

No. _____



Plaintiffs,
vs.
W. R. GRACE & CO.

)
)
) IN THE DISTRICT COURT OF
)
) _____ COUNTY,
)
) TEXAS
)
) _____ JUDICIAL DISTRICT
)

AFFIDAVIT OF HOLLY J. W. HUART, ESQ.

THE STATE OF TEXAS ~

THE COUNTY OF HARRIS ~

BEFORE ME, the undersigned authority, on this day personally appeared HOLLY J. W. HUART, known to me to be the person whose name is subscribed below, and after being duly sworn upon her oath, did depose and state as follows:

1. My name is Holly J. W. Huart. I am a resident of Harris County, Texas, am over the age of 18, and am otherwise competent to make and give this Affidavit. The facts set forth herein are based upon my personal knowledge and are true and correct.

2. I am an attorney licensed in the State of Texas and currently am Of Counsel to The Maierson Law Firm, P.C.

3. Prior to joining this firm, from 1993 through 1995, I acted as a consultant to the law firm of Susman Godfrey, L.L.P., who represented the plaintiffs in Block 145 Ltd. et al. v. W.R. Grace & Co.-Conn. et al., No. 93-61850, 164th Judicial District, Harris County, Texas (herein "Block 145").

4. As counsel for plaintiffs in Block 145, and because of my many years of experience in discovering documents and information from W.R. Grace (herein "Grace") during the course of other litigation while employed by Bracewell & Patterson, Branch Pike Ganz & O'Callaghan, and through various consulting arrangements with other law firms involved in litigation against Grace during the years 1988

through 1994, I had responsibility for various discovery matters involving Grace. In this connection, I personally prepared a Notice of Deposition and Subpoena Duces Tecum of Corporate Representative(s), including both attachments ~~thereto~~, all of which are appended to this affidavit as Exhibit "A".

5. Among the matters specifically set forth in Exhibit "A" is the following documentation as described in Section B (ix) of the Subpoena Duces Tecum:

(ix) The existence, extent, and current location of the "stats sheets" and "employee exposure calculations" referred to on bates nos. 40061148, 04211770, and 4208093, and of the database from which the "Employee Exposure Calc[ulations]" at Bates nos. 04206844-04206859 were printed out. See Appendix G.

Subpoena at para. B (ix).

6. The documents referred to as Exhibit "A" were served on Grace's local counsel, Mayor Day Caldwell & Keaton (herein "Mayor Day"). I had numerous discussions with various individuals from Mayor Day concerning the discovery plaintiffs sought in that case.

7. Although Grace did file an Objection to certain paragraphs of the Subpoena, Grace did not object to paragraph B (ix) of the Subpoena. See Exhibit "B".

8. In response to the Notice & Subpoena I prepared, Mayor Day, acting as counsel for Grace, prepared a written response in the form of a letter to counsel for the Block 145 plaintiffs, dated September 23, 1994. I am in possession of a copy of that letter.

9. In that response, counsel for Grace stated as follows specifically with reference to the items requested in paragraph B (ix) of the Subpoena:

We are unable to locate a database. We have confirmed that there was a computer but it became obsolete and when it was shut down, its contents were eliminated or discarded.

p. 4 (emphasis supplied).

10. This letter was signed by Dillon Ferguson, counsel for Grace. The list of individuals who were on the "cc" list of this letter includes names of individuals I recognize as either in-house counsel for Grace, and/or national coordinating counsel for Grace, namely Messrs. Robert Beber, Richard Senfleben, Matthew Murphy, Robert Murphy, and possibly others.

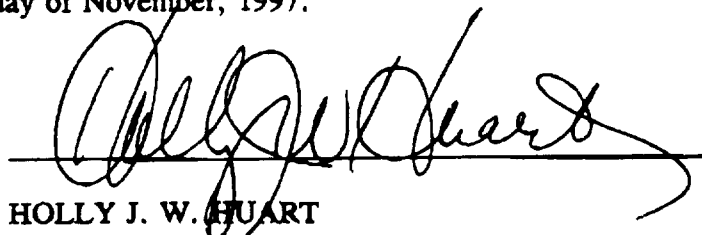
11. I am not aware of any confidentiality agreement or protective order that would prohibit the disclosure of the contents of the Subpoena or the Objections or the letter from Grace's counsel.

12. To my knowledge, nothing in the referenced letter was ever retracted by any counsel for Grace.

13. To my knowledge, the database was never located and/or produced to the Block 145 plaintiffs.

Further, the Affiant sayeth not.

DATED this 5th day of November, 1997.


HOLLY J. W. HUART

SUBSCRIBED AND SWORN TO before me this 5th day of November, 1997.





NOTARY PUBLIC in and for the State of Texas

My commission expires 4/25/98.

NO. 93-61850

BLOCK 145, LTD,
a Texas Limited Partnership,
AV AMERICA GRUNDBESITZVER-
WALTUNGSGESELLSCHAFT MBH,
a German entity,
LOUISIANA WALKER, LTD.,
a Texas Partnership
TOWER LTD.,
a Texas Limited Partnership,
POST OAK TOWER, LTD.,
a Texas Limited Partnership,
and HINES RANGER ASSOCIATES
LIMITED, a Texas Limited
Partnership,

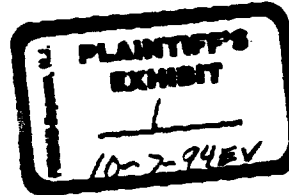
Plaintiffs,

v.

W.R. GRACE & CO.-CONN, and
VERMICULITE PRODUCTS, INC.,

Defendants.

IN THE DISTRICT COURT OF



HARRIS COUNTY, TEXAS

FILED
CLERK OF DISTRICT COURT
HARRIS COUNTY, TEXAS
1994 OCT -3 PM 4:38

BY _____ DEPUTY

164TH JUDICIAL DISTRICT

JURY TRIAL REQUESTED

**NOTICE OF ORAL DEPOSITION AND SUBPOENA
DUCES TECUM OF CORPORATE REPRESENTATIVE(S)**

TO: W. R. Grace & Co.-Conn, and Vermiculite Products, Inc., by and through their attorney of record, Dillon J. Ferguson, Mayor, Day, Caldwell & Keeton, 1900 Nations Bank, 700 Louisiana, Houston, TX 77002

PLEASE TAKE NOTICE that, pursuant to Rules 166b, 200, 201, 201(4), and 202 of the Texas Rules of Civil Procedure on October 7, 1994, 10:00 a.m. at the offices of Casner & Edwards, One Federal Street, Boston, Massachusetts, counsel for Plaintiffs will take

TKC-101098-BLD

the deposition(s) of the designated representative(s) of W.R. Grace & Co.-Conn. best able to testify as to the following ~~matters~~:

See Exhibit A, attached.

You are under a duty to designate one or more officers, directors, managing agents, or other persons with sufficient knowledge to testify for W.R. Grace & Co.-Conn. on information known to or reasonably available to it on these matters.

A subpoena duces tecum will be issued to the witness(es) requesting the production of the documents identified on Exhibit B, attached.

The deposition will be taken before a Notary Public or some other officer authorized by law to administer oaths for use at the trial herein. Such deposition(s) will continue from day to day until completed.

Respectfully submitted,

SUSMAN GODFREY L.L.P.



H. Lee Godfrey, State Bar No. 08054000

F. Eric Pryar, State Bar No. 07495770

Tracy K. Christopher, State Bar No. 11150500

Michael A. Lee, State Bar No. 12074620

5100 First Interstate Bank Plaza

Houston, Texas 77002

Telephone: (713) 651-9366

Telecopy: (713) 653-7897

Attorneys for Plaintiffs BLOCK 145, LTD, a Texas Limited Partnership; AV AMERICA GRUNDBESITZVERWALTUNGSGESellschaft MBH, a German entity; LOUISIANA/WALKER, LTD., a Texas Limited Partnership; TOWER, LTD., a Texas

Limited Partnership; POST OAK TOWER, LTD., a Texas Limited Partnership; and HINES RANGER ASSOCIATES LIMITED, A TEXAS LIMITED PARTNERSHIP

CERTIFICATE OF SERVICE

This is to certify that on this the 3rd day of Oct, 1994, a true and correct copy of the above and foregoing instrument was served on all counsel of record in by First Class, Certified Return Receipt Requested, mail in accordance with Rules 21 & 21a, Tex. R. Civ. P., addressed as follows:

by messenger

Dillon J. Ferguson
Mayor, Day, Caldwell & Kecton
1900 Nations Bank
700 Louisiana
Houston, TX 77002


Tracy K. Christopher

EXHIBIT A TO NOTICE OF DEPOSITION

SUBJECT MATTER AREAS

A. ABATEMENT DOCUMENTS AND DATABASES

(i) Based on Matt Murphy's representations that the abatement binders in the Winthrop Square repository are current only through December 31, 1992, the existence, extent, and location of all abatement documents dated after December 31, 1992.

(ii) The existence, extent, and location of all abatement documents pertaining to the abatement of asbestos-containing materials for any facility currently or previously owned or leased by Grace or any subsidiary located within or outside the continental United States, including but not limited to all facilities listed in Appendices A, and B-1, B-2, and B-3.

(iii) The existence, extent, and location of the "asbestos removal database" referred to in Bates no. R004649, and the extent to which and manner in which data may be retrieved from such "asbestos removal database." See Appendix C.

(iv) The existence, extent, and location of the database from which the "database report" referred to in Bates no. R005464 was produced, and the extent to which and manner in which data may be retrieved from such "database". See Appendix D.

B. MEDICAL RECORDS AND DATABASES

(v) Based on Matt Murphy's representation that the Worker's Compensation collection at the Winthrop Square repository has not been added to since September of 1991, and based on our understanding that it does not contain any documents dated after 1988, the existence, extent, and location of all post-1988 worker's compensation documents.

(vi) The existence, extent and current location of X-rays and X-ray reports of employees, kept at Cambridge and in various hospitals. See Bates nos. 755261, 15133867, and Appendix E.

(vii) The existence, extent and current location of medical records that were microfilmed for the NIOSH study. See Bates no. 15083152.

(viii) The existence, contents and current location of the "vault" referred to on one of the Worker's Compensation file folders as containing "obsoleted litigation," vault no. 4 referred to another file folder, and any other such vaults numbered one through three and five, et seq. and/or the existence, extent, and current location of all documents previously kept in such vaults. See Appendix F.

(ix) The existence, extent, and current location of the "stats sheets" and "employee exposure calculations" referred to on Bates nos. 40061148, 04211770, and 4208093, and of the database

from which the "Employee Exposure Calc[ulations]" at Bates nos. 04206844-04206859 were printed out, and the significance of the various columns on those pages provided in Appendix G.

(x) The existence, extent, and location of the "McGill study computerized employee history file" referred to in Bates no. 0620980, the extent to which and manner in which data may be retrieved from such "computerized . . . file," as evident from Bates no. 0620982, and the significance of each column of data provided in Bates nos. 0620982-83. See Appendix H.

(xi) The existence, extent and location of the database from which the "print-out" of "prior worker's compensation claims . . ." referred to on Bates No. 04212768 was to be made. See Appendix M.

(xii) "Studies" referred to as having been conducted by Grace on Bates Nos. 04206859.10 that purported to uncover 55 cases of "pulmonary disorders" that were not reported to Grace's insurers, and the results of all such studies. See Appendix N.

(xiii) The "exposure index" referred to on the October 1, 1982 memorandum from Earl Lovick to Jack Wolter, and the extent to which such "index" data appears to differ from the "employee exposure calculations" referred to in paragraph (ix), *supra*. See Appendix O.

(xiv) The "recently completed work history/fiber exposure estimate study" referred to on Bates No. 760073 and the extent to which such "estimate study" data appears to differ from the "employee exposure calculations" referred to in paragraph (ix), *supra*. See Appendix P.

C. MISCELLANEOUS ASBESTOS-RELATED DOCUMENTS AND DATABASES

(xv) The existence, extent, and location of J. Peter Grace Asbestos Files not currently being produced at the repository, and whether such files/documents are being withheld on grounds of privilege, and if so, the identification of those entries on Grace's privilege document index that pertain to such files/documents.

