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[CONFORMED]

Plaintiff's Exhibit WRG-187

# AGREEMENT AND PLAN OF MERGER

of

## WESTERN MINERAL PRODUCTS COMPANY

(a Minnesota Corporation)

INTO

## W. R. GRACE & CO.

(a Connecticut Corporation)

AGREEMENT AND PLAN OF MERGER dated December 16, 1966, between WESTERN MINERAL PRODUCTS COMPANY, a Minnesota corporation (herein called "Western") whose principal office and place of business is at 4725 Olson Highway, Minneapolis, Minnesota, and its directors or a majority thereof, and W. R. GRACE & Co., a Connecticut corporation (herein sometimes called "Grace" or the "Surviving Corporation") whose principal office and place of business is at 7 Hanover Square, New York, New York, and its directors or a majority thereof (said corporations being herein sometimes collectively referred to as the "Constituent Corporations").

WITNESSETH:

WHEREAS, the Board of Directors of each of the Constituent Corporations deems it advisable and to the general welfare and advantage of the Constituent Corporations and their respective shareholders that the Constituent Corporations merge into a single corporation pursuant to this Agreement and Plan of Merger (herein called "this Agreement") and the applicable provisions of the laws of the State of Connecticut and of the State of Minnesota;

NOW, THEREFORE, in consideration of the mutual agreements, covenants, conditions and provisions herein contained, and for the purposes of prescribing the terms and conditions of the merger (herein called the "Merger"), the mode of carrying the same into effect and such other provisions with respect to the Merger as are deemed necessary or desirable, the Constituent Corporations, in accordance with the applicable provisions of the laws of the State of Connecticut and of the State of Minnesota, hereby agree each with the other as follows:

1. **Merger.**

Western shall be, and hereby is, merged into Grace, which is hereby designated to be the surviving corporation and which said surviving corporation shall be governed by the laws of the State of Connecticut.

2. **Exchange of Shares.**

The manner of converting the shares of Western into the shares of the Surviving Corporation and the mode of carrying the Merger into effect shall be as follows:

(a) Each of the 211,800 shares of the capital stock, $1 par value, of Western (herein called "Western stock") issued and outstanding and held of record by shareholders other than Grace, shall be exchanged for and converted into .0897 of a share of Common Stock, $1 par value, of the Surviving Corporation;

(b) Each of the 10,100 shares of Western stock held in the treasury of Western and each of the 104,000 shares of Western stock held of record by Grace shall be cancelled and eliminated and no shares or other securities of the Surviving Corporation issued therefor;

(c) Each authorized share of the Preferred Stock, Class A Preferred Stock, Class B Preferred Stock, Class C Preferred Stock and Common Stock of Grace whether or not issued or outstand- [illegible] of the Merger shall remain unchanged;

(d) From and after the effectiveness of the Merger, each holder of an outstanding certificate or certificates theretofore representing shares of Western stock shall surrender the same to the Surviving Corporation or an agent appointed by it, and each such holder other than Grace, shall be entitled, upon such surrender, to receive in exchange therefor a certificate or certificates representing the number of full shares of Common Stock, $1 par value, of the Surviving Corporation into which the shares of Western stock theretofore represented by the certificate or certificates so surrendered shall have been converted as aforesaid; and

(e) No certificates or scrip representing fractional shares of the Common Stock, $1 par value, of the Surviving Corporation shall be issued upon the surrender for exchange of certificates representing shares of Western stock as provided for hereinabove. The Surviving Corporation shall, however, make appropriate arrangements either directly or through an agent or agents, for the sale, for the accounts of the holders of certificates representing, prior to the effectiveness of the Merger, shares of Western stock, of fractional shares of Common Stock, $1 par value, of the Surviving Corporation to which such holders are entitled or for the purchase by such holders of additional fractions of a share of the Common Stock necessary to make up a full share. All expenses connected with the purchase and sale of fractional shares by any shareholder of Western will be paid by the Surviving Corporation.

3. **Effect of Merger.**

As of the close of business December 31, 1966, for accounting and operating and tax purposes (herein called the "effectiveness of the Merger"), subject to the applicable laws of the State of Connecticut and the State of Minnesota:

(a) Grace and Western shall be a single corporation, which shall be Grace, the surviving corporation, and the separate existence of Western shall cease;

(b) The Surviving Corporation shall thereupon and thereafter, to the extent consistent with its Certificate of Incorporation as in effect upon the effectiveness of the Merger, possess all the rights, privileges, powers, immunities and franchises, as well of a public as of a private nature, of each of the Constituent Corporations; and all assets, property, real, personal and mixed, and all rights, privileges, powers, franchises and immunities and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the Constituent Corporations, shall be taken and transferred to and vested in the Surviving Corporation without further act or deed; and the title to any real estate, or any interest therein, vested in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger;

(c) All debts, liabilities and obligations of the Constituent Corporations shall become the debts, liabilities and obligations of the Surviving Corporation and the Surviving Corporation shall thenceforth be responsible and liable for all the liabilities, obligations and penalties, including liability to dissenting shareholders, of each of the Constituent Corporations; and any claim existing or action or proceeding, civil or criminal, pending by or against either of the Constituent Corporations may be prosecuted as if the Merger had not taken place, or the Surviving Corporation may be substituted in its place; and any judgment rendered against either of the Constituent Corporations may be enforced against the Surviving Corporation. The liabilities of the Constituent Corporations or of their shareholders, directors, or officers shall not be affected nor shall the rights of creditors or of any persons dealing with the Constituent Corporations or any liens upon the property of either of the Constituent Corporations be impaired by the Merger;

(d) Surplus of the Constituent Corporations which was available for the payment of dividends or of other distributions to shareholders immediately prior to the Merger, shall continue to be so available to the Surviving Corporation for such payments to the same extent as before the Merger;

(e) The Certificate of Incorporation and By-Laws of Grace, as existing and constituted upon the effectiveness of the Merger, shall not be amended in any manner by the Merger and shall be and constitute the Certificate of Incorporation and By-Laws, respectively, of the Surviving Corporation; but the Surviving Corporation hereby reserves and shall have the right to amend, alter, change or repeal its Certificate of Incorporation and By-Laws;

(f) The Board of Directors and officers of Grace upon the effectiveness of the Merger, shall be and constitute the Board of Directors and officers of the Surviving Corporation; and

(g) Any devise, bequest, gift or grant contained in any will or in any other instrument, made before or after the Merger, to or for the benefit of either of the Constituent Corporations shall inure to the benefit of the Surviving Corporation. So far as is necessary for that purpose, the existence of each of the Constituent Corporations shall be deemed to continue in and through the Surviving Corporation.

4. **Other Terms of Merger.**

(a) The Surviving Corporation hereby agrees that it may be served with process in Minnesota in any proceeding for enforcement of any obligation of Western as well as for enforcement of any obligation resulting from the provisions of Section 301.44 of the Minnesota Statutes 1965. The Surviving Corporation hereby irrevocably appoints the Secretary of State of Minnesota as its agent to accept service of process in any such suit or other proceeding and hereby specifies W. R. Grace & Co., 7 Hanover Square, New York, New York 10005 as the address to which a copy of such process shall be mailed by the Secretary of State of Minnesota, and in any such suit or proceeding service of process upon it may be made in any of the manners set forth in Section 303.13 of the Minnesota Statutes 1965;

(b) The stated capital with which the Surviving Corporation will begin business shall be $29,673,003; and

(c) Whenever a conveyance, assignment, transfer or any act, deed, or instrument is necessary or appropriate to evidence the vesting of property or rights in the Surviving Corporation the officers of Western shall execute, acknowledge, and deliver such deeds or instruments and do such acts as may be necessary or appropriate in the premises. For such purposes, the existence, capacity and authority of Western and its officers and directors shall be deemed to be continued notwithstanding the Merger.

5. **Representations and Warranties by Western.** Western represents and warrants to Grace as follows:

(a) Western is a corporation duly organized, validly existing, and in good standing under the laws of the State of Minnesota. Western is licensed or qualified as a foreign corporation in good standing under the laws of the States of Colorado, Nebraska and Wisconsin and neither the character or location of the properties owned by it nor the nature of the business transacted by it makes license or qualification in any other foreign jurisdiction necessary. Western has full power and authority to carry on its business as it is now being conducted and to own and operate its assets, properties and business. The copies of its Articles of Incorporation and all amendments thereto to date (certified by the Secretary of State of Minnesota) and of its by-laws as amended to date (certified by its Secretary) which have been delivered to Grace are true, complete and correct.

