

FILE NAME: WR Grace (WRG)

DATE: September 22, 1967

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September 22, 1967

American Adjustment Company
P. O. Box 2625
Great Falls, Montana 59401

ATTENTION: Robert Conley

Re: Your File: 1 C 34 16160
Co. Claim: 750 C 890
Insured: W. R. Grace & Co.
Claimant: LILAS D. WELCH
D/A: 11/9/66

Dear Mr. Conley:

This will confirm our several recent telephone conversations relative to the above matter.

We have prepared and filed Answer as requested by the Industrial Accident Board, copies of which I am at this time sending along in order that your own file may be complete.

We have consulted further with Mr. Lovick, of Libby, Montana, and he confirms that Mr. Welch was employed in the mill at the scene of their operations for approximately two months in the year 1949, and subsequently was employed in other areas.

It would appear that he did drive a truck hauling from the hopper where he would certainly encounter exposure to dust, for several months in 1949, as well as during the months of October, November and December of 1951, and September and October of 1956. On October 15, 1956 he was transferred to the warehouse where he remained until he was no longer able to work.

As we have discussed, The Occupational Disease Act of Montana was effective on the date of its approval, or March 7, 1959, and as you are of course aware, Section 92-1311(1), R. C. M., 1947, provides that no compensation shall be paid when the last day of the injurious exposure occurred prior to the effective date of the Act, with certain exceptions which appear to relate primarily to the condition of silicosis involving an employee who has been discharged in order that the employer might escape liability under the Act.

In addition of course, it was not until February 27, 1965 that asbestosis was included within the definition of occupational disease.

According to information furnished by Mr. Lovick, it would appear that there should be no particular exposure to dust in the warehouse where claimant was employed subsequent to October 15, 1956, and of course it does appear that it is on this point that our primary possibility of successful defense must be considered to rest.

Mr. Lovick did indicate that it is conceivable that claimant might have been loaned out on occasions as a truck driver, and that this information might possibly not be apparent from the records. It would seem however that any such activity would have been of short duration and may be validly claimed to have not resulted in injurious exposure as that term may be considered by the Industrial Accident Board.

It further appears that no dust counts have ever been obtained within the warehouse by either the Montana State Board of Health or insured. As far as we are able to ascertain, all State Board of Health tests, and those made by Zenolite, involved the mill, excepting for a test made by the State Board in 1942 at the company's processing plant in Libby, which of course does not figure in the present claim in any way.

Prior to the time Mr. Welch was transferred to the warehouse, he was also involved on various construction jobs around the mine, acted as a dump man, drove ore trucks, and prepared boxcars for loading, however we are informed that no particular dust hazard would seem to be involved at any points other than within the mill itself, and at the concentrate hopper, as above mentioned.

You will recall we were requested to produce voluntarily information with respect to any dust problem at the place of employment in the hands of the Montana State Board of Health. It did appear that we should be reasonably cooperative in this regard, and it was my own feeling that evidence of this type which was actually relevant should be produced, but it did not appear that we should provide the Industrial Accident Board or claimant with a blanket license to review all records in the hands of the State Board of Health relating to insured's Libby operations.

We have conferred on several occasions with Mr. Robert Swanberg, Chairman of the Industrial Accident Board, and have explained our position to him, pointing out that while we most certainly wish to be cooperative, and are not desirous of withholding any information, we must necessarily take the position that any such information revealed or presented, must be relevant and material. He has now agreed that the places where tests may have been conducted and the time they were obtained must necessarily in some way be related to claimant's exposure, and I am sure he is now of the opinion that the procedure indicated should involve a formal hearing, at which time the basic facts of time and place of employment may be placed in the record, and any information in the hands of the State Board of Health should be subpoenaed and then carefully considered at the hearing with respect to its relevancy.

This of course allows us the protection of the basic rules of evidence, and we have Mr. Swanberg's complete understanding as to our own position on the problem.

Accordingly, it is my assumption that this matter may shortly be called on for hearing, with both claimant and defendant allowed to present whatever evidence they may wish, subject to protection of the rules of evidence.

We will of course keep you advised of developments as they occur.

Sincerely,

S. Y. Larrick

SYL/nk

Enclosures: Copies, Answer