(xvi) The existence, extent, and location of the "databank" on the "asbestos problem" that was created to "improve the availability of information" as set forth in Bates no. 0626597, and the extent to which and manner in which data may be retrieved from such "databank." See Appendix I.

(xvii) The existence, extent, and location of the "Emergency and Environmental Response Logs" referred to in Bates no. 10009653. See Appendix J.

(xviii) The existence, extent, and location of minutes of the meetings of the "Audit Committee," "Committee on Corporate Responsibility," and "the Board" where the "asbestos problem" was discussed, as set forth in Bates no. 15140452. See Appendix K.

(xix) The current and former contents of Grace's libraries or documents or databases reflecting

the current and former holdings of any of Grace's libraries, to the extent such holdings pertain to asbestos and/or asbestos-related matters. See Appendix L.

(xx) The existence, extent and current location of TEVCO documents from the "archives" or "perlite pit," as set forth in Bates no. 15109344.

(xxi) The existence, extent and current location of any documents pertaining to the Safe Buildings Alliance ("SBA"), and date on which the last SBA-related documents were added to the Winthrop Square Repository.

(xxii) The extent to which documents to which Grace has claimed privilege have been reviewed by any court and determined to be non-privileged in any asbestos-related case other than Cullen Center.

D. MICROFILMED DOCUMENTS

(xxiii) The existence, extent and current location of microfilmed set of Grace documents that has been produced in its entirety in other cases, including the Baltimore County and State of Maryland litigation, and any additions thereto.

(xxiv) The existence, extent and current location of the microfilmed set of medical records created for the NIOSH study. See Bates no. 15083152.

E. OTHER

(xxv) The existence, extent, and location of any and all other asbestos-related documents, databases, or other record collections that were not produced to plaintiff at Winthrop Square.

EXHIBIT B TO NOTICE OF DEPOSITION

SUBPOENA DUCES TECUM

A. ABATEMENT DOCUMENTS AND DATABASES

(i) All abatement documents pertaining to the abatement of asbestos-containing materials for any facility currently or previously owned or leased by Grace or any subsidiary located within or outside the continental United States dated after December 31, 1992.

(ii) All abatement documents pertaining to the abatement of asbestos-containing materials for any facility currently or previously owned or leased by Grace or any subsidiary located within or outside the continental United States, other than those already produced within the 23 abatement binders at Winthrop Square, including but not limited to all facilities listed in Appendices A and B-1, B-2, and B-3.

(iii) All documents pertaining to the "asbestos removal database" referred to in Bates no. R004649. See Appendix C.

(iv) All documents pertaining to the "database report" referred to in Bates no. R005464. See Appendix D.

B. MEDICAL RECORDS AND DATABASES

(v) All post-1988 worker's compensation documents.

(vi) All X-rays and X-ray reports of employees, kept at Cambridge and in various hospitals. See Bates nos. 755261, 15133867, and Appendix E.

(vii) All medical records that were microfilmed for the NIOSH study. See Bates no. 15083152.

(viii) All asbestos-related documents that were previously maintained or are maintained any "vaults" referred to on any of the Worker's Compensation file folders and any inventories or indices of any such documents kept or previously kept in such vaults. See Appendix F.

(ix) All "stats sheets" and "employee exposure calculations" referred to on Bates nos. 40061148, 04211770, and 4208093, and the database from which the "Employee Exposure Calculations]" at Bates nos. 04206844-04206859 were printed out. See Appendix G.

(x) The "McGill study computerized employee history file" referred to in Bates no. 0620980. See Appendix H.

(xi) All "print-outs" of prior worker's compensation claims . . ." including those referred to on Bates no. 04212768. See Appendix M.

(xii) All documents pertaining to the "studies" referred to as having been conducted by Grace on Bates No. 04206859.10 that purported to uncover 55 cases of "pulmonary disorders" that were not reported to Grace's insurers. See Appendix N.

(xiii) All "exposure indices," including the "exposure" index referred to on the October 1, 1982 memorandum from Earl Lovicle to Jack Wolter. See Appendix O.

(xiv) All documents pertaining to the "recently completed work history/fiber exposure estimate study" referred to on Bates no. 760073. See Appendix P.

C. MISCELLANEOUS ASBESTOS-RELATED DOCUMENTS AND DATABASES

(xv) All J. Peter Grace Asbestos Files not currently being produced at the repository.

(xvi) The "databank" on the "asbestos problem" that was created to "improve the availability of information" as set forth in Bates no. 0626597. See Appendix I.

(xvii) The "Emergency and Environmental Response Logs" referred to in Bates no. 10009653. See Appendix J.

(xviii) All minutes of the meetings of the "Audit Committee," "Committee on Corporate Responsibility," and "the Board" where the "asbestos problem" was discussed, as set forth in Bates no. 15140452. See Appendix K.

(xix) All documents or databases reflecting the current and former holdings of any of Grace's libraries, to the extent such holdings pertain to asbestos and/or asbestos-related matters. See Appendix L.

(xx) All TEVCO documents previously or currently maintained in the "archives" or "perlite pit," as set forth in Bates no. 15109344.

(xxi) All documents pertaining to the Safe Buildings Alliance ("SBA") that were not produced at Winthrop Square.

(xxii) All documents to which Grace has claimed privilege that have been reviewed by any court and determined to be non-privileged in any asbestos-related case other than Cullen Center.

D. MICROFILMED DOCUMENTS

(xxiii) The microfilmed set of Grace documents that has been produced in its entirety in other cases, including the Baltimore County and State of Maryland litigation, and any additions thereto.

(xx) The microfilmed set of medical records created for the NIOSH study. See Bates no. 15083152.

E. OTHER

(xxiv) All other asbestos-related documents, databases, or other record collections that were not produced to plaintiff at Winthrop Square.

FACSIMILE COVER SHEET**MAYOR, DAY, CALDWELL & KEETON, L.L.P.**

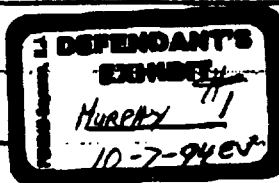
700 LOUISIANA, SUITE 1900
HOUSTON, TEXAS 77002-2778
(713) 225-7000

TELECOPY (713) 225-7047
TELEX 383813

CONFIDENTIALITY NOTICE

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Date: 10/06/94 Total number of pages, including cover letter: 12
From: Gary C. Miller

Item	To:	Time
1	H. Lee Godfrey, Tracy Christopher, Michael Lee	a.m. p.m.
2	Matthew T. Murphy	a.m. p.m.
3	Richard A. Scafliben	a.m. p.m.
4		a.m. p.m.
5		a.m. p.m.
6		a.m. p.m.

SPECIAL INSTRUCTIONS

If you have problems receiving this transmission, please call _____
at (713) 225-7146.

MAYOR. DAY. CALDWELL & KEETON, LLP.

GARY C. MILLER
PARTNER

700 LOUISIANA, SUITE 1900
HOUSTON, TEXAS 77002-2778
(713) 225-7000

TELECOPY (713) 225-7047
TELEX 382813

October 6, 1994

By Messenger

Ms. Katherine Tyra
Harris County District Clerk
301 Fannin
Houston, TX 77002

Re: No. 93-61850; *Block 145, Ltd., a Texas Limited Partnership, AV America Grundbesitzver-waltungsgesellschaft MBH, a German entity, Louisiana Walker, Ltd., a Texas Partnership, Tower Ltd., a Texas Limited Partnership, Post Oak Tower, Ltd., a Texas Limited Partnership, and Hines Ranger Associates Limited, a Texas Limited Partnership v. W. R. Grace & Co.-Conn. and Vermiculite Products, Inc.*; in the 164th Judicial District Court of Harris County, Texas

Dear Ms. Tyra:

Enclosed for filing among the papers of the above-referenced case is W. R. Grace & Co.-Conn.'s Objections to Plaintiffs' Notice of Oral Deposition and Subpoena Duces Tecum of Corporate Representative(s).

By copy of this letter, Plaintiffs' counsel are being provided a copy of the enclosed. Please file-stamp the enclosed copy and return to the messenger filing same.

Thank you for your assistance in this matter.

Very truly yours,


Gary C. Miller

Enclosure

cc: H. Lee Godfrey,
Tracy K. Christopher
Michael A. Lee
Susman Godfrey, L.L.P.
5100 First Interstate Bank Plaza
Houston, Texas 77002

0180875.01
109406/2135

NO. 93-61850

BLOCK 145, LTD.	§	IN THE DISTRICT COURT OF
a Texas Limited Partnership,	§	
AV AMERICA GRUNDBESITZVER-	§	
WALTUNGSGESELLSCHAFT MBH.	§	
A German entity,	§	
LOUISIANA WALKER, LTD.	§	
a Texas Partnership,	§	
TOWER LTD.,	§	
a Texas Limited Partnership,	§	
POST OAK TOWER, LTD.,	§	
a Texas Limited Partnership,	§	HARRIS COUNTY, TEXAS
and HINES RANGER ASSOCIATES	§	
LIMITED, a Texas Limited Partnership,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
W.R. GRACE & CO.-CONN., and	§	
VERMICULITE PRODUCTS, INC.,	§	
	§	
Defendants.	§	164th JUDICIAL DISTRICT

W. R. GRACE & CO.-CONN.'S OBJECTIONS TO PLAINTIFFS'
NOTICE OF ORAL DEPOSITION AND SUBPOENA DUCES TECUM OF
CORPORATE REPRESENTATIVE(S)

TO: Plaintiffs Block 145, Ltd., AV America Grundbesitzverwaltungsgesellschaft Mbh, Louisiana Walker, Ltd., Tower, Ltd., Post Oak Tower, Ltd., and Hines Ranger Associates Limited, by and through their attorneys of record, H. Lee Godfrey, Tracy K. Christopher, Michael A. Lee, SUSMAN GODFREY, L.L.P., 5100 First Interstate Bank Plaza, Houston, Texas 77002.

1.

On October 3, 1994, Plaintiffs filed in this case a Notice of Oral Deposition and Subpoena Duces Tecum of Corporate Representative(s) directed to W. R. Grace & Co.-Conn.

("Grace"). The Subpoena Duces Tecum, Exhibit B to the Notice, requests production of twenty-five (25) categories of documents.

2.

GENERAL OBJECTIONS

(a) Grace objects to each of the categories of documents requested by Plaintiffs to the extent they request privileged information, including, without limitation, documents protected by the attorney-client, work product, trade secret, or party communication privileges, and to the extent they invade Grace's state and federal constitutional rights, including, without limitation, Grace's rights under the First and Fourteenth Amendments to the United States Constitution. Grace's failure to reiterate these objections separately with respect to each individual category of the request is not a waiver of these objections with respect to any document or category of documents.

(b) Grace objects to each of the categories of documents requested by Plaintiffs to the extent they request documents that have previously been produced to Plaintiffs at Grace's Winthrop Square document repository or otherwise.

(c) Grace objects to each of the categories of documents requested by Plaintiffs to the extent they are inconsistent with the negotiations and agreements between counsel for Grace and for Plaintiffs with respect to Plaintiffs' Subpoena Duces Tecum.

3.

SPECIFIC OBJECTIONS

By category, Grace objects to the document subpoena on the following specific grounds.

A. ABATEMENT DOCUMENTS AND DATABASES

(i) All abatement documents pertaining to the abatement of asbestos-containing materials for any facility currently or previously owned or leased by Grace or any subsidiary located within or outside the continental United States dated after December 31, 1992.

(ii) All abatement documents pertaining to the abatement of asbestos-containing materials for any facility currently or previously owned or leased by Grace or any subsidiary located within or outside the continental United States, other than those already produced within the 23 abatement binders at Winthrop Square, including but not limited to all facilities listed in Appendices A and B-1, B-2, and B-3.