(b) The authorized capital stock of Western consists of 350,000 shares of common stock, par value $1.00 per share, of which 315,800 shares (excluding 10,100 shares held in treasury) are duly and validly issued and outstanding, fully paid and non-assessable. There are no outstanding subscriptions, options, warrants, calls, commitments or agreements relating to Western's authorized or issued common stock to which Western is a party or by which it is bound.

(c) Western has delivered to Grace a true and correct list of the names and addresses of each holder of its common stock and the number of shares held by each as of the date hereof.

(d) The following is a true and complete list setting forth (i) the name and jurisdiction of each corporation, a majority of the shares of the outstanding stock of which is owned or controlled, directly or indirectly, by Western (each such corporation herein being called a "Subsidiary" and all of said corporations being herein called "Subsidiaries"); (ii) the jurisdictions in which each Subsidiary is licensed and qualified to do business as a foreign corporation, (iii) the authorized capital stock of each such Subsidiary, (iv) the number of shares of each class of capital stock of each Subsidiary outstanding, and (v) the number of shares of each such class owned or controlled by Western:

| | | | Shares of Capital Stock | | |
|---|---|---|---|---|---|
| Name | Jurisdiction of Incorporation | Jurisdictions in Which Qualified | Authorized | Outstanding | Owned or Controlled by Western |
| Versi Products, Inc. | Minnesota | — | 2,500 ($10.00 par value) | 100 | 100 |
| Perl-Tile Company | Minnesota | Iowa<br>North Dakota<br>Wisconsin | 10,000 preferred stock ($1.00 par value) | 5,000 | 5,000 |
| | | | 15,000 common stock ($1.00 par value) | 5,000 | 5,000 |

Each Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation. Each Subsidiary is licensed or qualified as a foreign corporation in good standing under the laws of the jurisdictions specified above, and neither the character or location of the properties owned by it nor the nature of the business transacted by it makes license or qualification in any other foreign jurisdiction necessary, other than the qualification of Perl-Tile Company in Illinois for the purpose of installing a roof deck near Moline, Illinois. Each Subsidiary has full power and authority to carry on its business as it is now being conducted and to own and operate its assets, properties and business. The copies of the Articles or Certificate of Incorporation and all amendments thereto to date of each Subsidiary (certified by the Secretary of State of such corporation's jurisdiction of incorporation) and of its by-laws as amended to date (certified by its Secretary) which have been delivered to Grace are true, complete and correct. All the issued and outstanding shares of stock of each Subsidiary owned by Western are validly issued and outstanding, fully paid and non-assessable, and are free and clear of all liens, encumbrances, options, calls, commitments or other agreements.

Except for the Subsidiaries, Western does not have any affiliate or subsidiary, nor does it own any stock, bonds or other securities of, or have any proprietary interest in, any other corporation, association or business organization, except that Western owns $1,000 principal amount of Minneapolis Stadium Bonds, $100 principal amount of Durox Company Bonds and 20 shares of common stock of Durox Company, and a membership in the Minneapolis Athletic Club. For the purposes of this paragraph (d), the terms "affiliate" and "subsidiary" shall have the respective meanings assigned to them in Rule 405 of the General Rules and Regulations of the Securities and Exchange Commission under the Securities Act of 1933 in effect as of the date hereof.

(e) The directors and officers of Western are as follows:

| Name | Office Held |
|---|---|
| Lawrence J. Venard | President and Director |
| Harvey W. Steiff | Vice President and Director |
| Clarence A. Pratt | Vice President and Director |
| V. S. Okerlund | Secretary, Treasurer and Controller |
| John H. Bishop | Director |
| Robert L. Eikenberry | Director |
| O. H. Johnson | Director |

(f) The following financial statements of Western and the Subsidiaries, copies of which have been delivered to Grace by Western, are true and complete:

(i) Balance Sheets of Western as at January 31, 1961, 1962, 1963 and 1964 and related Statements of Income and Retained Earnings for the four fiscal years then ended, certified by Boulay, Anderson, Waldo & Co., independent accountants;

(ii) Balance Sheet of Western as at December 31, 1964 and related Statement of Income and Retained Earnings for the eleven months then ended, certified by Anderson, Helgeson, Liesor & Thorsen, independent accountants;

(iii) Consolidated Balance Sheet of Western and Perl-Tile Company as at December 31, 1965, and related Consolidated Statements of Income and Retained Earnings for the year then ended, certified by Anderson, Helgeson, Lieser & Thorsen;

Each of the aforesaid balance sheets presents fairly, as of its date, the financial condition of the corporation or corporations to which it refers and each of the aforesaid statements of income and retained earnings presents fairly the results of the operations of such corporation or corporations for the period or periods which it purports to cover in conformity with generally accepted accounting principles applied on a basis consistent with that of prior periods. In addition, Grace has received the Consolidated Balance Sheet of Western and its Subsidiaries as at September 30, 1966 and the Consolidated Statement of Income and Retained Earnings for the 9 months period then ended, certified by Price Waterhouse & Co., independent accountants, referred to in Section 14 hereof. Said Consolidated Balance Sheet as at September 30, 1966 is herein referred to as the "Balance Sheet".

(g) Except as and to the extent reflected or reserved against in the Balance Sheet as at September 30, 1966, and to the extent reflected in the schedule delivered pursuant to Section 5(o) hereof, neither Western nor the Subsidiaries had as of September 30, 1966 any debts, liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise, and whether due or to become due, including, but not limited to, liabilities or obligations on account of taxes or other governmental charges, or penalties, interest or fines thereon or in respect thereof, and there is no basis for the assertion against Western or the Subsidiaries as of such date of any debt, liability or obligation, whether absolute, accrued, contingent or otherwise, of any nature or in any amount not fully reflected or reserved against in the Balance Sheet.

(h) Since September 30, 1966 there has not been:

(i) Any change in the condition (financial or otherwise), properties, assets, liabilities, business or prospects of Western or any Subsidiary, except changes in the ordinary course of business which in the aggregate have not been materially adverse;

(ii) Any damage, destruction or loss (whether or not covered by insurance) materially and adversely affecting the properties, assets, business or prospects of Western or any Subsidiary;

(iii) Any declaration, setting aside, or payment of any dividend or other distribution on or in respect of the capital stock of Western or any Subsidiary, any direct or indirect redemption, retirement, purchase or other acquisition of any of such stock, any issuance of shares of such stock or the granting, issuance or exercise of any right, warrant, option or commitment by Western or any Subsidiary relating to its authorized or issued stock, except that Western has declared and paid during January, June and September, 1966, dividends of 15¢, 7½¢ and 3¢ respectively, per share on its outstanding common stock;

(iv) Except as set forth on a schedule (certified by the Treasurer of Western) heretofore delivered to Grace, any increase in the compensation, or in the rate of compensation or commissions payable or to become payable by Western or any Subsidiary to any director, officer, salaried employee earning $10,000 per annum or more, salesman or agent or any general increase in the compensation or rate of compensation payable or to become payable to the hourly employees or salaried employees of Western or any Subsidiary earning less than $10,000 per annum ("general increase" for purposes hereof shall mean any increase generally applicable to a class or group of employees and does not include increases granted to individual employees for merit, length of service, change in position or responsibility or other reasons applicable to specific employees and not generally to a class or group thereof), or any employee hired at a salary in excess of $10,000 per annum, or any payment of any bonus, profit sharing or other extraordinary compensation to any employee;

(v) Any change in the accounting methods or practices followed by Western or any Subsidiary, or any change in depreciation or amortization policies or rates theretofore adopted;

(vi) Any debt, obligation or liability (whether absolute or contingent) incurred by Western or any Subsidiary (whether or not presently outstanding) except (A) current liabilities incurred, and obligations under agreements entered into, in the ordinary course of business and (B) obligations or liabilities entered into or incurred in connection with the execution of this Agreement;

(vii) Any sale, lease, abandonment or other disposition by Western or any Subsidiary of any real property, or, other than in the ordinary course of business, of any machinery, equipment or other operating properties; nor any sale, assignment, transfer or license by Western or any Subsidiary of any patent, trade-mark, trade name, brand name, copyright or interest thereunder, pending application for any patent, trade-mark or copyright or any invention, process, know-how, formula or trade secret or other intangible asset; or

(viii) Any labor trouble, strike, or any other occurrence, event or condition of any similar or dissimilar character which materially and adversely affects or may materially and adversely affect the assets, properties, business or prospects of Western or any Subsidiary.

