBER

2615 Calder

P.O. Box 16

Beaumont, Texas 77704

APPEARING FOR DEFENDANT

W.R. GRACE & COMPANY

EXCERPT FROM PROCEEDINGS

March 11, 1992

Dallas, Texas

THE COURT: All right. Proceed.

MR. BRUEGGER: Your Honor, if it please the Court: On behalf of Plaintiffs, we are here to announce that we have reached a settlement with all parties in the subject case that is still on trial before the Court, and the appropriate Orders will be forthcoming.

MS. CLARK: That's true, Your Honor, for W.R. Grace; we have settled with the Plaintiffs.

MR. BRUEGGER: At some point, can we make a specific record of the settlement?

MR. CROWE: It's true for National Gypsum, as well.

MR. BRUEGGER: That's correct. Would you like me to make a specific record now or --

THE COURT: Yeah, you might as well, while you're rolling.

MR. WORTHINGTON: W.R. Grace has agreed to settle the following groups of cases: the Perkins group, the Bilyeau group, B-i-l-y-e-a-u, the Verklin group, the Dills group, the Muth,

1 M-u-t-h, group, the Webster group, the Barnard,
2 B-a-r-n-a-r-d, group, the Brown group, the Willie
3 Carroll group, the Diane Surls, S-u-r-l-s, group,
4 and the Shipley group.

5 The total number of cases that W.R.
6 Grace has agreed to settle with us is eighty-four.
7 The Carroll case does not include the case of
8 Elijah Clark, which has been severed, and the
9 Brown group does include the Santowsky case, which
10 has also been settled. So, the total number of
11 Plaintiffs is eighty-four.

12 W.R. Grace has agreed to pay in a lump
13 sum within sixty days of today; furthermore, W.R.
14 Grace will provide Plaintiffs' Counsel with the
15 releases for all eighty-four Plaintiffs.

16 And finally -- well, not finally, but
17 thirdly, W.R. Grace has agreed to generate the
18 Dismissal Orders for all eighty-four Plaintiffs.

19 And finally, W.R. Grace has agreed to
20 authenticate a number of documents with our firm
21 in any trial in which our firm is involved,
22 whether it's in Dallas County, Tarrant County,
23 Nueces County, Travis County; any other county or
24 state.

25 Ms. Clark and I have made an agreement

1 as to the precise documents that W.R. Grace has
2 agreed to authenticate.

3 In short order, they are everything --
4 all the documents that have been admitted into
5 evidence in this trial, save for the Dewey & Almy,
6 documents which are W.R. Grace Exhibits -- W.R.
7 Grace Exhibits 8, 9, 13 and 14.

8 Grace will -- will preserve their right
9 to object to authentication of those documents.

10 On Document W.R. Grace 56, Grace will
11 determine within ten days whether they are going
12 to challenge authentication of that document.

13 Plaintiffs have not asked W.R. Grace to
14 authenticate W.R. Grace Exhibit 78, which is a
15 picture of Ernest Summerall, and all the documents
16 that have been admitted into this trial W.R. Grace
17 has agreed to authenticate.

18 I can list those numbers, but it may
19 take a while.

20 MS. CLARK: I think we can just do that
21 by a letter --

22 MR. WORTHINGTON: Okay.

23 MS. CLARK: -- exchange later.

24 Further, the Plaintiffs agree not to
25 pursue, by Motion to Compel, any pending Requests

1 for Production, and we don't have to put anything
2 on the record here, because we'll work out the
3 details on that.

4 The only other thing is that the
5 releases that you said we would provide to you,
6 those are releases for the Plaintiffs to sign. I
7 didn't want that to be unclear --

8 MR. WORTHINGTON: Okay.

9 MS. CLARK: -- that we were somehow
10 providing a release from Grace.

11 MR. WORTHINGTON: Right.

12 MS. CLARK: But that accurately reflects
13 the settlement agreement.

14 MR. WORTHINGTON: And disregard any
15 Requests for Production, and that's before Judge
16 Rhea. We will -- Plaintiffs will agree not to
17 pursue the Order in Judge Rhea's Court.

18 MS. CLARK: Right. And further action
19 would have to be taken up, I think, with Judge
20 Rhea on that.

21 THE COURT: Well, the Court approves the
22 agreement as it has been read into the record, and
23 the agreement as it has been read into the record
24 is the Order of the Court.

25 END OF EXCERPT FROM PROCEEDINGS

1 CERTIFICATE OF REPORTER

2
3 THE STATE OF TEXAS /

4 COUNTY OF DALLAS /

5 I, PATRICIA R. COLVIN, Official Court Reporter in
6 and for the 192nd Judicial District Court of Dallas County,
7 State of Texas, do hereby certify that the above and fore-
8 going contains a true and correct transcription of an excerpt
9 from proceedings held in the above entitled and numbered
10 cause on the 11th day of March, A.D., 1992, all of which
11 occurred in open Court and were reported by me.

12 WITNESS MY HAND this the 6th day of May,
13 A.D., 1992.

14 
15

16 PATRICIA R. COLVIN, C.S.R.

17 192nd Judicial District Court

18 Dallas County Courthouse

19 Dallas, Texas 75202

20 Telephone: 214/653-7766

21 Certificate No. 821

22 Expiration Date: 12/31/92

23
24 Cost of Original: \$ 70.⁰⁰

25 Paid by: Plaintiffs

ORIGINAL

PATRICIA R. COLVIN, C.S.R.