Objection:

Grace objects to categories (i) and (ii) because they are unreasonably broad in that they request abatement documents for facilities outside the United States, where customs, practices, laws and regulations do not correspond to those in the United States. Such a request is not reasonably calculated to lead to the discovery of admissible evidence and compliance would result in undue burden, unnecessary expense, harassment and annoyance.

With respect to categories (i) and (ii), Grace has produced to Plaintiffs all responsive documents relating to asbestos abatement completed by December 31, 1993 for facilities in the United States and Puerto Rico, with the exception of documents protected from discovery by the attorney-client privilege, work product privilege or other applicable privilege. As a standard practice, Grace, on an annual basis, gathers from its involved facilities throughout the country documents created during the prior year and deposits them in Winthrop Square. To require Grace to produce post-1993 documents at this time would result in undue burden, unnecessary expense, harassment and annoyance. Nevertheless, and without waiving its objection, Grace has offered to search for post-1993 documents, but believes that there are no post-1993 documents

relating to abatement of fireproofing materials. Grace has asked Plaintiffs whether it should undertake the document search. Grace is awaiting Plaintiffs' instructions.

B. MEDICAL RECORDS AND DATABASES

(v) All post-1988 worker's compensation documents.

Objection:

Grace objects to category (v) to the extent it seeks material protected from discovery by the attorney-client privilege, work product privilege, and party communications privilege and to the extent it seeks medical records protected from discovery by Texas Rule of Civil Procedure 166b(h), Texas Rule of Evidence 509, and the Americans With Disabilities Act, 42 U.S.C. § 12112 (1994). Grace has produced all other material responsive to category (v) in Winthrop Square and in the offices of its counsel.

(vi) All X-rays and X-ray reports of employees, kept at Cambridge and in various hospitals. See Bates nos. 755261, 15133867, and Appendix E.

Objection:

Grace objects to category (vi) because it seeks material protected from discovery by Texas Rule of Civil Procedure 166b(h), Texas Rule of Evidence 509, and the Americans With Disabilities Act, 42 U.S.C. § 12112 (1994).

(vii) All medical records that were microfilmed for the NIOSH study. See Bates no. 15083152.

Objection:

Grace does not know and has no way of telling what records were microfilmed for the NIOSH study. In addition, Grace objects to category (vii) because it seeks material protected

from discovery by Texas Rule of Civil Procedure 166b(h), Texas Rule of Evidence 509, and the Americans With Disabilities Act, 42 U.S.C. § 12112 (1994).

(viii) All asbestos-related documents that were previously maintained or are maintained any "vaults" referred to on any of the Worker's Compensation file folders and any inventories or indices of any such documents kept or previously kept in such vaults. See Appendix F.

Objection:

Grace previously reviewed the documents maintained in the "vaults" referenced in category (viii) and delivered all non-privileged, relevant documents to Winthrop Square. Grace objects to any requirement that it review these materials again because such a requirement would result in undue burden and unnecessary expense. Nevertheless, in an effort to accommodate Plaintiffs' counsel, Grace is in the process of rereviewing the documents currently in the vault and upon completion of that review will provide to Plaintiffs any additional non-privileged documents responsive to this request.

(xi) All "print-outs" of prior worker's compensation claims . . ." including those referred to on Bates no. 04212768. See Appendix M.

Objection:

Grace objects to category (xi) because it is vague, ambiguous and indefinite. The reference in Appendix M to "print-outs" is to a cryptic, handwritten, marginal note by an unknown author. Nonetheless, computer generated materials have been produced to Plaintiffs in response to category A(v) of this subpoena. Grace further objects because category (xi) is not limited to a relevant time period and is not limited to claims relating to asbestos, and therefore is not reasonably calculated to lead to the discovery of admissible evidence. Grace also objects to category (xi) to the extent it seeks material that is protected from discovery by the attorney-client privilege, work product privilege or party communications privilege.

C. MISCELLANEOUS ASBESTOS-RELATED DOCUMENTS AND DATABASES

(xv) All J. Peter Grace Asbestos Files not currently being produced at the repository.

Objection:

Grace objects to category (xv) to the extent it seeks material protected by the attorney-client privilege, work product privilege, and party communications privilege, and to the extent it invades Grace's state and federal constitutional rights, including its rights under the First and Fourteenth Amendments to the United States Constitution. Grace has produced all non-privileged documents responsive to category (xv) at the offices of its counsel.

(xvi) The "databank" on the "asbestos problem" that was created to "improve the availability of information" as set forth in Bates no. 0626597. See Appendix I.

Objection:

Grace objects to category (xvi) because it seeks material protected from discovery by the work product privilege and party communications privilege.

(xvii) The "Emergency and Environmental Response Logs" referred to in Bates no. 10009653. See Appendix I.

Objection:

Grace objects to category (xvii) to the extent it seeks documents containing non-asbestos related information because such information is not reasonably calculated to lead to the discovery of admissible evidence. In accordance with this objection and its agreement with Plaintiffs, Grace has produced "Emergency and Environmental Response Logs" from which non-asbestos related information was redacted.

(xviii) All minutes of the meetings of the "Audit Committee," "Committee on Corporate Responsibility," and "the Board" where the "asbestos problem" was discussed, as set forth in Bates no. 15140452. See Appendix K.

Objection:

Grace objects to category (xviii) because it seeks materials protected from discovery by the attorney-client privilege, work product privilege, party communications privilege, and accountant-client privilege.

(xix) All documents or databases reflecting the current and former holdings of any of Grace's libraries, to the extent such holdings pertain to asbestos and/or asbestos-related matters. See Appendix L.

Objection:

Grace objects to category (xix) because the request is burdensome and is not reasonably calculated to lead to the discovery of admissible evidence. Nonetheless, without waiving its objection, Grace will undertake to produce the requested information to the extent it is not privileged.

(xxi) All documents pertaining to the Safe Buildings Alliance ("SBA") that were not produced at Winthrop Square.

Objection:

Grace objects to category (xxi) to the extent it seeks material protected from discovery by the attorney-client privilege and invades Grace's state and federal constitutional rights, including its rights under the First and Fourteenth Amendments to the United States Constitution. Grace has produced all non-privileged documents responsive to category (xxi) to Plaintiffs in the offices of its counsel.

(xxii) All documents to which Grace has claimed privilege that have been reviewed by any court and determined to be non-privileged in any asbestos-related case other than Cullen Center.

Objection:

Grace objects to category (xxii) because it seeks material protected from discovery by applicable privileges as claimed by Defendants, including the attorney-client privilege, work product privilege, and party communications privilege. However, Grace is in the process of reviewing those documents and will provide Plaintiffs' counsel with any of those documents with respect to which Grace determines to no longer assert a privilege.

D. MICROFILMED DOCUMENTS

(xxiii) The microfilmed set of Grace documents that has been produced in its entirety in other cases, including the Baltimore County and State of Maryland litigation, and any additions thereto.

Objection:

Grace has offered to produce the microfilm responsive to this category, subject to Grace's review for inadvertently produced privileged information, providing that Plaintiffs agree to pay the cost of duplicating the microfilm (estimated to be approximately \$430.00). Grace is awaiting a response from Plaintiffs to that offer.

E. OTHER

(xxiv)[sic](xxv) All other asbestos-related documents, databases, or other record collections that were not produced to plaintiff at Winthrop Square.

Objection:

Grace objects to category (xxv) because it is vague, ambiguous, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and because compliance would result in undue burden, unnecessary expense, harassment and annoyance. From time to

time, additional documents come to the attention of Grace's counsel that may be responsive to various documents requests. Grace is currently in the process of reviewing documents, some of which may be responsive to this subpoena, for ultimate placement in Winthrop Square. To the extent that additional documents not previously furnished to Plaintiffs are identified as responsive and not protected from discovery, they will be placed in the Winthrop Square repository within a reasonable time, and Plaintiffs' counsel will be notified when and if that occurs.

Grace further objects to category (xxv) because it seeks materials protected from discovery by the attorney-client privilege, work product privilege, party communications privilege, accountant-client privilege, and physician-patient privilege, and trade secret privilege, and because it would invade Grace's state and federal constitutional rights, including its rights under the First and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

MAYOR, DAY, CALDWELL & KEPTON, L.L.P.



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ATTORNEYS FOR DEFENDANTS
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VERMICULITE PRODUCTS, INC.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Defendant W. R. Grace & Co.-Conn.'s Objections to Plaintiffs' Notice of Oral Deposition and Subpoena Duces Tecum to Corporate Representative(s) has been served upon H. Lee Godfrey, Tracy K. Christopher, and Michael A. Lee, Susman Godfrey L.L.P., 5100 First Interstate Bank Plaza, Houston, Texas 77002, counsel of record for Plaintiffs, by telecopy and United States Certified Mail, postage prepaid, return receipt requested, on this the 6th day of October, 1994.


Gary C. Miller

(11) MR. CASTEL: Of course, it's a (12)
 (13) evident proposition that Mr. Strand
 has not (13) been authoring additional
 documents since his (14) departure from
 the company. At least not (15) Grace-re-
 lated documents.

(16) BY MS. HUART:

(17) Q: I thought that I had requested, in
 paging (18) through through Exhibits 19
 and 18, I intended to (19) request a copy
 of what appeared to be a Xerox copy (20)
 of a film canister. I don't see it in this list,
 (21) but it's a film canister called Ceilings
 and (22) Sounds, C-e-i-l-i-n-g-s?

(23) MR. CASTEL: Ceilings and —

(24) MS. HUART: — and Sounds. Okay.

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(1) MR. CASTEL: Okay.

(2) MS. HUART: It appeared to be (3) 16-
 millimeter old-fashioned type film
 canister; and (4) just for the record, al-
 though I don't see it in (5) these par-
 ticular exhibits that I had copied for the
 (6) deposition, for the record, I saw this
 in box three (7) of four in the supplemen-
 tal production, and the (8) pages where
 the film canister was copied on were (9)
 Bates numbered 25203041 to
 25203043.

BY MS. HUART:

(14) Q: Mr. Murphy, does that sound like
 one of (12) the films that was included in
 the boxes of tapes (13) and photographs
 and slides were that produced back (14)
 in October?

(15) A: I have no idea.

(16) MS. HUART: My recollection is that
 (17) that particular one may be different
 than what was (18) converted to
 videotape.

(19) I don't have those notes available to
 (20) me at this moment, so let me just
 make a request on (21) the record that we
 have an opportunity to view that (22)
 film, or if it is ultimately converted, that
 it may (23) be relevant to the asbestos.

(24) MR. MILLER: Are you saying that

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(1) there is a film as opposed to a Xerox
 page that (2) shows a copy of a film
 canister?

(3) MS. HUART: Well, there's a copy of a
 (4) canister. Obviously, I don't have the
 originals (5) that the copy was made
 from, so I'm afraid (6) Mr. Murphy is the
 only person that can answer (7) whether
 there really is film inside that canister.

(8) MR. MILLER: Or whether there's a (9)
 'ister. From what we've heard, there's
 (10) a piece (10) of paper. Maybe we should
 ask him.

(11) BY MS. HUART:

(12) Q: Well, Mr. Murphy, do you have any
 (13) knowledge of whether there is a
 canister that has (14) been photocopied?

(15) A: I have no knowledge.

(16) MS. HUART: Well, that's what it (17)
 appeared to me; and obviously, I don't
 have any (18) inside knowledge of what
 the original was that that (19) copy was
 made from.

(20) If it is a film, then we're making a (21)
 request for it; and our request would be
 (22) encompassed by our previous re-
 quest to see slides (23) and films and
 videotapes that pertain to the (24) asbes-
 tos-containiong products.

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(1) BY MS. HUART:

(2) Q: Turning again back to Exhibit No.
 18, if (3) you could, within the slide
 presentation document (4) that we
 looked at before, on Bates numbered
 page (5) 25202718, under the heading at
 the top of the page, (6) Slide 18 —

(7) A: Yes.

(8) Q: — there is a statement that is made
 by (9) whoever is giving the slide presen-
 tation, quote, (10) Zonolite makes avail-
 able a complete job inspection (11)
 report file. It details everything to look
 for in (12) conducting an inspection on a
 given project. It (13) provides a
 repository for all data and records on (14)
 any fireproofing job, close quotes.