(i) Western and each Subsidiary has filed all tax returns (federal, state and local) required to be filed by it, and has paid all taxes shown to be due and payable on said returns or on any assessments received by it as well as all other taxes (federal, state and local) due and payable by it on or before the date hereof, other than state and local taxes which are payable but the installment payments of which are not yet due. All federal income and excess profits tax returns of Western has been audited by the appropriate governmental authority for all periods up to and including the year ended December 31, 1964, and all taxes and assessments for all such periods finally determined and paid; provided, however, that the appropriate governmental authority has never audited either Perl-Tile Company or Versi Products, Inc. There are no agreements, waivers, or other arrangements providing for an extension of time with respect to the filing of any returns or the assessment of any tax or deficiency against Western or any Subsidiary, nor are there any actions, suits, proceedings, investigations or claims now pending against Western or any Subsidiary in respect of any tax or assessment or any matters under discussion with any federal, state or local authority relating to any taxes or assessments, or any claims for additional taxes or assessments asserted by any such authority. The provisions made for taxes on the Balance Sheet are sufficient for the payment of all unpaid federal, state and local taxes of Western and the respective Subsidiaries for the period ended September 30, 1966, and all periods prior thereto.

(j) The execution and delivery of this Agreement and the consummation of the merger contemplated hereby will not (i) result in any breach of any of the terms or conditions of, or constitute a default under, the Articles of Incorporation or by-laws of Western, or any mortgage, note, bond, indenture, agreement, license or other instrument or obligation to which Western is a party or by which Western or any of its properties or assets may be bound or affected, or (ii) violate any order, writ, injunction or decree of any court, administrative agency or governmental body.

(k) Western has delivered to Grace a true and complete schedule (certified by the Treasurer of Western) setting forth (i) a complete description by metes and bounds or lot, block and section or by title registry references of each and every parcel of real property owned by Western or by any Subsidiary, together with a summary description of the buildings and improvements thereon, (ii) a description of each and every lease of real property to which Western or any Subsidiary is a party together with a summary description of the buildings and improvements thereon, and (iii) a description of all other interests, if any, in real property owned or claimed by Western or any Subsidiary. Western and each Subsidiary has good and marketable title in fee simple absolute to all real property which it purports to own and to the buildings and improvements thereon, and good and marketable title to all other interests in real property which it purports to own, in each case free and clear of all security interests, leases, liens, encumbrances, mortgages, assessments, covenants, restrictions, reservations, easements and other burdens of every nature except as set forth in the aforesaid schedule. All leases of real property under which Western or any Subsidiary purports to be a lessee are valid, binding and in full force and effect and there exists no default thereunder and all of said leases are assignable to Grace free and clear of all security interests, liens, encumbrances, mortgages, pledges, assessments, covenants, restrictions, reservations, easements and other burdens except as set forth in said schedule. Western and each Subsidiary has all easements and rights, including easements for power lines, water lines, sewers and roadways, and other means of ingress and egress necessary to conduct the business it now conducts.

All buildings, offices, shops and other structures owned or occupied by Western or any Subsidiary, and all machinery, equipment, tools, dies, fixtures, motor vehicles and other properties owned or used by Western or any Subsidiary, are in good operating condition and repair, ordinary wear and tear excepted, in accordance with standards generally accepted in the industry and are adequate and sufficient for all current operations of Western or such Subsidiary. Neither the whole nor any portion of any real property owned or occupied by Western or any Subsidiary has been condemned or otherwise taken by any public authority, nor is any such condemnation or taking threatened or contemplated. None of the properties owned or occupied by Western or any Subsidiary, or the occupancy or operation thereof, is in violation of any law, or any building, zoning or other ordinance, code or regulation applicable to it and no notice from any governmental body has been served upon Western or any Subsidiary or upon any property owned or occupied by Western or any Subsidiary claiming any violation of any such law, ordinance, code or regulation or requiring, or calling attention to the need for, any work, repairs, construction, alterations or installation on or in connection with said properties which has not been complied with. Western and each Subsidiary has the right to use its properties for the operations presently conducted.

Western and each Subsidiary has good and marketable title to all personal property which it purports to own, including, but not limited to, that reflected on the Balance Sheet (except as disposed of in the ordinary course of business since September 30, 1966), free and clear of all security interests, liens, encumbrances, mortgages, conditional sale and other title retention agreements, pledges, assessments, covenants, restrictions, reservations and other burdens or charges of every nature.

(l) Western has delivered to Grace a true and complete schedule (certified by the Treasurer of Western) setting forth all patents, trade-marks, trade names, brand names and copyrights and interests therein, and all pending applications therefor, owned or used by or licensed to Western or any Subsidiary, together with a summary description and full information in respect of the filing, registration or issuance thereof. No licenses, sub-licenses, covenants or agreements have been granted or entered into by Western or any Subsidiary in respect of such patents, trade-marks, trade names, brand names, copyrights, applications or licenses except those described on the schedule heretofore delivered to Grace pursuant to Section 5 (m) hereof. No other patents, trade-marks, trade names, brand names, copyrights or applications are necessary for the conduct of the business of Western or any Subsidiary as now conducted. Western and each Subsidiary validly owns or is validly licensed under all inventions, processes, know-how, formulae and trade secrets which are necessary for the conduct of its business as now conducted, and all such rights and all rights listed on the schedule heretofore delivered to Grace pursuant to this subsection (l) are valid and in good standing, and free and clear of all security interests, liens and encumbrances of any nature whatsoever and are not being challenged in any way or involved in any pending or threatened interference proceeding and are (in the case of those rights of Western) assignable to Grace. The operations of Western and each Subsidiary, the manufacture, use and sale by it of its products, the use by it of its machinery, equipment and processes, the use of its products by its customers for the purpose for which sold, and the use by it of its patents, trade-marks, trade names, brand names and advertising, technical or other literature do not involve infringement or claimed infringement of any patent, trade-mark, trade name or copyright, other than the possible infringement of U. S. Patent No. 2727827 known as the Chertkof Patent, full information as to which has heretofore been given by Western to Grace. No director, officer or employee of Western or any Subsidiary owns, directly or indirectly, in whole or in part, any patents, trade-marks, trade names, brand names or copyrights or applications therefor which Western or any Subsidiary is presently using or the use of which is necessary for the business of Western or any Subsidiary as now conducted. There are no new developments in the manufacture or marketing of the products of Western or any Subsidiary or any new or improved materials, products, processes or methods of manufacture useful in connection with the business of Western or any Subsidiary as now conducted which may materially adversely affect the assets, business or prospects of Western or any Subsidiary.

(m) Western has delivered to Grace a true and complete schedule (certified by the Treasurer of Western) of all of the following contracts, agreements, leases, licenses, plans, arrangements, commitments and other undertakings to which Western or any Subsidiary is a party or by which Western or any Subsidiary is in any way affected or bound:

(i) All contracts, agreements or commitments in respect of the sale of products or services, or for the purchase of raw materials, supplies or other products or utilities, other than contracts, agreements or commitments involving payments or receipts by Western and/or a Subsidiary of less than $10,000 in any single case and terminable by Western and/or such Subsidiary without penalty, or to be fully performed, within 6 months from the date hereof;

(ii) All sales agency or distributorship agreements or franchises;

(iii) All collective bargaining, union, employment or secrecy agreements or agreements providing for the services of an independent contractor;

(iv) All stock option, profit sharing, pension, retirement, bonus, group life, health and accident insurance or other employee benefit plans, agreements, arrangements or commitments, whether or not legally binding;

(v) All contracts, agreements, commitments or licenses relating to patents, trade-marks, trade names, brand names, copyrights, inventions, processes, know-how, formulae or trade secrets;

(vi) All leases or other contracts, agreements or commitments relating to or affecting real property or any interest therein;

(vii) All loan agreements, indentures, mortgages, pledges, conditional sale or title retention agreements, and equipment obligations, lease and lease purchase agreements; and

(viii) All contracts, agreements and commitments other than those of the types covered by paragraphs (i) through (vii), inclusive, above, (a) involving payments or receipts by Western and/or any Subsidiary of more than $10,000 in any single case, or (b) not to be fully performed within 6 months from the date hereof or (c) otherwise affecting the condition (financial or other) of the properties, assets, business or prospects of Western or any such Subsidiary.

