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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 87-M-1783

BOULDER VALLEY SCHOOL DISTRICT NO. RE-2; JEFFERSON COUNTY SCHOOL DISTRICT NO. 4-1; and WELD COUNTY SCHOOL DISTRICT NO. 6,

Plaintiffs,

v.

W.R. GRACE & CO.; UNITED STATES GYPSUM CO., and NATIONAL GYPSUM COMPANY ARMSTRONG WORLD INDUSTRIES, INC.; CELOTEX CORP.; EAGLE-PICHER INDUSTRIES, INC.; FIBREBOARD CORP.; THE FLINTKOTE CO.; GAF CORPORATION/RUBEROID COMPANY; GEORGIA-PACIFIC CORP.; KEENE CORP.; OWENS-CORNING FIBREGLASS CORP.; PFIZER, INC.; PITTSBURGH PLATE GLASS CO.; U.S. MINERAL PRODUCTS CO.; and ABC CORPORATION, et al., whose true names are not known,

Defendants.

DEFENDANT W.R. GRACE & CO.-CONN.'S TRIAL NOTEBOOK

W.R. Grace & Co.-Conn., ("Grace") through its counsel, Holme Roberts & Owen, respectfully submits this trial notebook setting forth the factual and legal issues of the case. Discovery is ongoing. Therefore, like the plaintiffs, this defendant believes it likely that this document will need to be amended prior to or after the pretrial conference, to be scheduled in early February, 1991.

V. SPECIAL ISSUES

Counsel understands that this Court normally follows the practice of not ruling on evidentiary questions prior to trial. However, the following special issues can be, and should be ruled on in limine. Counsel will therefore file motions in limine for the exclusion of certain evidence. Resolution of these issues will substantially reduce the complexity of the issues at trial and will eliminate the need for numerous "trials within a trial."

1. The Multibestos Company

The Multibestos Company was a manufacturer of brake linings in the 1930's. It was never owned, directly, indirectly or otherwise by Grace. Dewey & Almy Chemical Company ("Dewey & Almy"), which Grace subsequently acquired in 1954, briefly owned the Multibestos Company between 1930 and 1935. It sold Multibestos 19 years before Dewey & Almy was acquired by Grace.

Plaintiffs are expected to seek to introduce at trial, purportedly on the issue of notice to Grace, certain correspondence between the president of Dewey & Almy, Bradley Dewey, and other persons. This correspondence discussed the possible health risk to industrial workers, such as those at the Multibestos Company, who had long-term daily exposure to high levels of asbestos dust. These documents were obtained from the files of the Massachusetts Division of Occupational

Hygiene, and there is no evidence that copies of the correspondence were ever in Grace's files.

Moreover, there is not a scintilla of evidence that Mr. Dewey ever discussed the events of 20 years earlier relating to Multibestos with anyone at Grace when he served on Grace's Board of Directors in the 1950's (he ceased being a regular Board member about four years before Grace began selling acoustical plaster and MK-3). Indeed, J. Peter Grace, Chairman of W.R. Grace, has testified that he had never heard of Multibestos until the recent asbestos-in-building litigation began. Even if Grace were aware of these documents -- which it was not -- they have nothing to do with the extremely low-dose exposures at issue in this case.

As there is no evidence that Grace was ever aware of correspondence relating to Multibestos in the 1930's, and because the documents are irrelevant in any event, courts have not looked favorably on their use at trial. In none of the four cases involving Grace which have proceeded to verdict since September, 1989 have the documents been admitted into evidence. They have been offered by plaintiffs but have been excluded by the courts on motions in limine.

2. High-Dose Exposure at the Libby Mine and Mill

Set forth below is a summary of the facts relating to an irrelevant and prejudicial detour which plaintiffs can be expected to try to pursue. The detour relates to Grace's

ownership of a vermiculite mine in Libby, Montana. This evidence is inadmissible.

The vermiculite mine and mill in Libby was owned by the Zonolite Company and, after 1963, by Grace. The vermiculite deposits at Libby were intermixed with other rocks and minerals, including a substantial amount of tremolite, a type of asbestos (different from chrysotile, the asbestos ingredient in acoustical plasters and MK-3). The ore that was extracted at Libby was processed in an onsite mill, which separated the vermiculite from the other rocks and minerals.[10] The mining and milling process created huge clouds of dust, which included tremolite dust. The managers of the Libby operation learned in the late 1960's and early 1970's that some Libby employees were developing impaired lung functions due to daily exposure to extremely high levels of tremolite dust.

Plaintiffs will attempt to give this case a personal injury cast by relying at trial on documents relating to the health problems of Libby workers and arguing that, as a result of such information, Grace knew or should have known asbestos was hazardous at extremely low levels such as those found in plaintiffs' buildings. The health of Libby workers has

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10. No acoustical plaster or Monokote products were produced at Libby, and Libby personnel had no involvement with the production or sale of those products.

nothing to do with whether the acoustical plaster and fireproofing products as installed in the plaintiffs' buildings are a health hazard to building occupants.

Conditions at the Libby mine and mill are not substantially similar to conditions in the plaintiffs' buildings. The workers at Libby were exposed every day to clouds of dust, including tremolite dust, which contained levels of airborne asbestos fibers tens of thousands of times higher than the levels of asbestos fibers in the plaintiffs' building, which are essentially equivalent to the ambient air outside on the street. There is no evidence that exposure to extremely low levels of asbestos fibers, such as those in the plaintiffs' building, causes disease. Plaintiffs' primary objective in resorting to the irrelevant Libby evidence will be to prejudice and inflame the jury with information concerning the asbestos-related personal injuries of Grace employees.[11]

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11. Such documents would be particularly unfair in light of the extensive remedial measures taken by Grace to improve workers' health at the Libby operations when it became aware of the implications of the dust problem. In 1959 and 1963 the Zonolite Company (which then owned the Libby mine) conducted X-ray surveys of the Libby workers. Doctors who conducted the surveys told Zonolite that they could come to no conclusion concerning the effect, if any, that dust at the Libby mine and mill had in causing disease among workers. Nevertheless, in 1963 when Grace bought the Zonolite Company, an annual X-ray program was commenced, and numerous steps were taken to reduce dust levels generally at the Libby operation. As the pernicious effect of tremolite dust in particular became

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