(15) Do you have any knowledge about
 these (16) job inspection report files?

(17) A: No, as I said to you in response to
 one (18) of your earlier questions, I've
 seen documents (19) which refer to den-
 sities and, you know, volumes or (20)
 weights.

(21) I've certainly seen memoranda that
 (22) report inspections conducted at job
 sites. I don't (23) recall the forms that we
 discussed, and I don't — (24) so, that's my
 answer.

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(1) MS. HUART: I'm afraid that some of
 (2) your answer was blocked out by some
 moving papers. (3) Could I please ask the
 court reporter just to read (4) back that
 response.

(5) (Answer read.)

(6) MS. HUART: Thank you.

(7) BY MS. HUART:

(8) Q: Before I move on to — strike that.

(9) Mr. Murphy, could you, would you (10)
 describe the documents that came out
 of the vault (11) as the documents that
 were maintained by the Legal (12)
 Department exclusively, or is there
 some other (13) reason why documents
 would be in the vault?

(14) A: I don't think I can answer the
 question (15) when you say "exclusively."

(16) They were certainly largely docu-
 ments (17) maintained by the Legal
 Department. I don't think (18) I'm

capable of commenting on every piece
 of paper (19) that was in there.

(20) MS. HUART: Before we move on to
 the (21) matters outstanding from the
 subpoena, I think I (22) need to clarify,
 this may be, this may be (23) redundant,
 I'm not sure I made this request; but if
 (24) I hadn't, I had asked you when the
 last time was

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(1) that Grace searched the files of Gail
 Ericson for (2) asbestos-related docu-
 ments; and I believe I had (3) made a
 request on the record that that search
 be (4) done for, and that we receive the
 nonprivileged (5) documents.

(6) I know that she did represent Grace.
 (7) But I'm not sure I made that request
 on the record (8) or not. If I neglected to
 do so, as I had with the (9) other in-
 dividuals, I do want to make sure that (10)
 request is included as well.

(11) BY MS. HUART:

(12) Q: Mr. Murphy, would you turn,
 please, to (13) the notice of deposition,
 which is Exhibit No. 1.

(14) MR. CASTEL: It's now in front of the
 (15) witness.

(16) Q: Okay. And I think I probably need
 to ask (17) you also to have in front of you
 the letter dated (18) September 23rd,
 from local counsel; and if you'll (19) bear
 with me a minute, I'll give you an exhibit
 (20) number for that. It's Exhibit No. 14,
 I'm sorry, (21) Exhibit No. 15.

(22) MR. CASTEL: We now have it in
 front (23) of the witness as well.

(24) MS. HUART: Okay.

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(1) MR. CASTEL: Okay.

(2) Q: With respect to Paragraph A 3 and
 4, that (3) particular paragraph in the
 subpoena pertains to (4) the asbestos
 removal database for the Organic (5)
 Chemicals Division.

(6) Do you have any knowledge about
 that (7) particular database as it pertains
 to our request (8) for abatement docu-
 ments?

(9) MR. CASTEL: Well, I would just note
 (10) for the record that Mr. Murphy has
 not been (11) designated and is not being
 produced with regard to (12) those sub-
 divisions of Paragraph A.

(13) Q: Well, to the extent that you are
 the (14) custodian of records, if you have
 any knowledge (15) about the — do you
 have any knowledge about the (16) asbes-
 tos removal, the asbestos removal
 database (17) itself, to the extent that you
 are presumably the (18) person who
 gathers asbestos abatement documents
 or (19) is responsible for producing them
 to plaintiffs?

[20] A: I don't know of the existence of an [21] asbestos removal database. I was involved in [22] discussions about whether it existed or not; and I ~~say~~ think Mr. Eschenbach is the better person to ask [24] the question of.

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[1] But the answer to your question to me [2] is, I have no knowledge of the existence of an [3] asbestos removal database.

[4] Q: As within your duties as the custodian of [5] record and maintaining records for production to [6] plaintiffs, do you have input over records that are [7] destroyed?

[8] A: That's awfully broad. What —

[9] Q: I'm sorry, let me ask this another way.

[10] In the September 23rd letter, at [11] Paragraph B 7, plaintiffs were told that Grace has [12] no knowledge of the existence or whereabouts or [13] disposition of a computer tape or the documents [14] that were microfilmed for the NIOSH inspection.

[15] Can you confirm whether these [16] documents, and I think that the appendix that we [17] attached to this subpoena clearly indicated that at [18] one time they existed, can you confirm that these [19] items were destroyed in your capacity as custodian [20] of records?

[21] MR. CASTEL: Object to the form of [22] the question.

[23] A: I cannot confirm that such documents, if [24] they existed, were destroyed, no.

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[1] Q: Does Grace have a document destruction [2] policy?

[3] A: With reference to asbestos litigation, I [4] am aware of a letter that was sent out, I think [5] over the signature of Mr. Walsh, I'm not a hundred [6] percent sure of that, advising people not to [7] destroy any documents that had anything to do with [8] the subject of asbestos.

[9] Q: How long has that policy been in effect?

[10] A: That letter went out in the early 1980s.

[11] Q: This has been before your involvement in [12] litigation?

[13] A: I think so. Not by much, but I think [14] so.

[15] And in addition, there was a policy [16] in place in those days whereby, after a certain [17] number of years, the records custodian at the [18] Construction Products Division would notify the [19] generator or originator of the documents that they [20] had been in storage for a certain number of years [21] and sought guidance on what to do about them.

[22] So there was a policy in place in [23] general for documents, which was then, if you will, [24] made more specific with respect to asbestos-related

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[1] documents.

[2] Q: Once you were heading up Grace's asbestos [3] litigation effort, were you ever consulted by [4] somebody from within the organization regarding [5] destroying records?

[6] MR. MILLER: Object to the form of [7] the question and also that it seems to seek [8] attorney-client —

[9] A: Your premise is faulty. You attribute [10] something to me that's not true.

[11] Q: Which is?

[12] A: In charge of Grace's asbestos litigation [13] effort.

[14] Q: Well, to the extent that Casner & Edwards [15] has responsibility for the custody and maintenance, [16] organization and production of documents to [17] plaintiffs in asbestos litigation, and you're the [18] individual with overall charge of that effort, have [19] you ever been consulted regarding the destruction [20] of asbestos, the destruction of records pertaining [21] to asbestos-related matters?

[22] A: Yes.

[23] Q: Have you authorized the destruction of [24] records pertaining to asbestos-related matters?

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[1] A: I don't think I have the authority to [2] authorize the destruction of any of Grace's [3] records.

[4] To the extent that there may have [5] been records at this firm that might have pertained [6] to litigation or something like that, a particular [7] case or cases, you know, perhaps I possess such [8] authority. I'm not really sure.

[9] But, you know, I want to be, I don't [10] want to overstate my authority or responsibility [11] here.

[12] Q: If you can't confirm whether the computer [13] tape or documents pertaining to the NIOSH study [14] were destroyed, do you know who could confirm [15] whether or not that occurred?

[16] A: Isn't someone else designated on that [17] subject?

[18] Q: Not on the subject of destruction. [19] Somebody is designated on the subject of [20] existence.

[21] But in your capacity as records [22] custodian, I thought it would be appropriate to ask [23] you regarding the destruction issue.

[24] MR. CASTEL: Well, I mean, don't

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[1] have to establish first whether the documents [2] exist?

[3] I mean, there seem to me to be a [4] number of possibilities: the documents never [5] existed; the documents exist and exist today; or [6] your suggestion that they, they may have been [7] destroyed, and which I haven't seen any basis for [8] such a suggestion.

[9] A witness has been designated on the [10] category which you have requested. Is that not the [11] case?

[12] MS. HUART: Well, I think the [13] foundation for my question is in the document Bates [14] numbered 15083152, which is one document attached [15] to, attached to, I believe, it's the August 17 [16] letter, if I'm not mistaken.

[17] MR. CASTEL: Yes, but am I not [18] correct that a witness has been designated on this [19] subject?

[20] MS. HUART: A witness has been [21] designated on the existence, extent and current [22] location.

[23] And the response that we received [24] indicated that Grace has no knowledge of the

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[1] existence, whereabouts or disposition of the [2] computer tape or documents.

[3] MR. CASTEL: Well, I don't think the [4] deposition is the place for you and I to be [5] arguing; but I have Exhibit A to your notice of [6] deposition; and there is a category 7, the [7] existence, extent and current location of medical [8] records that were microfilmed for the NIOSH study. [9] And I also have here a letter from the Mayor Day [10] firm to Tracy Christopher dated September 23; and [11] it has Mr. Eschenbach designated for all of [12] subdivision B of the subpoena except subcategory 8, [13] if I'm not mistaken.

[14] MS. HUART: That's correct.

[15] MR. CASTEL: Yes. So I think you [16] have a witness who has been designated, and [17] presumably you will be able to probe with the [18] witness.

[19] MS. HUART: So I — you're right, and [20] I don't want to take up time with colloquy and [21] argument between us.

[22] I do think the issue of document [23] destruction is an appropriate one to pursue with [24] the records, with someone who is being produced as

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[1] the records custodian; and I understand, if he [2] doesn't have any knowledge, then I can just move [3] on.

[4] MR. CASTEL: Yes. Well, I think [5] you've already established and I don't

have any [6] problem with your establish-
[15] that, you know, [17] whether Mr.
Murphy is aware of the existence or [18]
destruction of such documents.

[9] Let's establish that; and if he [10]
knows, he knows. If he doesn't know,
let's move on [11] and ask the witness
who has been designated on [12] this.

[13] Do you know of the existence, extent
[14] and current location of the. of
such documents, [15] Mr. Murphy?

[16] THE WITNESS: No, and I answered
[17] Miss Huart earlier that I have no
knowledge with [18] respect to the
destruction of any such documents if [19]
they existed.

[20] MR. CASTEL: Okay.

[21] MS. HUART: I understand that. I [22]
don't want to get into a semantic argu-
ment; but [23] there is a difference be-
tween existence, extent and [24] location
and destruction. I mean, I see a big

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[1] difference in those two issues. But, if
he doesn't [2] have any knowledge, so
there's really no point to [3] belabor it.

[4] MR. CASTEL: I think it is semantics,
[5] truly do; and I think the witness just
[6] to [6] the extent that you even can
breath a semantic [7] question in that he
has no knowledge of [8] destruction; but
I don't want somebody saying, "I [9] don't
know of the documents being
destroyed" as [10] somehow being a con-
firmation that the documents [11] ever
existed.

[12] The witness just simply does not
have [13] knowledge on that subject, so
he has testified.

[14] BY MS. HUART:

[15] Q: With respect to Paragraph B 9 of
the [16] subpoena duces tecum, we have
been told, and within [17] the context of
the September 23rd letter, that the [18]
database cannot be located, and that
there was a [19] computer, and it became
obsolete; and, quote, when [20] it was
shut down, its contents were eliminated
or [21] discarded, close quote.

[22] Were you involved in, in your [23]
capacity as custodian of records, did you
authorize [24] the destruction of the con-
tents of the computer.

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[1] MR. CASTEL: I'm going to object to
[2] the form of the question, but go
[3] ad.

[4] A: Subject to the objection, the
answer is [4] no.

[5] Q: Do you have any knowledge
regarding the [6] destruction of the con-
tents of the computer that [7] was shut
down?

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[8] A: I recall hearing what you describe
as [9] being told, and my knowledge is
just about that.

[10] Q: Okay. And just so the record is
clear, [11] Paragraph B 9 relates to the stat
sheets and [12] employees' exposure cal-
culations; and these [13] documents are
reflected in Appendix G to the [14] sub-
poena.

[15] MR. CASTEL: And for further [16]
clarification of the records, W. R. Grace
has [17] designated a witness on this sub-
category; and that [18] witness is not
Robert A Murphy, the deponent.

[19] MR. FERGUSON: Let me make a
point [20] here, if I may.