Each and every of said contracts, agreements, leases, licenses, plans, arrangements, commitments and undertakings is valid, binding upon the parties thereto in accordance with its terms and in full force and effect and is (in the case of those to which Western is a party) assignable to Grace without the consent of any other party, and there is no existing default thereunder. Copies of all of the documents described in the aforesaid schedule have been made available by Western to Grace and are true and complete and include all amendments, supplements or modifications thereto.

(n) Western has delivered to Grace a true and complete schedule (certified by the Treasurer of Western) setting forth (i) the name of each bank in which Western or any Subsidiary has an account or safe deposit box and the names of all persons authorized to draw thereon or to have access thereto; and (ii) the names of all persons, firms, associations, corporations or business organizations holding general or special powers of attorney from Western or any Subsidiary and a summary of the terms thereof.

(o) There are no suits, actions, claims or investigations by any governmental body, or legal, administrative or arbitration proceedings pending or threatened against or affecting Western or any Subsidiary or any of the properties, assets, business or prospects of Western or any Subsidiary or to which Western or any Subsidiary is or might become a party, except those set forth on a schedule (certified by the Treasurer of Western) heretofore delivered to Grace, and in the opinion of Western there are no bases or grounds for any such suit, action, claim, investigation or proceeding. There is no outstanding order, writ, injunction or decree of any court, governmental agency or arbitration tribunal against or affecting Western or any Subsidiary, or the properties, assets, business or prospects of Western or any Subsidiary.

(p) Western has delivered to Grace a true and complete schedule (certified by the Treasurer of Western) setting forth all insurance policies (specifying the insurer, the amount of the coverage, the type of insurance, the policy number and any pending claims thereunder) maintained by Western and each Subsidiary on its respective properties, assets, business and personnel. Neither Western nor any Subsidiary is in default with respect to any provision contained in any insurance policies, nor has Western or any Subsidiary failed to give any notice or present any claim thereunder in due and timely fashion.

(q) Western and each Subsidiary has all governmental licenses and permits (federal, state and local) necessary to conduct its business, and such licenses and permits are in full force and effect. No violations are or have been recorded in respect of any of such licenses or permits or any of them, and no proceeding is pending or threatened looking toward the revocation or limitation of any of them.

(r) All notes and accounts receivable of Western and the Subsidiaries shown on the Balance Sheet and all notes and accounts receivable acquired by it subsequent to September 30, 1966 have arisen in the ordinary course of business and have been collected or are collectible in the aggregate recorded amounts thereof less (i) with respect to the notes and accounts receivable reflected on the Balance Sheet as of September 30, 1966, the applicable reserves in respect thereof reflected on said Balance Sheet, and (ii) with respect to the notes and accounts receivable acquired subsequent to September 30, 1966, the applicable reserves set up on the books of Western and of each Subsidiary subsequent to September 30, 1966 in respect thereof, which reserves are not in excess of an amount equal to the same proportion of the notes and accounts receivable acquired by Western or such Subsidiary subsequent to September 30, 1966 as the proportion which the applicable reserves reflected on the Balance Sheet as of September 30, 1966 are of the aggregate recorded amounts of the notes and accounts receivable reflected on said Balance Sheet.

(s) The inventories of Western and of each Subsidiary shown on the Balance Sheet and the inventories acquired by it subsequent to September 30, 1966 consist of items of a quality and quantity usable and saleable in the normal course of its business, and the value of obsolete materials and materials below standard quality has been written down on its books of account to realizable market value, or adequate reserves have been provided therefor, and the values at which such inventories are carried reflect the customary inventory valuation policy consistently applied by Western or such Subsidiary of stating inventory at the lower of cost or estimated realizable market value, on a first-in, first-out basis, all in accordance with generally accepted accounting principles.

(t) The execution and delivery of this Agreement by Western and its Directors, or a majority thereof, and the consummation of the Merger contemplated hereby have been duly and validly authorized by all or a majority of the Board of Directors of Western, subject to the approval by the shareholders of Western, and upon approval by the holders of the outstanding shares of the common stock of Western in accordance with Section 301.42 of the Minnesota Statutes 1965, this Agreement and the consummation of the Merger will have been duly and validly authorised by all necessary and appropriate corporate action on the part of Western and this Agreement will be binding upon and enforceable against Western in accordance with its terms.

(u) Neither Western nor any Subsidiary is in default, or alleged to be in default, under any agreement, contract, lease, commitment, license, instrument or obligation, and no other party to any agreement, contract, lease, commitment, license, or instrument to which Western or any Subsidiary is a party is in default thereunder and there exists no condition or event which, after notice or lapse of time or both, would constitute a default by any party to any such agreement, contract, lease, commitment, license, instrument or obligation.

(v) Neither Western nor any Subsidiary has, nor has it had since September 30, 1966, any employee benefit arrangements of the types specified in Section 5 (m) (iv) hereof except for The Western Mineral Retirement Trust and the arrangements set forth on the schedule heretofore delivered to Grace pursuant to said Section 5 (m) (iv). Western has made available for inspection by Grace copies of the above-mentioned arrangements pursuant to Section 5 (m) and has delivered to Grace a statement (certified by the Treasurer of Western) of the estimated current annual cost (including current annual cost of funding past service benefits) of said arrangements and the extent to which such cost and any liability of Western under said Trust has been funded, current financial reports showing the assets of all said funds, and currently effective United States Internal Revenue Service ruling or determination letters holding said Trust to be exempt from federal income tax, provided, however, that on or before the Closing said Trust shall be terminated and Grace shall assume no obligation with respect to liabilities under said Trust. There has been no subsequent amendment of said Trust which might affect the current validity of any such ruling or determination letters.

(w) Western has delivered to Grace a true and complete schedule (certified by the Treasurer of Western) setting forth the name and current annual salary of each director and each officer of Western and of each Subsidiary and of each employee and each salesman thereof whose current annual salary and/or estimated current annual commission is $10,000 or more, and the profit sharing, bonus, or other form of compensation (other than salary) paid or payable to or for the benefit of each such person for the period ended September 30, 1966.

(x) No officer and, to the knowledge of Western or any of its officers or directors, no employee of Western or any Subsidiary controls or is an employee of any corporation, firm, association, partnership or other business entity which is a competitor or a potential competitor of Western or any Subsidiary. With respect to this paragraph (x) the term "controls" shall have the meaning assigned to it in Rule 405 of the General Rules and Regulations of the Securities and Exchange Commission under the Securities Act of 1933 in effect at the date of this Agreement.

(y) No representation or warranty by Western in this Agreement, or in any statement (including financial statements), deed, certificate, schedule, or other document furnished to Grace pursuant hereto or in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

6. **Representations and Warranties by Grace.** Grace represents and warrants to Western as follows:

(a) Grace is a corporation duly organized, validly existing and in good standing under the laws of the State of Connecticut.

(b) As of the close of business November 14, 1966, the outstanding capital stock of Grace consisted of 37,226 shares of Preferred Stock, par value $100 per share, 48,132 shares of Class A Preferred Stock, par value $100 per share, 37,951 shares of Class B Preferred Stock, par value $100 per share, and 17,323,103 shares of Common Stock, par value $1 per share.

(c) Grace has delivered to Western copies of the following financial statements:

(i) Consolidated Balance Sheet of Grace and subsidiary companies as at December 31, 1965, and Consolidated Statements of Income, Capital Surplus and Retained Earnings for the year then ended, certified by Price Waterhouse & Co.

(ii) Third Quarter Report of Grace and subsidiary companies dated October 19, 1966 containing unaudited results of the nine months period ended September 30, 1966.

The above-certified Consolidated Balance Sheet and Consolidated Statements of Income, Capital Surplus and Retained Earnings present fairly the financial position of Grace and its consolidated subsidiary companies at December 31, 1965 and the results of their operations for the year then ended in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

(d) Since December 31, 1965 there has not been any material adverse change in the condition (financial or otherwise), properties, assets, liabilities, business or prospects of Grace and its consolidated subsidiaries (taken as a single enterprise).

(e) The shares of Common Stock, par value $1 per share, of Grace (herein called "Grace common stock") into which capital stock of Western is to be converted pursuant hereto will, when issued and delivered as herein provided, be duly and validly issued, fully paid and non-assessable and duly authorized for listing on the New York Stock Exchange and the Midwest Stock Exchange upon official notice of issuance.

7. **Conduct of Western Business Prior to Merger.** Western covenants, agrees, represents and warrants that, except as otherwise consented to in writing by Grace, pending the effectiveness of the Merger:

(a) The business of Western and of each Subsidary will be conducted only in the ordinary course.