[21] I want the record to reflect that the
[22] first paragraph of the September
23rd letter [23] indicates clearly the
responses in the [24] September 23rd
letter are not exclusively and

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[1] all-encompassing Grace's position. It's
merely one [2] of a series of responses in
the continuum of [3] discovery and the
discovery process here, and the [4]
response of Grace is not contained solely
within [5] the September 23rd letter.

[6] MS. HUART: Well, Mr. Ferguson, is [7]
there a subsequent letter that elaborates
on, on [8] what happened to the database
that's referred to in [9] B 9?

[10] MR. FERGUSON: The database was
not [11] even the subject of the original
request. That was [12] provided in your
or Susman Godfrey's August 17th [13]
letter to me, which was further to my
August 16th [14] letter to you; and the
truth of the matter is, as [15] clearly indi-
cated, this is merely a further [16]
response to what was initially provided,
[17] reprocessed and refined through our
[18] communications.

[19] So to look at the September 23rd [20]
letter and say that that is Grace's
response is [21] inaccurate. Grace's
response is contained in its [22] full
response to the subpoena and its objec-
tions. [23] I just want the record to reflect
that.

[24] MS. HUART: Well, with respect to

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[1] Paragraph B 9 —

[2] MR. FERGUSON: We can —

[3] MS. HUART: Wait a second. Let me [4]
finish, finish what I'm going to say.

[5] I don't see the objection, I don't [6] see
that portion of the objection that per-
tains to [7] Paragraph B 9 of the sub-
poena. It's not, correct [8] me if I'm
wrong, but I don't think I see — I see [9]
paragraph B 5, B 6, B 7, B 8 and B 11
referred to [10] in the objection; but I
don't believe the objection [11] refers to
Paragraph B 9. And my questions right

[12] now are solely related to Paragraph
9.

[13] MR. MILLER: The objection is [14]
directed to production of documents in
response to [15] the subpoena.

[16] The particular documents under B 9,
[17] we're not aware of any. So there
wasn't any reason [18] to object. There
was nothing for us to produce. [19] It is
explained, as Dillon told you, in the en-
tire [20] series of the correspondence
between the parties.

[21] I don't know if there's anything [22]
subsequent. There are certainly prior let-
ters, and [23] there are prior requests
which don't track exactly [24] the sub-
poena; and I think his only point: You've

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[1] got to read this all together and in
context in [2] order to under the position.
And that's the point [3] he wanted to
make clear on the record.

[4] This witness, I think, you've [5] ex-
hausted your questions on the subject
of this [6] witness anyway, so maybe we
ought to move on.

[7] MS. HUART: As I said before, I think
[8] it's appropriate to ask to study the
records [9] regarding his knowledge of
destruction.

[10] MR. MILLER: You have. We're not [11]
arguing about that, I don't believe.

[12] We pointed out there is a witness [13]
designated, but we've allowed you to
ask those [14] questions, and you've
received the answers.

[15] MR. CASTEL: One second.

[16] THE WITNESS: The court reporter
[17] wants to stop for one moment,
please.

[18] MS. HUART: Sure. Can we take a [19]
five-minute break at this point.

[20] THE WITNESS: Off the record for a
[21] second.

[22] (Discussion off the record.)

[23] MS. HUART: Let's go on the record.

[24] BY MS. HUART:

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[1] Q: Mr. Murphy, let me just make sure
the [2] record is clear, that, regarding
these items that I [3] understand you
have not been designated as the [4] per-
son who is most knowledgeable, I have
asked you [5] questions just trying to
probe your knowledge [6] regarding the,
whether certain documents have been
[7] destroyed; and I have limited those
questions to [8] Paragraphs A 3, 4, B 7, B
9 of of the subpoena [9] duces tecum.

[10] Can you just tell me that, with [11]
respect to those, with respect to those
items, have [12] you taken any steps at all
to respond, you [13] yourself, I mean,
have you taken any steps to [14] respond

to the subpoena duces tecum regarding those (15) items?

(16) A: Yes.

(17) Q: What have you done?

(18) A: I've participated in conversations with (19) counsel and with, I believe, two former Grace (20) employees, and one current Grace employee, with (21) respect to some of these items.

(22) Q: Who did you speak with regarding the (23) database for the Organic Chemicals Division? That (24) would be items A 3 and 4.

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(1) A: Yes, my recollection is, and I'm not (2) crystal clear on this, that that subject came up in (3) conversations with counsel, and counsel being Texas (4) counsel and perhaps Matt Murphy. And I may have (5) had a conversation with Mr. Eschenbach about it. I (6) am not a hundred percent sure of that. I think I (7) did.

(8) Q: Okay. Have you or anyone else checked (9) with the location in Nashua where it used to be (10) located?

(11) A: I did not. I believe others have made (12) such inquiries.

(13) Q: Okay. With respect to B 7, which is the (14) NIOSH study, have you personally taken any steps to (15) respond to the subpoena on that item?

(16) A: I don't think so.

(17) Q: With respect to item B 9, which is the (18) computer, have you personally undertaken any steps (19) to respond to the subpoena on this item?

(20) A: Yes.

(21) Q: What did you do?

(22) A: Again, I had conversations with counsel; (23) and in this instance, in addition to perhaps (24) talking with local Texas counsel, I may also have

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(1) talked with at least one in-house counsel; and I (2) spoke with Mr. Lovick and Mr. Walter about whether (3) or not stat sheets and employee exposure (4) calculations existed.

(5) I don't recall talking with them, I (6) don't recall talking with Mr. Walter, at least, (7) about any database.

(8) Q: Do you know who the source is for the (9) information that we received from local counsel (10) regarding the contents of that computer being (11) eliminated or discarded?

(12) A: Do I? No.

(13) Q: Do you know the source of that (14) information?

(15) A: No, I don't know who local counsel's (16) source is of that information, no.

(17) Q: With respect to the subpoena item B 9, (18) excuse me, B 10, which is the McGill study (19) computerized employee history file, it's referred (20) to in Appendix H to the subpoena, to your (21) knowledge, has Grace produced all the documents (22) pertaining to this particular database?

(23) A: I don't know.

(24) MR. MILLER: What database? As

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(1) you've used that term.

(2) MS. HUART: Well, it's referred to in (3) the Grace documents and specifically in Bates No. (4) 0620980 as a computerized employee history file. (5) If you look at that Appendix H, you'll see that it (6) actually is a printout of a computer run.

(7) MR. MILLER: Okay. I'm sorry.

(8) BY MS. HUART:

(9) Q: The response that we received from local (10) counsel is that Grace did not have control over the (11) database. Do you know who does have control over (12) it?

(13) A: No.

(14) Q: Do you know how Mr. Lovick was able to (15) access this database as it's reflected in Appendix (16) H to Exhibit 3?

(17) MR. CASTEL: I'm going to object to (18) the form of the question in its use of the word (19) "access."

(20) There is a document. It doesn't (21) necessarily mean that he accessed something.

(22) A: I can't follow your question. What (23) should I be looking at?

(24) Q: If you'll turn to Exhibit H for a moment,

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(1) and I'm going to do the same, as soon as I find (2) it. Okay.

(3) In the first paragraph of document (4) Bates numbered 0620980, dated September 17th, 1985, (5) Mr. McKaig, M-c, capital K-a-i-g, wrote to (6) Mr. Walsh that, and this is in the first paragraph, (7) "Earl Lovick returned from his trip, and I had him (8) research this statement using the McGill study (9) computerized employee history file."

(10) The foundation for my question is (11) that particular statement that Mr. Lovick was able (12) to access the database even though — well.

(13) MR. CASTEL: Well, I don't want to (14) argue with you, but I don't get to that question (15) from that statement in the letter.

(16) He is looking at a file. File (17) implies, particularly in 1985, hard copy of a (18) document. It doesn't mean going on line and (19) doing accessing a database.

(20) If you have some information that (21) that's the case, that's a different story; but I (22) don't get that from the document you just quoted.

(23) But why don't we get to questioning (24) of the witness and just put a question to him and

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(1) see what he says.

(2) Q: Well, I asked my question: Who has (3) control over it? And the response to that question (4) was that Mr. Murphy doesn't know.

(5) And then I asked how it could be (6) accessed by Earl Lovick who is a Grace employee; (7) and that's when, that was, I believe, the question (8) that is pending.

(9) MR. CASTEL: Well, okay. I stand on (10) my objection to the form of the question; and it (11) assumes all sorts of facts for which I don't think (12) there's any basis to assume; but if the witness has (13) anything to say on the subject, I'd be delighted to (14) have him respond.

(15) A: What I can say, because I know it, is (16) that Mr. Lovick worked with Dr. McDonald and others (17) from Dr. McDonald's team and with Mr. Amandus and (18) people from NIOSH in collecting and providing (19) information that they utilized in their work at (20) Libby.

(21) Q: With respect to Paragraph B 12, which is (22) a telegram from one of the insurance companies, and (23) B 14 — Well, let me just take them one at a time.

(24) With respect to Paragraph B 12 of the

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(1) subpoena, did you participate in undertaking to do (2) anything to respond to that particular paragraph of (3) the subpoena? The telegram itself is listed in (4) appendix N to Exhibit 3.

(5) A: Yes, I'm looking at that now.

(6) MR. CASTEL: And you're representing (7) that this was a telegram?

(8) MS. HUART: It was produced from (9) Grace's files, I believe —

(10) MR. CASTEL: No, no, I see the (11) document, and I don't have any quarrel with that. (12) I'm just asking if you're representing that it was (13) a telegram, that's all.

(14) MS. HUART: Well, it looks like a (15) telegram.

(16) MR. CASTEL: Okay.

(17) MS. HUART: That's conjecture on my (18) part.

(19) THE WITNESS: What is the question (20) now, please?

(21) Q: Well, my question is, Did you do anything (22) to respond to this particular paragraph of the (23) subpoena?

(24) Did you undertake to do any kind of a

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(1) ...ch or attempt to respond to this paragraph? (2) I'm specifically just trying to find out if you (3) talked to the people at the insurer's office or (4) undertook to do some kind of a search.

(5) A: I don't recall doing anything (6) specifically with respect to this paragraph unless, (7) and I don't have all the information in front of (8) me, unless it's encompassed by the, you know, the (9) reference to exposure index or indices; and in that (10) regard, I did speak, as I said to you already, to (11) Mr. Lovick and to Mr. Walter; but I don't recall (12) doing anything specifically with respect to (13) Paragraph 12, or B 12.

(14) Q: With respect to Paragraph B 14, is that (15) the one you were referring to, that you did speak (16) to Mr. Lovick and Mr. Walter, with respect to the (17) work history, fiber exposure estimate study?

(18) A: No, I think I had reference to the (19) exposure index that's referred to in Paragraph B (20) 13.

(21) Q: Oh, okay.

(22) Have you already told me what you did (23) in response to Paragraph B 13?

(24) A: I think so. I said I talked to

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(1) Mr. Walter and Mr. Lovick as to their recollections (2) about such lists or indices, or studies, whatever (3) word one wants to use.

(4) Q: Okay. And with respect to B 14, did you (5) undertake to do anything?

(6) A: You know, I think that it was probably a (7) more general conversation; and my, I can't recount (8) it for you exactly — not that I would anyway, (9) because it's probably work product — but I think (10) my conversation with them was more general. You (11) know, what do you remember about lists, indices, (12) with respect to exposures or work with (13) Dr. McDonald?

(14) It was that type of a conversation.

(15) Q: Okay. Well, these, the insurance (16) telegram paragraph and the one relating to work (17) history, fiber exposure, these are all, these were (18) all requests that were deemed too general to (19) respond to; and I was just attempting to determine (20) what was done in order to try to respond to those.

(21) A: Well, I've told you as best I can recall (22) what I did.

(23) Q: Yes. Beyond providing the documents that (24) form the basis for the request, I don't know what

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(1) else we could do to try to be more specific, try to (2) determine what is available.

(3) What, if anything, did you do to (4) respond to Paragraph C 20 regarding the TEVCO (5) documents.

(6) MR. CASTEL: T-E-V-C-O, solid caps.

(7) A: I participated in discussions about it (8) with counsel. I don't recall doing anything else.

(9) Q: Was there a perlite pit at that (10) particular location?

(11) A: I'm recalling. I'm recalling, I did (12) something else or caused to have it done.

(13) I talked with one person who visited (14) that facility, and I had, either I or, at my (15) direction, one of my associates spoke with at least (16) one other person who made a visit to that site as (17) part of the sweep to see what, if anything, they (18) knew about any place called a perlite pit or the (19) archives.

(20) Q: Mm-hmm.

(21) A: And it was the proverbial dry hole.

(22) Q: When, do you have an approximate time (23) frame for when the documents would have been taken (24) from TEVCO during the sweep?

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(1) A: Best I can give you now is that was in (2) the summer of the sweep; and wasn't that 1984, as I (3) recall? Sometime around then.

(4) MR. CASTEL: For the reporter, (5) perlite is per-l-i-t-e.

(6) Q: Have there been any subsequent return (7) visits to TEVCO to determine whether there are any (8) other documents?

(9) A: I don't, I don't know.

(10) Q: So to your knowledge, was the sweep in (11) 1984 the last time somebody reviewed the Dallas (12) location for asbestos-related documents?

(13) A: That's my memory as I sit here.

(14) Q: Does Grace maintain documents — strike (15) that.

(16) Did Grace obtain asbestos-related (17) documents from the Houston office of Vermiculite (18) Products, Inc.?

(19) A: My recollection is that that was visited; (20) and certainly if there were any documents that were (21) responsive, they would have been collected and (22) reviewed.

(23) But you know, I don't have an (24) independent memory now as to what, if anything, was

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(1) obtained as a result of the visit.

(2) Q: Would the Vermiculite Products search be (3) done at approximately the same time frame as TEVCO?

(4) A: If it was visited, it would have been (5) approximately the same time, be-

cause all of these (6) visits were done over several months in, as I (7) recall, the late spring, summer, early fall of (8) 1984.

(9) Q: Well, to the extent that there might be (10) additional later generated documents or even newly (11) discovered documents pertaining to the asbestos (12) litigation, does Grace have the authority to obtain (13) further documents from TEVCO or Vermiculite (14) Products, Inc.?

(15) A: I don't know.

(16) MS. HUART: Well, I guess, to the (17) extent that it's possible, we would like to make a (18) request on the record that whatever additional (19) asbestos-related documents that pertain to TEVCO or (20) Vermiculite Products, Inc. be produced to us.

(21) BY MS. HUART:

(22) Q: Do you know who would know whether Grace (23) has the authority to obtain such documents from (24) companies who formerly manufactured Grace products?

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(1) A: Presumably someone in house would know (2) the answer to that.

(3) Q: With respect to Paragraph B 11 of the (4) subpoena, did you participate in doing anything to (5) respond to that particular paragraph? And that, (6) for the record, is the one pertaining to printouts (7) of prior Workers Compensation claims that were (8) referred to in Appendix M of Exhibit 3.

(9) A: My recollection is that I participated in (10) conversations with counsel about it. I don't (11) believe I did anything else.

(12) And there was a dispute, I guess, as (13) to whether that meant there was a printout or what (14) in fact it did mean.

(15) MR. CASTEL: I believe an objection (16) has been asserted as to this item in the subpoena.

(17) MR. MILLER: Yes, that's correct.

(18) Q: The same question with respect to C 18, (19) which I understand has also been objected to.

(20) MR. CASTEL: Bingo.

(21) Q: And that particular paragraph of the (22) subpoena refers to the minutes of the meetings of (23) various — I'm sorry.

(24) A: Again, I believe I participated in

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(1) conversations with counsel about it, and I do not (2) believe I did anything else.

(3) Q: Have you reviewed those minutes that are (4) referred to in that paragraph and Appendix K?

(5) MR. CASTEL: Let me just note for the (6) record a couple of points.

[7] Number one, this witness has not been [8] designated with regard to this subject area; number [9] two, this is a subject as to which Grace has [10] asserted an objection in its objections.

[11] That having been noted, I don't know [12] why this witness is now being asked about it; but [13] if you have any knowledge, go right ahead.

[14] A: I don't recall reading any minutes of any [15] audit committee or any committee on corporate [16] responsibility. I have a recollection of seeing [17] board minutes. I don't recall reading any where [18] the, quote, asbestos problem, close quotes, was [19] discussed.

[20] Q: With respect to Paragraph D 20, you may [21] want to refer to Exhibit 11, which is the [22] August 17th letter from local counsel; and the [23] attachment to that letter might help you.

[24] MR. FERGUSON: I'm sorry, where are

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[1] you?

[2] MS. HUART: I'm asking, I'm moving on [3] to Paragraph D 20.

[4] MR. FERGUSON: D as in dog?

[5] MS. HUART: Correct.

[6] MR. FERGUSON: Well, subpoena doesn't [7] have a category D 20.

[8] MS. HUART: Excuse me, I'm sorry. [9] I'm sorry. It's a typo.

[10] Yes, it does. Yes, it does. The [11] subpoena has a paragraph, or at least it does on my [12] copy.

[13] MR. FERGUSON: Exhibit 1 has got a C [14] 20. The first enumeration under D is little Roman [15] numeral XXIII.

[16] MR. CASTEL: That's the way it is on [17] my copy.

[18] MS. HUART: Yes, and then the next [19] one right after that is 20.

[20] MR. CASTEL: No, I have 24. Under D.

[21] MS. HUART: I'm sorry. I must be [22] looking at an older version.

[23] MR. FERGUSON: There's a typo in that [24] D 20 on Exhibit B.

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[1] MS. HUART: Ycs.

[2] MR. FERGUSON: That has reference to [3] microfilm set up, medical records for NIOSH.

[4] MR. CASTEL: That's Exhibit B, [5] though.

[6] MR. FERGUSON: Yes, that's B.

[7] MR. CASTEL: Right.

[8] MS. HUART: Yes, I'm looking at [9] Exhibit — yes, I'm sorry, I'm looking at Exhibit [10] B, Paragraph D, entitled Microfilm documents, page [11] 3 of the exhibit; and it's Paragraph, the first one

[12] is numbered 23, the second one is misnumbered 20. [13] But that's the the number I'm going by. I guess [14] whatever number we want to call it, the microfilm [15] set of medical records created for the NIOSH [16] study.

[17] MR. CASTEL: And what is the [18] question?

[19] Q: Okay, if you will look at the Exhibit 11 [20] and turn to page 9 of the attachment to that [21] letter?

[22] MR. CASTEL: The ninth attachment [23] or —

[24] MS. HUART: This is page 9 of the

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[1] attachment. The Bates number is 15083161.

[2] MR. CASTEL: Got it.

[3] Q: Okay. There was no objection lodged to [4] this particular paragraph, as far as I know, of the [5] subpoena; and I'm trying to determine what, if [6] anything, you participated in to respond to that [7] particular paragraph.

[8] A: Are you finished?

[9] Q: Yes.

[10] A: I don't recall any participation by me [11] with respect to that paragraph.

[12] Q: I take it then you don't have any [13] knowledge about what company records were [14] microfilmed or subject of computer transfer in your [15] capacity as records custodian?

[16] A: For this morbidity and mortality study, [17] that's correct.

[18] Q: Okay. And is it also true that, in your [19] capacity as records custodian, you don't have any [20] knowledge about the final computer tape that's [21] referred to on page 12?

[22] A: I'm sorry, you'll have to repeat the [23] question because the court reporter didn't follow [24] it.

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[1] Q: Okay. In your capacity as custodian of [2] records, do you have any knowledge about the final [3] computer tape that was to be supplied to Grace in [4] accordance with page 12 of that document?

[5] A: No, I don't.

[6] Q: Okay. So in your capacity as custodian [7] of records, you —

[8] A: In any capacity, I don't know anything [9] about it.

[10] Q: Okay. You didn't participate in [11] determining the existence of this computer tape for [12] the purposes of responding to the subpoena?

[13] A: As I said earlier, I have no recollection [14] of any participation with respect to this [15] paragraph.

[16] Q: With respect to the Workers Compensation [17] documents, are the

documents being produced to us, [18] and I include the six-box collection that was [19] previously produced, and then later the additional [20] two boxes we received in Houston, are we receiving [21] only cases that are closed; or are we also [22] receiving documents pertaining to ongoing claims [23] and claims that have been filed but not resolved?

[24] A: As I believe I told you on day one of

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[1] this, I don't know what you were provided because [2] the documents that were sent to you in Texas did [3] not pass through this office. They went from [4] Lexington to Boca Raton, to Houston. So I can't [5] answer the question.

[6] Q: With respect, can you answer the question [7] with respect to the six boxes of Workers [8] Compensation documents traditionally maintained at [9] the Winthrop Square repository?

[10] A: The question being, Are those closed [11] claims or open claims?

[12] Q: Correct. Are they limited to closed [13] cases, or do they include open and ongoing claims?

[14] A: I believe those would be closed claims [15] because they were — well, let me stop and say, you [16] know, I don't know what necessarily open and closed [17] means. If it means, is Grace paying on a claim, or [18] is the insurer paying on a claim at present? then I [19] can't answer the question as to whether it's open [20] or closed because I don't know the status of the [21] payments, if any, with respect to each of those [22] cases.

[23] But the latest document, as I recall, [24] that was at Winthrop Square was 1988. So in, from

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[1] that, one might say that it's a closed claim as [2] opposed to a current claim. But I make the [3] qualification, and I have no idea what the status, [4] if any, is of payments on those claims.

[5] Q: Okay.

[6] MS. HUART: Well, to the extent that [7] those records might be limited to those cases and [8] claims that are closed and resolved and not include [9] cases that have been filed or are ongoing, I want [10] to make sure that our record request is broad [11] enough to encompass open, nonresolved claims as [12] well.

[13] BY MS. HUART:

[14] Q: Do Grace lawyers keep the exhibit [15] notebooks that are exchanged when Grace goes to [16] trial in asbestos cases?

[17] MR. CASTEL: Object to the form of [18] the question. I don't know what you're talking [19] about.

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(20) Q: Well, when Grace goes to trial in an asbestos-related case and the plaintiffs give Grace (22) a copy of their exhibit, trial exhibits, which are (23) generally kept in binders — I don't know how most (24) people do it; that's how we do it — my question

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(11) is: At the conclusion of that trial, does Grace (2) maintain those plaintiff exhibit binders or (3) collections of plaintiffs exhibits used at trial (4) against Grace?

(5) A: I can't answer what other law firms do (6) with the exhibits that are used against Grace in (7) cases that they are defending. So I guess I can't (8) answer your question.

(9) Q: So Grace itself does not remain a (10) repository of documents used against it at trial, (11) is that correct?

(12) A: I'm not sure.

(13) Q: Well, is this one of these situations (14) that's similar to documents, documents reviewed in (15) camera and deemed nonprivileged, where you'd have (16) to go around and talk to every single local counsel (17) in order to answer the question?

(18) Would exhibit notebooks be treated the same way?

(19) MR. MILLER: I'm not following you, (21) Holly.

(22) MS. HUART: Okay.

(23) MR. MILLER: I'm not sure which (24) question you're asking him he would have to go to

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(1) local counsel to find out about, but I don't think (2) it's the same as privileged documents.

(3) I think we are getting out of the (4) area that Mr. Murphy is designated for and into (5) what may be work product, if you're talking about (6) anything other than the documents in his custody at (7) Winthrop Square.

(8) MS. HUART: Well, as the records (9) custodian for Grace, I'm trying to determine —

(10) MR. MILLER: Record custodian for (11) Grace, that's not what he is. He's designated in (12) specific categories; and that's not one of them, I (13) don't think.

(14) MS. HUART: Well, as the records (15) custodian for Grace in producing documents to (16) plaintiffs in asbestos litigation, I'm trying to (17) determine if he has any knowledge regarding (18) plaintiffs' exhibits used against Grace in trial.