(b) No change will be made in the Articles of Incorporation or by-laws of Western or of any Subsidiary.

(c) No change will be made in the authorized or issued capital stock of Western or of any Subsidiary, nor shall any rights, warrants, options or commitments relating thereto be granted, issued or exercised.

(d) No dividend or other distribution or payment will be declared, set aside, paid or made on or in respect of the capital stock of Western or of any Subsidiary nor will Western or any Subsidiary directly or indirectly redeem, retire, purchase or otherwise acquire any of such stock.

(e) Western will use its best efforts to preserve the business organization of Western and each Subsidiary intact and to keep available to Grace the services of the present officers, employees, and agents thereof and will use its best efforts to preserve for Grace the good will of suppliers, customers and others having business relations therewith.

(f) Except as set forth on a schedule (certified by the Treasurer of Western) heretofore delivered to Grace, no increase will be made in the compensation or rate of compensation or commissions payable or to become payable by Western and/or any Subsidiary to any director, officer, salaried employee earning $10,000 per annum or more, salesman, distributor or agent, nor will there be made any general increase in compensation or rate of compensation payable or to become payable to hourly employees or salaried employees earning less than $10,000 per annum ("general increase" shall have the meaning set forth in Section 5 (h) (iv) hereof), nor will any employee be hired at a salary in excess of $10,000 per annum, and no bonus, profit sharing or other extraordinary compensation will be paid by Western or any Subsidiary, nor will any employee benefit arrangements of the types specified in Section 5 (m) (iv) hereof be adopted or entered into, or be amended, modified or changed in any respect.

(g) No contract, agreement, obligation, lease, license or commitment will be entered into or assumed by or on behalf of Western or any Subsidiary, except for normal and ordinary contracts, agreements or commitments not involving payments or receipts by Western and/or the Subsidiaries of more than $10,000 in any single case for the purchase of raw materials, supplies or other products or utilities or for the sale of their products or services; neither Western nor any Subsidiary will enter into or assume any security interest, lien, encumbrance, mortgage, conditional sale or other title retention agreement, pledge, or burden or charge of any kind upon any of its properties or assets whether now owned or hereafter acquired, or create or assume any obligation for borrowed money, or make any loans or advances to or assume, guarantee, endorse or otherwise become liable with respect to the obligations, stock or dividends of any person, firm, association, corporation or business organization or purchase or otherwise acquire any stocks, bonds or other securities of, or any proprietary interest in any person, firm, association, corporation or business organization or sell, lease, abandon, transfer, license or otherwise dispose of any real property, machinery, equipment or other operating properties, patent, trade-mark, trade name, brand name or copyright, pending application for any patent, trade-mark or copyright, invention, process, know-how, formula, trade secret or other intangible asset.

(h) No change will be made affecting the banking and safe deposit arrangements and powers of attorney referred to in Section 5 (n) hereof, no new bank accounts or safe deposit boxes will be opened and no new powers of attorney will be granted.

(i) Western and each Subsidiary will duly and timely file all reports or returns required to be filed with federal, state, local and other authorities and will promptly pay all federal, state and local taxes, assessments and governmental charges lawfully levied or assessed upon it or its properties or upon any part thereof, and will duly observe and conform to all lawful requirements of any governmental authority relative to any of its properties or to the operation and conduct of its business and to all terms and conditions upon or under which any of its properties are held. Neither Western nor any Subsidiary will enter into any agreements, waivers or other arrangements providing for an extension of time with respect to the filings of any tax returns or the payment or assessment of any tax or deficiency; provided that Western or any Subsidiary may contest in appropriate proceedings any and all such taxes, assessments, charges or requirements which may be contested in good faith and for which adequate provision has been made.

(j) All buildings, offices, shops and other structures and all machinery, equipment, tools, dies, fixtures, motor vehicles and other property owned or used by Western or any Subsidiary (whether under its control or the control of others) will be kept and maintained in good operating condition and repair.

(k) Western and each Subsidiary will continue to maintain in full force and effect all policies of insurance now in effect or renewals thereof, and will give all notices and present all claims under all policies of insurance in due and timely fashion.

(l) Neither Western nor any Subsidiary will merge, amalgamate or consolidate with any other corporation or acquire all or substantially all of the stock or the business or assets of any other person, firm, association, corporation or business organization.

(m) Western and each Subsidiary shall give, from and after the date hereof, to Grace and to Grace's counsel, accountants, engineers and other representatives, full access during normal business hours throughout the period prior to the effective date of the Merger to all of its plants, offices, properties, books, contracts, commitments, records and affairs so that Grace may inspect and audit them and will furnish to Grace copies (certified, if requested) of all documents and information concerning the properties and affairs of Western and of each Subsidiary as Grace may reasonably request.

(n) None of the shareholders of Western who are parties to the Agreement of Indemnity attached hereto will sell, transfer, assign, pledge or otherwise dispose of or encumber any right, title or interest in or to any of the capital stock of Western, nor enter into any agreement, trust or commitment relating to any such stock.

(o) On or before the Closing Western will pay and satisfy in full the existing mortgage on its Milwaukee plant building and will obtain a release of record from the lien thereof.

8. **Agreement from Certain Western Shareholders.** Western shall obtain from such of its shareholders as may be specified by Grace a written instrument, in form and substance satisfactory to Grace and its counsel, to the effect that such person covenants and agrees that he will not at any time or times, directly or indirectly (except to the extent permitted under Rule 133 of the Securities and Exchange Commission), offer, sell, pledge, transfer, or otherwise dispose of the Common Stock, $1 par value of the Surviving Corporation, or any portion thereof which he is to receive on or in connection with the Merger (or solicit any offers to buy, purchase, or otherwise acquire or to take a pledge of any of said stock) if under the Securities Act of 1933, as amended, and the applicable rules and regulations of the Securities and Exchange Commission, such person would be deemed to be an underwriter or to be engaged in a distribution with respect to such stock or Grace would for any reason be required to register any of such stock under the Securities Act of 1933, as amended.

In order to enable Grace and Price Waterhouse & Co. to determine that treatment of the transactions contemplated hereby as a pooling of interest will be in accordance with generally accepted accounting principles, Western shall obtain from each of its shareholders specified by Grace, a written instrument, in form satisfactory to Grace, to the effect that he has no present intention of disposing of any of the Common Stock, $1 par value of the Surviving Corporation, to be received by him in connection with the Merger.

9. **Conditions Precedent to Grace's Obligations.** All obligations of Grace under this Agreement are subject, at Grace's option, to the fulfillment, prior to or at effectiveness of the Merger, of each of the following conditions:

(a) Each and every representation and warranty of Western contained in this Agreement and in any statement (including financial statements), deed, certificate, schedule or other document delivered pursuant hereto, or in connection with the transactions contemplated hereby, shall be true and accurate as of the date when made and shall be deemed to be made again at and as of the time of the effectiveness of the Merger and shall then be true and accurate in all respects.

(b) Western shall have performed and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the effectiveness of the Merger.

(c) Western shall have delivered to Grace a certificate of the President and the Treasurer of Western, dated the date of the effectiveness of the Merger, in form and substance satisfactory to Grace, certifying to the fulfillment of the conditions set forth in Section 9(a) and (b) hereof.

(d) Western shall have delivered to Grace an opinion of Messrs. Bishop, Burdett, Falasz & Ericson, Chicago, Illinois, counsel for Western, dated the date of the effectiveness of the Merger, in form and substance satisfactory to Grace, that:

(i) The corporate existence, foreign qualifications, good standing and corporate power and authority of Western and of each Subsidiary are as represented and warranted in Sections 5(a) and (d) hereof.

(ii) The capital stock of Western and of each Subsidiary is as represented and warranted in Sections 5(b) and (d) hereof.

(iii) Western has full power and authority to enter into the Merger as herein provided, all legal and corporate proceedings and actions necessary and appropriate to be taken by Western, its Directors, or a majority thereof, and its shareholders in connection with the Merger provided for herein and necessary to make the same effective have been duly and validly taken, and this Agreement has been duly and validly authorized, executed and delivered by Western and constitutes a valid obligation binding on Western, in accordance with its terms.

(iv) Such counsel does not know or have any reason to believe that Western or any Subsidiary is a party to or affected by any pending suit, action, investigation by any governmental body, or legal, administrative or arbitration proceeding or that any such suit, action, investigation or proceeding to which Western or any Subsidiary might become a party or which might affect its properties, assets, business or prospects has been threatened.

(v) Such counsel does not know or have any reason to believe that any representation or warranty by Western in this Agreement or in any statement (including financial statements), deed, certificate, schedule or other document delivered pursuant hereto or in connection with the Merger contemplated hereby is false or inaccurate in any respect, or that any statement of fact made by Western herein or therein contains any untrue statement of fact or omits to state any fact necessary in order to make the statements herein or therein contained not misleading.

(vi) Such counsel does not know or have any reason to believe that Western has not performed or complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Western prior to or at the effectiveness of the Merger.

(vii) Such counsel does not know or have any reason to believe that Western has any affiliate or subsidiary within the meaning of Rule 406 of the General Rules and Regulations of the Securities and Exchange Commission under the Securities Act of 1933 in effect at the date of said opinion other than shareholders and Subsidiaries as disclosed herein.

Such opinion shall also opine favorably on such other matters incident to the transactions contemplated hereby as Grace may reasonably request. Insofar as it relates to real property owned by Western located outside of the State of Minnesota, such opinion may be based upon the opinions of local counsel, in which event the opinion of Messrs. Bishop, Burdett, Falasz & Ericson shall opine that Grace is justified in relying on such opinions of local counsel.

(e) Grace shall have received such legal opinions, title insurance (or commitments therefor) or other evidence, in form and substance satisfactory to it and its counsel, as it may deem necessary to establish that as of the effectiveness of the Merger, the titles of Western and of each Subsidiary to the real property referred to in Section 5(k) hereof are as represented in said Section 5(k).

(f) All actions, corporate proceedings, instruments and documents required to carry out this Agreement, or incidental thereto, and all other related legal matters, shall have been approved by Leo A. Larkin, Esq., General Counsel of Grace.

(g) Western shall have delivered to Grace employment contracts signed by Messrs. Lawrence J. Venard, Harvey W. Steiff and Clarence A. Pratt which shall be substantially in the form of those heretofore delivered by Grace to Western and initialed by said persons, respectively.

(h) Grace shall have received from Leo A. Larkin, Esq., General Counsel of Grace, an opinion that the issue and delivery of the Grace common stock to Western stockholders are, under the circumstances contemplated by this Agreement, exempt from registration under the Securities Act of 1933.

(i) The Common Stock, $1 par value of the Surviving Corporation, to be delivered to Western shareholders hereunder shall have been duly authorized for listing on the New York Stock Exchange and the Midwest Stock Exchange upon official notice of issuance and all Blue Sky filings and permits, if any, required to carry out the transactions contemplated hereby shall have been made and received.

(j) The books and records of Western and each Subsidiary shall have been adequate to permit Price Waterhouse & Co. to determine the financial condition of Western and of each Subsidiary and the results of their operations, all in accordance with generally accepted accounting principles, and there shall have been no changes made in accounting methods or practices.

(k) Price Waterhouse & Co. shall confirm in writing that the treatment of the transaction contemplated hereby as a pooling of interests would be in accordance with generally accepted accounting principles.

(l) No suit, action, investigation, inquiry or proceeding by any governmental body, or other legal or administrative proceeding shall have been instituted or threatened which questions the validity or legality of the transactions contemplated hereby.

(m) Western and each Subsidiary shall have entered into written agreements, to which Grace shall succeed upon the effectiveness of the Merger, with all of its employees who perform services of a technical, professional or business nature and who by reason of their technical knowledge or their skills, training, background or capacity are in a position to make or contribute to the making of inventions or to have access to trade secrets requiring said persons to assign their entire right, title and interest in and to any such inventions to Western or such Subsidiary and to keep secret and confidential all trade secrets of Western or such Subsidiary.

(n) Western shall have delivered to Grace the instruments referred to in Section 8 hereof as provided therein.

(o) Grace shall have received from its Chief Patent Counsel an opinion that (i) Western and the Subsidiaries own or are validly licensed under all patents, trade-marks, trade names, brand names, copyrights, applications for patents, trade-marks and copyrights, inventions, processes, know-how, formulae and trade secrets which are necessary for the conduct of Western's and the Subsidiaries' businesses as now conducted, and all such rights and all rights listed on the schedule delivered to Grace pursuant to Section 5 (1) of this Agreement are valid and in good standing and free and clear of all security interests, liens and encumbrances of every nature, are not being currently challenged in any way and are not involved in any pending or threatened interference proceeding and are, in the case of all such rights of Western, validly assignable to Grace, and (ii) the operations of Western and the Subsidiaries, the manufacture, use and sale by Western and the Subsidiaries of their products, their use of their machinery, equipment and processes, the use of their products by their customers for the purpose for which sold, and the use of their patents, trade-marks, trade names, brand names and advertising, technical or other literature do not involve infringement or claimed infringement of any patent, trade-mark, trade name or copyright.

(p) Western shall have delivered to Grace an Escrow Agreement signed by each of the shareholders of Western listed therein which shall be substantially in the form attached to an Agreement of Indemnity of even date herewith entered into by Grace and such shareholders of Western.

10. **Conditions Precedent to Western's Obligations.** All obligations of Western under this Agreement are subject, at Western's option, to the fulfillment, prior to or at the effectiveness of the Merger, of each of the following conditions:

(a) All representations and warranties of Grace contained in this Agreement and in any statement (including financial statements), certificate, schedule or other document delivered pursuant hereto, or in connection with the transactions contemplated hereby, shall be true and accurate as of the date when made and shall be deemed to be made again at and as of the time of the effectiveness of the Merger and shall then be true and accurate in all respects.

(b) Grace shall have performed and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the effectiveness of the Merger.

(c) Grace shall have delivered to Western an opinion of Leo A. Larkin, Esq., General Counsel of Grace, dated the date of the effectiveness of the Merger, in form and substance satisfactory to Western, that:

(i) Grace's corporate existence and good standing are as represented and warranted in Section (6) (a) hereof.

(ii) The shares of Common Stock, $1 par value of the Surviving Corporation, into which the Western capital stock is to be converted pursuant hereto will, when issued and delivered as herein provided, be duly and validly issued, fully paid and non-assessable, and duly authorized for listing on the New York Stock Exchange and the Midwest Stock Exchange upon official notice of issuance.

(iii) All legal and corporate proceedings necessary to be taken by Grace in connection with the Merger contemplated hereby provided for by this Agreement and necessary to make the same effective have been duly and validly taken, and this Agreement has been duly and validly authorized, executed and delivered by Grace and constitutes a valid obligation binding on Grace in accordance with its terms.

(d) Grace shall have executed and delivered to Western the employment contracts referred to in Section 9 (g) hereof.

(e) Grace shall have delivered to the shareholders of Western listed therein an Escrow Agreement signed by Grace which shall be substantially in the form attached to an Agreement of Indemnity of even date herewith entered into by Grace and such stockholders of Western.

(f) Western shall have received an opinion from its tax counsel to the effect that consummation of the Merger will constitute a reorganization as defined in Section 368 of the Internal Revenue Code and that no gain or loss will be recognized upon the receipt of Grace common stock by the shareholders of Western in exchange for their shares of Western common stock, except for such gain or loss recognized with respect to fractional interests which may be sold by such shareholders.

**11. Nature of Statements of Western.** All statements of fact contained in any statement (including financial statements), deed, certificate, schedule or other document delivered by or on behalf of Western pursuant hereto or in connection with the transactions contemplated hereby shall be deemed representations and warranties by Western hereunder.

**12. Nature of Statements of Grace.** All statements of fact contained in any statement (including financial statements), certificate, schedule or other document delivered by or on behalf of Grace pursuant hereto or in connection with the transactions contemplated hereby shall be deemed representations and warranties by Grace hereunder.

**13. Brokers.** Western covenants and warrants that no broker or finder has acted for it in connection with this Agreement or the transactions contemplated hereby and that no broker or finder is entitled to any brokerage commission, finder's fee or similar commission, fee or charge in respect thereof based in any way on agreements, arrangements, or understandings made by it; and Western agrees, with respect to any claim for any such commission, fee or charge based in any way on any agreement, arrangement or understanding made or alleged to have been made by it, to indemnify and hold Grace harmless from and against any claim for brokerage commission, finder's fee or any similar commission, fee or charge relative to this Agreement or to the Merger contemplated hereby and in respect of any and all expenses of any character (including reasonable attorney's fees), incurred in connection with the investigation or defense of any such claim. Western covenants and agrees that no such commission, fee, charge or expense will be paid prior to the effectiveness of the Merger from Western's assets.