(19) MR. MILLER: All I'm saying is I (20) think he should answer in his capacity as custodian (21) for whichever portions of the records he is the (22) custodian for and not in his capacity as sometimes (23)

outside counsel in litigation that might involve (24) work product.

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(1) I think he's already answered that he (2) doesn't know.

(3) If he has anything to add in his (4) capacity as records custodian, that's fine.

(5) Q: Have you answered the question, (6) Mr. Murphy?

(7) A: Why don't you ask me the question again, (8) so I can be sure I've answered whatever question it (9) is you're putting in front of me.

(10) Q: All I'm trying to find out is whether, in (11) your capacity as records custodian, there is a (12) stash of exhibits that plaintiffs have used, (13) plaintiffs' exhibits, used in trial against Grace (14) in previous cases.

(15) A: That's very difficult to answer.

(16) You say in my capacity as records (17) custodian. I mean, you know, I have, and I'll try (18) to answer the question as you phrase it, in my (19) capacity, whatever it be, records custodian or (20) denoted to be responsible for the records, such (21) exhibits don't come into our possession; and in (22) that capacity, I don't believe I have any (23) knowledge, that I've acquired any knowledge with (24) respect to plaintiffs' exhibits used against Grace

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(1) in litigation.

(2) I do have knowledge in my capacity as (3) national counsel for personal injury cases or as a (4) lawyer who's represented W. R. Grace in both (5) personal injury and property cases.

(6) Q: Would your response be the same if I (7) asked you the question as to exhibit lists and not (8) the specific documents themselves?

(9) A: Yes.

(10) Q: With respect to, and I know you could (11) answer this particular question, because this (12) pertains exclusively to the documents at Winthrop (13) Square — let me just restate it.

(14) If I go to the Winthrop Square (15) repository and look through a box, find a document, (16) tag it for copying, and ultimately obtain that (17) document, and a year later or two years later go (18) back to the repository and look in that same box, (19) and that document isn't there, can you account for (20) how that happens in your capacity as record (21) custodian for the Winthrop Square collection?

(22) MR. CASTEL: I'm going to object to (23) the form of that question.

(24) I don't see how any witness could

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(1) answer a question phrased in that fashion. Maybe (2) Mr. Murphy will be different.

(3) A: I could not answer as to any particular (4) document. If you were to say to me: I saw such (5) and such a document two years ago; and I went back (6) last month, and it's not there now. Why not? I (7) don't believe I could answer that question.

(8) The general answer would be it got (9) misfiled, it came back to us from the copy service (10) in a place different from where it was sent to the (11) copy service, a plaintiff attorney stole it, (12) somebody dropped it on the floor when they were (13) making a copy of it and didn't pick it up — human (14) error.

(15) Q: With respect to Grace's computerized (16) search capability, without telling me what it is, (17) what it involves, can you tell me whether it allows (18) for full text retrieval or — let me just leave the (19) question there — can you tell me whether it allows (20) for full text retrieval?

(21) MR. CASTEL: Well, I'm going to (22) object and advise the witness that he need not and (23) should not disclose any information concerning (24) work-product means which Grace either has or, to

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(1) the contrary, does not have in defending in this (2) litigation.

(3) Whether Grace has or does not have (4) capabilities of the sort that you described is work (5) product and, as I understand it, not a valid (6) subject of inquiry; and I would ask for guidance (7) from Mr. Miller as well on that subject.

(8) MR. MILLER: I agree completely; and (9) I'd just like to point out also, whether it's an (10) objection to the form or not, that your question is (11) inherently contradictory.

(12) You started off by saying you didn't (13) want to ask about the work-product capability, and (14) that's exactly what you do; so I join in (15) Mr. Castel's objection and instruct the witness (16) that he should not answer in a way that will reveal (17) work product.

(18) MS. HUART: Well, I didn't say, I (19) didn't say it quite that way. What I said was he (20) can answer the question without telling me about (21) your computerized search capability.

(22) All I was trying to determine was (23) whether it was, whether it was organized by search (24) field or full text.

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(1) MR. MILLER: Well, I think, I (2) continue to think that's inherently contradictory.

(13) It seems to me you're doing exactly (14) what you suggested you didn't want to do, or what (15) you're telling him he doesn't need to do. So I (16) don't think it's a proper question.

(17) MR. CASTEL: And whether Grace has no (18) computers or a lot of computers or a computer (19) database or has refrained from expending the money (110) to have a computer database or has expended the (111) money to have a computer database but limited the (112) capabilities of that database or any of that (113) strikes me as attorney work product, which is not (114) fair game for inquiry in this proceeding.

(115) BY MS. HUART:

(116) Q: Mr. Murphy, could you turn, please, to (117) Exhibit 7.

(118) MR. CASTEL: We're at Exhibit 7.

(119) MS. HUART: Okay.

(120) Q: I will represent to you that this is the (121) memorandum that I handed to Mr. Matt Murphy of your (122) office during the course of our October '93 (123) production. And it was also later provided to (124) Mr. Ferguson, to local counsel.

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(11) In this memorandum, I have listed (12) files from reviewing the 25,000-page inventory that (13) I was unable to locate or at least could not track (14) into the boxes in the repository; and I provided (15) this memorandum to Mr. Matt Murphy, asking him, if (16) I identified the Eschenbach files that I'm (17) interested in seeing, can you pull them from your (18) end?

(19) And he said: Well, I'll have to get (110) back to you on that; and he never — well, we (111) ultimately did get a response.

(112) My question is: Aren't these (113) Eschenbach documents maintained by Grace in a way (114) that's analogous to the way they're listed in the (115) 25,000-page inventory?

(116) MR. CASTEL: I would just say to the (117) witness, if he can answer that question without (118) revealing attorney work product, he may do so.

(119) If answering that question would (120) disclose trial preparation materials, attorney work (121) product, material prepared in contemplation of (122) litigation, that, as I have been instructed by (123) Texas counsel, he would not need to respond to that (124) question.

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(11) A: I think I can say this without reference (12) to work product: That I don't know the answer to (13) your question, because it would depend on when the (14) documents denoted as they are here were reviewed by (15) the paralegals. They may or may not have been

reviewed sequentially, consecutively, one day after (17) the other; and they may not, therefore, have been (18) placed in boxes that are near each other.

(19) So I, you know, I can't answer your (110) question. Or another way of answering it, as I (111) recall it, is not necessarily would they be found (112) together.

(113) Q: Did you participate in responding to our (114) request for these Eschenbach documents as embodied (115) in this redacted memorandum?

(116) MR. MILLER: What request? You're (117) referring to the, an exhibit that you handed (118) someone as opposed to a formal discovery request?

(119) MS. HUART: Well, this was a (120) follow-up to — we were at the repository in (121) conjunction with the formal discovery request.

(122) I was given access to the inventory (123) index. I attempted to use it to locate documents (124) of interest to us. I was unable to do so and

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(11) prepared a memorandum which in redacted format I (12) handed to Matt Murphy.

(13) All I'm trying to find out is, did (14) Mr. Robert Murphy play any role in responding to my (15) request of, Can we get possession of the documents (16) the way that they are listed here from some other (17) source, other than what, the way that they are (18) maintained in the repository?

(19) MR. CASTEL: I'll object to the form (110) of the question; but if you can answer it, go (111) ahead.

(112) A: I'm pausing not because I don't know the (113) answer, but because I'm turning around in my head (114) whether, if I had participated in it, whether that (115) wouldn't have been a privileged communication (116) between me and Mr. Murphy.

(117) However, the answer is I don't recall (118) and don't believe that I participated in responding (119) to your request.

(120) MS. HUART: Off the record.

(121) (Discussion off the record.)

(122) MS. HUART: Back on the record.

(123) BY MS. HUART:

(124) Q: Mr. Murphy, we requested in Paragraph C

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(11) 19 of the subpoena lists of library holdings of (12) Grace, and we did receive a copy of some, what's (13) referred to as a compilation of Grace library (14) holdings. There is an offer by local counsel for a (15) copy of the lists themselves.

(16) What is there beyond the library (17) holdings that would disclose to us the contents of (18) the library, or at least the

historical contents of (19) the Grace library?

(110) A: I guess I don't understand your (111) question.

(112) Q: Okay. As records custodian, what (113) documents are there that are available that (114) enumerate what was in the Grace library over the (115) course of the time that asbestos-containing (116) materials were made?

(117) A: I don't recall seeing anything in —

(118) Q: Did —

(119) A: Excuse me. (Continuing) — seeing (120) anything at Winthrop Square which, by way of a list (121) or an index that indicates what would have been in (122) any library at any particular time.

(123) Q: Did you participate in any way in (124) responding to Paragraph C 19 of the subpoena?

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(11) A: I believe I was involved in discussions (12) with counsel about that subject.

(13) Q: Well, we have been offered some (14) additional lists. I'm just trying to determine (15) what those lists contain. It sounds like you don't (16) know what those lists would contain.

(17) MS. HUART: To the extent that (18) they're responsive to our subpoena and they further (19) elucidate what's in the library of Grace and what (110) has been there, I'd like to make a request on the (111) record that we receive those lists.

(112) THE WITNESS: I do —

(113) MR. MILLER: The list.

(114) MS. HUART: This is the list referred (115) to in Paragraph 1 of the letter dated October 31, (116) 1994.

(117) MR. MILLER: Okay. Thank you. It's (118) not among the exhibits to the deposition. I just (119) wanted to have a reference. That's fine.

(120) MS. HUART: Since we were going (121) through the subpoena, I just wanted to make sure it (122) was included in what we discussed.

(123) BY MS. HUART:

(124) Q: Mr. Murphy, does Grace have any logs of

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(11) documents that were destroyed in accordance with (12) its document destruction policy?

(13) A: I don't know of any logs.

(14) Q: Are there any — I'm sorry, did you (15) finish your response?

(16) A: Yes.

(17) Q: Are there any records that Grace has (18) maintained that in any way pertain to the (19) destruction of Grace records?

(110) A: I believe Mr. —

(1) Q: In accordance with its document
(2) ruction policy or otherwise?

(3) A. I'm aware that Mr. Derico, whose
name I (14) mentioned earlier as the cus-
odian, if that's the (15) right term, of the
records in, that were in our, at (16) the
Construction Products Division in
Cambridge, (17) maintained at one time,
and perhaps still does, (18) index cards
which reflect what's there and, at one
(19) time, and I assume he still does, made
some sort of (20) record if a document or
documents were destroyed on (21) those
cards.

(22) MS. HUART: I'd like to make a (23)
request on the record for any docu-
ments pertaining (24) to the destruction
of records; and I include in my

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(1) definition of records any other form
of data (2) storage, computerized or
otherwise, to the extent (3) that those
records might pertain to (4) asbestos-re-
lated matters.

(5) THE WITNESS: And I don't know of
any (6) such records, because I don't
know of any such (7) documents that
were destroyed since my involvement (8)
in the — in representing W. R. Grace.

(9) MS. HUART: I think that concludes
n) questions of the witness.

(11) MR. CASTEL: The witness will read
(12) and sign.

(13) Thank you very much, everybody.

(14) MS. HUART: Off the record.

(15) (Discussion off the record.)

(16) (The deposition was concluded at
(17) 6:25 p.m.)

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DEPONENT'S ERRATA SHEET & SIGNATURE

The original of the Errata Sheet has
been delivered to P. Kevin Castel, Esq.
When the Errata Sheet has been completed
by the deponent and signed, a copy thereof
should be delivered to each party of record
and the original thereof delivered to
Molly J. W. Huart, Esq., to whom the
original deposition transcript was delivered.

INSTRUCTIONS TO DEPONENT

After reading this volume of your
deposition, indicate any corrections or
changes to your testimony and the reasons
therefor on the Errata Sheet supplied to
you, and sign it. DO NOT make marks or
notations on the transcript volume itself.

PLEASE REPLACE THIS PAGE OF THE TRANSCRIPT
WITH THE COMPLETED AND SIGNED ERRATA SHEET
WHEN YOU RECEIVE IT.