**14. Western Financial Statements as at September 30, 1966.** Grace has, at its own expense, caused Price Waterhouse & Co., independent accountants, to conduct an examination and audit of the books and accounts of Western and each Subsidiary as of the close of business September 30, 1966 and to deliver to Grace the following financial statements: Consolidated Balance Sheet of Western and the Subsidiaries as at September 30, 1966 and related Consolidated Statement of Income and Retained Earnings for the 9 months period then ended.

The aforesaid Consolidated Balance Sheet has been certified by Price Waterhouse & Co. as presenting fairly the financial position of Western and Subsidiaries as at September 30, 1966 and the aforesaid Consolidated Statement of Income and Retained Earnings has been certified by Price Waterhouse & Co. as presenting fairly the results of the operations of Western and the Subsidiaries for the 9 months period then ended in conformity with generally accepted accounting principles applied on a basis consistent with prior periods.

**15. Efforts of Grace and Western; Termination.** Each of the Constituent Corporations agrees to use its best efforts to enter into, execute, acknowledge, adopt, certify, file and deliver all documents, hold all meetings of their respective Boards of Directors and/or stockholders and take all action and do all things necessary, advisable or proper under the laws of the State of Connecticut and the State of Minnesota, or either of such states, to consummate and make effective the Merger herein provided for and to carry out the purposes of this Agreement; provided, however, that anything herein contained to the contrary notwithstanding, this Agreement may be terminated whether before or after the adoption or approval of this Agreement by the shareholders of Western (a) by mutual consent in writing of the Boards of Directors of each of the Constituent Corporations at any time prior to the effectiveness of the Merger, or (b) by the Board of Directors of Grace at any time prior to the effectiveness of the Merger if of the opinion that any of the conditions set forth in Section 9 hereof have not been fulfilled, or (c) by the Board of Directors of Western at any time prior to the effectiveness of the Merger if of the opinion that any of the conditions set forth in Section 10 hereof have not been fulfilled.

In the event that the Board of Directors of either Grace or Western shall elect to terminate this Agreement because either Board of Directors is of the opinion that the conditions set forth in Section 9 or Section 10 hereof have not been fulfilled, as the case may be, then written notice of such termination and the reason therefor shall be given by the party terminating this Agreement to the other party hereto. In the event that the Boards of Directors of Grace and Western elect to terminate this Agreement by mutual consent, then Grace and Western shall enter into a written instrument to that effect.

In the event of the termination of the Merger pursuant to this Section 15, this Agreement shall become void and have no effect, without any liability on the part of either Grace or Western or their shareholders, directors or officers in respect of this Merger except that the obligation of Grace and Western to pay their own expenses as provided in Section 16 hereof shall remain in effect.

**16. Expenses of Merger.** If the Merger contemplated hereby is consummated, all expenses incurred in consummating the Merger shall, except as otherwise agreed in writing between Grace and Western, be borne by the Surviving Corporation. If the Merger is not consummated, Grace and Western shall each be liable for, and shall pay, the expenses incurred by it.

17. *Notices.* All notices, requests, demands and other communications required or permitted to be given hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, given by prepaid telegram or mailed first-class, postage prepaid, registered or certified mail as follows:

If to Grace —

W. R. Grace & Co.
7 Hanover Square
New York, New York 10005
Attention: Leo A. Larkin, Secretary

If to Western —

Western Mineral Products Company
4725 Olson Highway
Minneapolis, Minnesota 55422
Attention: Lawrence J. Venard, President

18. General. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. This Agreement sets forth the entire agreement and understanding of the parties in respect of the transactions contemplated hereby and supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof. No representation, promise, inducement or statement of intention has been made by Western or Grace which is not embodied in this Agreement, the exhibit hereto or the written statements, deeds, certificates, schedules or other documents delivered pursuant hereto or in connection with the Merger contemplated hereby, and neither Western nor Grace shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not so set forth. All the terms, covenants, representations, warranties and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the parties hereto and their respective successors, but this Agreement and the rights and obligations hereunder shall not be assignable by either party. This Agreement may be amended, modified, superseded or cancelled, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by both Grace and Western or, in the case of a waiver, by the party waiving compliance. The failure of either party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by either party of any condition, or of the breach of any term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other term, covenant, representation or warranty of this Agreement.

IN WITNESS WHEREOF, the directors, or a majority thereof, of Grace and Western have entered into this Agreement and Plan of Merger under the corporate seals of their respective corporations and have hereunto set their hands and seals as of the day and year first above written.

ATTEST:

W. R. GRACE & CO.

CHARLES F. DUGAN
Assistant Secretary

By A. T. DAIGNAULT
Vice President

[SEAL]

| | |
|---|---|
| LAWRENCE J. McKAY | F. G. KINGSLEY |
| EBEN W. PYNE | MICHAEL G. PHIPPS |
| JOHN T. MADDEN | JOHN H. PHIPPS |
| EDGAR AINSWORTH EYRE | F. E. LARKIN |
| ROGER MILLIKEN | A. S. RUPLEY |
| (Being a majority of the Directors of W. R. GRACE & Co.) | O. V. TRACY |

ATTEST:

WESTERN MINERAL PRODUCTS COMPANY

V. S. OKERLUND
Secretary

By L. J. VENARD
President

[SEAL]

| | |
|---|---|
| L. J. VENARD | O. H. JOHNSON |
| C. A. PRATT | JOHN H. BISHOP |
| HARVEY W. STEIFF | |

(Being a majority of the Directors of WESTERN MINERAL PRODUCTS COMPANY)

I, V. S. OKERLUND, Secretary of WESTERN MINERAL PRODUCTS COMPANY, a corporation organized and existing under the laws of the State of Minnesota, hereby certify, as such secretary and under the seal of the corporation, that the Agreement and Plan of Merger to which this certificate is appended, after having been first duly signed by a majority of the directors of said corporation and by a majority of the directors of W. R. GRACE & Co., a corporation organized and existing under the laws of the State of Connecticut, was duly submitted for consideration to the shareholders of record of said WESTERN MINERAL PRODUCTS COMPANY at a special meeting held on December 16, 1966, notice of the time, place and object of which was mailed at least two weeks before the meeting to each shareholder of record, whether entitled to vote or not, at his last post-office address, as shown by the records of the Secretary of said WESTERN MINERAL PRODUCTS COMPANY, and that at said meeting the said Agreement and Plan of Merger was considered and a ballot taken for the adoption or rejection of the same, and the votes of the shareholders of said WESTERN MINERAL PRODUCTS COMPANY holding shares in said corporation entitling them to exercise at least two-thirds of the voting power thereof were cast in favor of the adoption of said Agreement and Plan of Merger.

IN WITNESS WHEREOF, I have subscribed my name as Secretary of said WESTERN MINERAL PRODUCTS COMPANY and affixed hereto its corporate seal this 16th day of December, 1966.

V. S. OKERLUND

Secretary of
WESTERN MINERAL PRODUCTS COMPANY

[SEAL]

I, Charles F. Dugan, being an Assistant Secretary of W. R. Grace & Co., a Connecticut corporation, hereby certify, as such Assistant Secretary and under the seal of the corporation, that the Agreement and Plan of Merger to which this certificate is appended was made, signed and delivered by the Directors, or a majority thereof, of W. R. Grace & Co. after said Agreement and Plan of Merger had been approved by resolution adopted by the Board of Directors of W. R. Grace & Co. at a meeting thereof duly called, convened and held on December 1, 1966, for the purpose of considering the same; and that the shareholders of W. R. Grace & Co. did not vote on said Agreement and Plan of Merger and, pursuant to Section 33-366(b)(2) of the Connecticut Stock Corporation Act, such vote was not required because said Agreement and Plan of Merger will not effect any change in or amendment to the Certificate of Incorporation of W. R. Grace & Co., and the shares to be issued under said Agreement and Plan of Merger could have been issued by the Board of Directors of W. R. Grace & Co. without further authorization of the shareholders of W. R. Grace & Co.

In Witness Whereof, I hereunto sign my name as an Assistant Secretary of said W. R. Grace & Co. and affix hereto its corporate seal this 27th day of December, 1966.