Page 280

COMMONWEALTH OF MASSACHUSETTS)

I, Sarah Zahar, Registered

Professional Reporter and Notary Public in and for
the Commonwealth of Massachusetts, do hereby
certify that there came before me on the 7th day of
December, 1994, at approximately 1:20 p.m., the
person hereinbefore named, who had been previously
sworn to testify to the truth and nothing but
the truth of his knowledge touching and concerning
the matters in controversy in this cause; that he
was thereupon examined upon his oath, and his
examination reduced to typewriting under my
direction; and that the deposition is a true record
of the testimony given by the witness.

I further certify that I am neither
attorney nor counsel for, nor related to or

employed by, any of the parties to the action in
which this deposition is taken, and further that I
am not a relative or employee of any attorney or
counsel employed by the parties hereto or
financially interested in the action.

In witness whereof, I have hereunto
set my hand and seal this day of December,
1994.

Sarah Zahar, Notary Public

My Commission expires:

February 2, 2001

FRITZ & SHEEHAN ASSOCIATES, INC

(continuation)

ATTACH TO DEPOSITION OF: ROBERT A. MURPHY, ESQ. (VOLUME II)
CASE: Block 145, Ltd., et al., vs. W. R. GRACE & CO.-Conn, et al.

ERRATA SHEET

INSTRUCTIONS: After reading the transcript of your deposition, please note any change or correction to your testimony and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Please sign and date this errata sheet (before a Notary Public, if required). Refer to page 279 of the transcript for errata sheet distribution instructions.

PAGE	LINE	CHANGE OR CORRECTION AND REASON
168	1	hear vice here Stenographic Error
185	20	logs vice laws Stenographic Error
208	13	Delete "the" Clarification
213	15	Delete "for" Clarification
247	2,6	Wolter vice Walter Stenographic Error
252	11,16	Wolter vice Walter Stenographic Error
253	1	Wolter vice Walter Stenographic Error
255	19-24	Delete entire answer. Insert: Correction
256	1	"No. That office was not visited during the sweep."
263	24	Delete "in." Clarification
264	3	that vice and Clarification
277	13	D'Errico vice Derico Stenographic Error

I have read the foregoing transcript of my deposition taken on December 7, 1994; and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

Robert A. Murphy
(Signature of Deposition)

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 3rd DAY OF January

1995 BY Notary Public

MY COMMISSION EXPIRES: 4-27-95

Jan 1st
com

MAYOR, DAY, CALDWELL & KEETON, L.L.P.

700 LOUISIANA, SUITE 1900
HOUSTON, TEXAS 77002-2778
(713) 225-7000

DILLON J. FERGUSON
PARTNER
225-7001

TELECOPY (713) 225-7047
TELEX 382813

September 23, 1994

Ms. Tracy K. Christopher
Susman & Godfrey, L.L.P.
1000 Louisiana, Suite 5100
Houston, Texas 77002-5096

VIA COURIER

Re: *Block 145, Ltd., AV America Grundbesitverwertungsgessellschaft MBH, Louisiana Walker, Ltd., Tower Ltd., Post Oak Tower, Ltd., and Hines Ranger Associates Limited v. W.R. Grace & Co.-Conn. and Vermiculite Products, Inc.; Cause No. 93-61850. In the 164th Judicial District Court, Harris County, Texas*

Dear Tracy:

Reference is made to your letter dated August 23, 1994, concerning the draft deposition notice furnished to us on August 18, 1994, and Grace's response to the items included in the draft Exhibit B to such notice which was previously furnished to us. This is to (i) furnish you with the names of persons within the W.R. Grace organization most knowledgeable about the subject matter items listed in the draft Exhibit A to deposition notice which was previously furnished to us and (ii) provide further response to the draft Exhibit B subpoena duces tecum and your follow-up questions concerning the same.

IDENTIFICATION OF PERSONS MOST KNOWLEDGEABLE:

Persons most knowledgeable about subject matter items in Exhibit A are the following, listed by letters and numbers corresponding to Exhibit A:

A (i) and (ii); B (viii); C (xxii); D (xxiii); and E (xxv)

• Robert A. Murphy

A (iii) and (iv); all of B except (viii); C (xvii); and D (xxiv)

• Harry Eschenbach

C (xv)

• Richard A. Senftleben

Ms. Tracy K. Christopher
September 23, 1994
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C (xvi)

- Grace will seek protection.

C (xviii)

- Robert B. Lamm

C (xix)

- Marjorie Metcalf and Jeanette Hamilton

C (xx)

- There is no Grace employee knowledgeable about such matters.

C (xxi)

- Since SBA documents are being separately produced to plaintiffs (SEE SUBPOENA DUCES TECUM ITEMS - C (xxi)), the inquiry in this area seems to be moot. If plaintiffs require a response, then (i) as to the portion of the inquiry dealing with the existence, extent and current location of any SBA documents, there is no Grace employee most knowledgeable and (ii) as to the portion of the inquiry dealing with the date on which the last SBA related documents were added to the Winthrop Square Repository, Robert A. Murphy is the party most knowledgeable.

SUBPOENA DUCES TECUM ITEMS:

Further responses to the items contained in draft Exhibit B and to your follow-up questions are presented below. The responses are listed by letters and numbers corresponding to Exhibit B.

A. Abatement Documents and Databases:

(i)(ii)

- Copies of the abatement documents which have been added to the Winthrop Square repository since October 1993 are being furnished to you contemporaneously under separate cover.

Ms. Tracy K. Christopher
September 23, 1994
Page 3

- The additions to the abatement binders are not limited to abatements that were completed by December 31, 1993. In addition, some documents from abatements for which notice was received before December 31, 1993 but which were completed in 1994 are included in the documents to be produced contemporaneously with this letter.
- Your August 23 letter misstates the manner in which abatement documents are maintained. Documents pertaining to current abatement are not maintained in a centralized location within Grace's legal department. Documents such as those contained in the asbestos abatement binders in the Winthrop Square repository are gathered annually and generally pertain to completed abatements.
- Grace has undertaken a review of its asbestos abatement activities in the United States and Puerto Rico for which documents have not yet been assembled and placed in Winthrop Square. None of the abatement efforts described in those documents involve removal of fireproofing materials. Though Grace maintains that it is not required to do so under applicable rules of discovery, because of your strong insistence and in order to avoid acrimony, Grace offers to accommodate your demands by obtaining and producing documents from Grace facilities where abatements have been completed or are ongoing and for which documents have not yet been assembled and placed in Winthrop Square. Please let us know if you continue to insist upon Grace's production of these documents.
- If abatement occurred during Grace's ownership of a subsidiary, documentation was collected and is in Winthrop Square. A listing of Grace's subsidiaries is attached to this letter.
- Grace will seek protection for documents regarding abatements outside the U.S. and Puerto Rico.

(iii)(iv)

- As indicated in our letter to you dated August 17, the Organic Chemicals Division of Grace was sold to Hampshire Chemical Corp. in December 1992. The asbestos removal database for the Organic Chemicals Division's Nashua facility was never part of the repository. If such a database exists, it is still in Nashua. Documents regarding abatements of the Organic Chemicals Division were added to the abatement documents

in the repository in January 1987, February 1989, June 1992 and October 1993.

B. Medical Records and Databases:

(v)(vi)

- Grace will produce post 1988 workers' compensation documents including both open and closed files. Those files are currently available for inspection and copying in Mayor, Day, Caldwell and Keeton's offices in Houston. Grace will continue to refuse to produce medical records because to do so violates applicable laws, including without limitation, the Americans with Disabilities Act.

(vii)

- Grace has no knowledge of the existence, whereabouts or disposition of the computer tape or the documents which were microfilmed.

(viii)

- The 1985 sweep of the company documents included all relevant, non-privileged documents from the vault. Copies of any relevant documents which came to the attention of Grace or its counsel, including from the vault, are included in Winthrop Square. Due to your assertion that Grace has left open the possibility that other relevant documents have been added to the vault, Grace is currently searching the contents of the vault for potentially responsive documents.

(ix)

- We are unable to locate a database. We have confirmed that there was a computer but it became obsolete and when it was shut down, its contents were eliminated or discarded.

(x)

- Grace never had control of the McGill study database. All Grace had were the employee files on which the study was based. Will you please inform us when and in what context Mr. Walsh attributed such control of this database to Grace.

(xii), (xiv)

- These descriptions are too general to effectively search Winthrop Square for them using all reasonably available means. We have made inquiry of persons who might have knowledge of such documents and they have no information that will enable us to locate the documents.

(xiii)

- Grace is still searching for these items.

C. Miscellaneous Asbestos-Related Documents and Databases:

(xv)

- We have reconsidered your request for documents in J. Peter Grace Asbestos files. We are in the process of reviewing the contents of such files and responsive, non-privileged documents will be produced for inspection and copying at Mayor, Day, Caldwell & Keeton's offices in Houston within the next few days.

(xvii)

- Emergency and Environmental Response logs, redacted as previously described, are available for inspection and copying at Mayor, Day, Caldwell & Keeton's offices in Houston.

(xix)

- Grace does not intend to withhold pre-1974 documents - it intends to produce them.

(xx)

- We have now examined Bates numbers 15109344 et. seq. and have located the reference to documents "buried" in the "archives"... "a section of our perlite pit." TEVCO documents were searched by lawyers in the course of preparation for litigation after the date of this document. Grace has no knowledge of any records which continue to be stored or archived in a perlite pit.

(xxi)

- Safe Building Alliance documents through mid-1992 are available for inspection and copying in Mayor, Day, Caldwell and Keeton's offices in Houston. Grace is currently searching materials from mid-1992 through a current date and will provide non-privileged, responsive documents for inspection and copying within the next few days.

(xxii)

- Our prior representation to you was never intended to include personal injury litigation in the statement that Grace was only ordered to produce documents for which it had claimed privilege in *Cullen Center*. On closer examination of property damage cases, we have located additional litigation in which a court undertook an in camera inspection of documents and determined some documents to be non-privileged. We are in the process of searching for additional documents and any documents determined to be non-privileged in property damage or personal injury cases and for which Grace does not intend to continue to assert privilege, will be produced for inspection and copying.

D. Microfilmed Documents:

(xxiii)

- Materials potentially responsive to this item have recently been discovered. Twenty-four spools of microfilm of the materials produced in the state, city and county cases in Maryland in 1985 were found. There is no index to this microfilm which consists of thousands and thousands of images. As we have discussed, this film was apparently Grace's copy of documents selected for copying by plaintiffs in the Baltimore County and State of Maryland litigation from documents produced by Grace to those plaintiffs. We understand that you are considering whether you desire copies of this film (or copies of the documents presented on the film) and that you will let us know your decision. If you determine that you require the film (or copies of the documents presented on the film), Grace will review the film and produce the non-privileged portions of the film. Review of the film will be a lengthy process which will be impossible to complete before Bob Murphy's deposition on October 7, 1994. Please let us know your decision as to whether you require anything further in this regard.

Ms. Tracy K. Christopher
September 23, 1994
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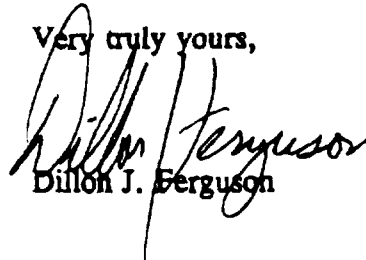
E. Other:

(xxiv [sic] xxv)

• Grace will continue to object to this request.

The above described documents that are in our possession are available to you currently and we will let you know when others are received. Please tell us when you wish to examine those documents and let us know any questions or comments you may have.

Very truly yours,



Dillon J. Ferguson

cc: Mr. Robert H. Beber (w/encls.).
Mr. Richard A. Senftleben (w/encl.).
Mr. P. Kevin Castel (w/encl.).
Mr. Daniel A. Hershman (w/encl.).
Mr. Matthew T. Murphy (w/encl.).
Mr. Robert A. Murphy (w/encl.).
Mr. Richard H. Caldwell (w/encl.)
Mr. Gary C. Miller (w/encl.)
Ms. Gail A. Bartlett (w/encl.)

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