[Seal]

Charles F. Dugan
Assistant Secretary

The foregoing Agreement and Plan of Merger having been duly executed by the directors, or a majority thereof, of W. R. GRACE & Co., a Connecticut corporation, and WESTERN MINERAL PRODUCTS COMPANY, a Minnesota corporation, and having been duly adopted by the shareholders of said WESTERN MINERAL PRODUCTS COMPANY in accordance with the applicable provisions of the Minnesota Statutes 1965 and the fact of the adoption thereof having been duly certified thereon by the Secretary of WESTERN MINERAL PRODUCTS COMPANY, and having been approved by resolution adopted by the Board of Directors of W. R. Grace & Co. (approval by the stockholders of W. R. GRACE & Co., not being required under the Connecticut Stock Corporation Act) and the fact of such approval having been duly certified thereon by an Assistant Secretary of W. R. GRACE & Co., all in accordance with law, a Vice-President and an Assistant Secretary of W. R. GRACE & Co. and the President and Secretary of WESTERN MINERAL PRODUCTS COMPANY do now hereby sign said Agreement and Plan of Merger under the respective corporate seals of each of said corporations, as the act, deed and agreement of each of said corporations, on this 27th day of December, 1966.

W. R. GRACE & CO.

A. T. DAIGNAULT
*Vice-President*

CHARLES F. DUGAN
*Assistant Secretary*

[SEAL]

ATTEST:

CHARLES F. DUGAN
*Assistant Secretary*

WESTERN MINERAL PRODUCTS COMPANY

L. J. VENARD
*President*

V. S. OKERLUND
*Secretary*

[SEAL]

ATTEST:

V. S. OKERLUND
*Secretary*

f WRG 31

PERSONAL AND CONFIDENTIAL

TO: W. L. Taggart DATE: December 5, 1967

FROM: C. F. Dugan SUBJECT: Report of Trip to Kalispell, Montana

CC: R. W. Sterrett
Peter Kostic
J. F. Cahalane

This is a report on my trip to Montana in connection with a hearing before the Montana Industrial Accident Board on a claim by a former employee, L. F. Welsh.

The defendants in the proceedings, Zonolite Division of W. R. Grace & Co. and Maryland Casualty Company, were represented by D. Y. Larrick, Smith Block, Kalispell, Montana who was retained by Maryland Casualty. The hearing was held in Kalispell on November 29 before Robert F. Swanberg, Chairman of the Industrial Accident Board.

On November 28 after arriving at Libby I went up to the operations with Mr. Bleich and Mr. Lovick to observe the operations where Mr. Welsh had been employed. That night Bleich, Lovick, Kujava and I went down to Kalispell where we met with Larrick to discuss the case. The hearing was conducted on the 29th and concluded except for submission by us to the Board of all chest X rays of Mr. Welsh taken since institution of the regular X ray program.

The first purpose of my trip was to observe the caliber of representation being furnished by the counsel retained by Maryland Casualty. I found Mr. Larrick to be a very able and aggressive trial lawyer who was concerned with protection of Grace as much as representing Maryland Casualty. The first point raised by him in our discussion Tuesday night was what he called the "big picture" or possible total exposure of Grace. He pointed out that probably our only defense in the particular case was a technical one; namely, that the disease was contracted before enactment of the Montana Industrial Disease Act and well before addition of the disease of asbestosis as an industrial disease. If we were to win on this technical point it seemed likely to him that the claimant could then bring a common law action with a recovery that could well exceed recovery under the Act. Maximum award under the Act for one disabled by an industrial disease is $60.00 per week for 600 weeks. In a recent Montana case an employee was held not to have been covered by the Act in connection

PLAINTIFF'S EXHIBIT WRG-186

with inhaling of cement dust and he then recovered approximately $50,000 in a common law action. Since our last annual series of X rays of employees showed approximately 32 employees (about 1 in 4) as having lung conditions which might be the start of asbestosis, the extent of our exposure under the Act could run as much as $1,150,000, and at common law could be as much as $1,600,000. We concluded, however, that our only course was to handle each case on its merits, trying to limit our liability as much as we could in each case as it came along and that we would defend the Welsh case on the only technical ground available to us.

At the hearing claimant's counsel called (i) the claimant, (ii) an employee named Smerken who had been employed for one year, (iii) Arthur Bundrock, the secretary of the local labor union, (iv) Ray Kujava, our chief engineer, and (v) Mr. Bleich, our manager. It was brought out that Mr. Welsh came to work for Zonolite in 1949 after previous employment as a logger, butcher and trainman. He worked for Zonolite until November 1966 when he was retired because of his disability. (Mr. Welsh is now 64 years old.) During his employment with Zonolite he worked for 37 days in the mill and then drove a truck for many years, primarily carrying ore concentrate down the mountain to the railroad siding. About 1956 he started to work in the warehouse where he remained employed until his retirement. It was brought out, however, that in his employment in the warehouse he did from time to time go to other places in the operation, including the mill.

Much testimony was given as to the quantities of dust caused by the operation. The worst concentrations were admittedly in the mill and in the truck bed when the ore was loaded. Mr. Kujava's testimony, however, showed that visible dust is not harmful and that only particles under 10 microns in size are hazardous to health.

It was brought out in testimony of the employees that a dust committee was formed about five years ago and that the committee dealt with management and the State Board of Health regarding dust conditions at the operation.

Mr. Welsh's condition was first diagnosed as silicosis when he first consulted doctors about 1959. It seems that asbestosis cannot be definitely established unless a biopsy is done on lung tissue. Mr. Welsh submitted to an operation last June for the purposes of obtaining the tissue for the biopsy which definitely established asbestosis and that was acknowledged on the record. It seems clear, therefore, that he has contracted totally disabling asbestosis and that his only exposure to asbestiform mineral was during his Zonolite employment.

Mr. Kujava told of tests made at various locations in the operation and at various times to determine dust content. He indicated that United States Public Health standards have established a maximum of 20,000,000 parts of dust per cubic foot of air. His studies indicated that the asbestiform content of the dust at Libby was in the range of 12% indicating an asbestiform content of 2-3,000,000 parts per cubic foot. He stated that United States Public Health standards set a threshold limit of 5,000,000 parts per cubic foot before asbestiform material in the atmosphere is hazardous to the health of a normal person. His studies showed that the equipment for obtaining a dust count could not get a measurable count in the mill complex area outside the mill itself.

There appeared to have been reports from the State board of Health respecting continuing studies of the situation in one of which it was stated that the asbestiform content ran as high as 40% although this statement was unsupported by any evidence of scientific test. At any rate reports of the State Board of Health are inadmissible by statute in any legal proceedings and, therefore, could not be admitted in this hearing.

The purpose of calling Bleich was to attempt to establish an admission against interest made by Bleich to the dust committee regarding the asbestiform content but this attempt was not successful.

During the afternoon coffee break Mr. Svanberg, Chairman of the Board, joined us and questioned whether some settlement could be made. Apparently he wanted to be taken off the hook in what is a new and most difficult field. Mr. Larrick told him that certainly Mr. Welsh had asbestosis and that probably it was contracted at Zonolite but that it was before the enactment of the Act and Svanberg agreed that the Act could not be applied retroactively. Mr. Larrick said he would consider settlement but that the man who could make any decision along this line was travelling and not available (reference to the fact that you were enroute to Atlanta).

To summarize, I think the record is clear that Welsh contracted asbestosis from his employment with us but the Board may agree that he was not covered at the time the disease was contracted.

The implications of the case are apparent. A record has now been made that there is danger of asbestosis in our operation. It shows efforts to improve the picture such as mandatory use of respirators in critical areas, periodic X ray checkups, independent scientific tests of dust conditions and installation of dust exhaust system. Unfortunately, however, we know that there is a potentially large group of employees who may already have the beginnings of the disease so that eventual liability cannot be readily forecast. Undoubtedly we will be required to take further and more expensive measures for limiting the exposure. It is also true that as more is learned about the disease the standards may be tightened considerably.

One point that has not been mentioned in any of the discussions so far is the possibility of liability to the general public, although this is probably a very minor exposure. However, it was brought out in the testimony by one of the employees that Zonolite had permitted employees to cut Christmas trees on the property but that after a couple of years this was discontinued; the witness stated that the reason for the discontinuance was that the purchaser of the trees refused to take any more because they were so covered with dust.

Also unmentioned in these discussions was any question of moral obligation apart from legal liability.

Bob Sterrett will consult with J-M as to methods and costs of protection against asbestosis in an asbestos operation such as J-M conducts. He will also check with Stewart and Skardon regarding the mineral content in the South Carolina operation, although he is almost certain that asbestos does not occur there. I have also asked Peter Kostic to look into the problem.

C. F. Dugan

CFD/MS