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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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)
In re) Chapter 11
)
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,)
f/k/a GENERAL MOTORS CORP., <i>et al.</i> ,)
	) Case No. 09-50026 (REG)
)
Debtors.	) Jointly Administered
-----X	

**RESPONSE AND LIMITED OBJECTION OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS HOLDING ASBESTOS-RELATED CLAIMS TO
THE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF MOTORS LIQUIDATION COMPANY FOR AN ORDER
PURSUANT TO BANKRUPTCY RULE 2004 DIRECTING PRODUCTION OF
DOCUMENTS BY (I) THE CLAIMS PROCESSING FACILITIES FOR
CERTAIN TRUSTS CREATED PURSUANT TO BANKRUPTCY CODE
SECTION 524(g) AND (II) GENERAL MOTORS LLC AND THE DEBTORS**

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TO: THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY COURT

The Official Committee of Unsecured Creditors Holding Asbestos-Related Claims (“**ACC**”) against the above captioned debtors and debtors-in-possession in these chapter 11 cases (collectively, the “**Debtors**” or “**Old GM**”), by and through its undersigned counsel, hereby responds to the motion of the Official Committee of Unsecured Creditors (“**Creditors Committee**”) for entry of an order pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure authorizing the service of subpoenas compelling the production of documents by (i) the claims processing facilities for certain trusts created pursuant to the Bankruptcy Code § 524(g), and (ii) General Motors LLC (“**New GM**”) and the Debtors (the “**Motion**”).

PRELIMINARY STATEMENT

If the Debtors, the ACC, the legal representative for holders of future asbestos personal injury claims (the “**Future Claimants’ Representative**”) and the Creditor’s Committee cannot reach an agreement regarding the approximate value of the Debtors’ aggregate asbestos-related liability, this Court will need to estimate that liability for the limited purposes of formulating a confirmable plan of reorganization. Such an estimation is properly a high-level, macroeconomic analysis of what it would cost the Debtors to resolve all present and future asbestos claims against them had the Debtors never entered bankruptcy. As a result, estimation must be focused on the Debtors’ own claims history – its experience in receiving and resolving claims in the tort system.

To conduct this estimation, the parties and the Court will need information about how and why Old GM resolved asbestos personal injury claims, including the

complete databases Old GM used to track claims and information about the trends and context in which Old GM resolved those claims. Some of this GM-specific information has been provided by the Debtors, but additional materials are needed. Indeed, the ACC itself has sought discovery from the Debtors narrowly tailored to further the purposes of aggregate estimation.¹ And to that part of the Creditors Committee’s request directed to New GM and the Debtors, the ACC has no objection.

Now, however, the Creditors Committee seeks leave to subpoena vast amounts of additional information entirely unrelated to the aggregate estimation of the Debtors’ liability from each of seven trusts established as a result of *other* asbestos bankruptcies. The Creditors Committee claims that, in order for the estimation expert it has retained to accurately value the universe of asbestos claims against the Debtors, it requires “any and all claims forms and other filings submitted to each of the Trusts by the plaintiffs in each of the pre-petition asbestos personal injury actions against Old GM in which the plaintiffs alleged they suffered from mesothelioma” and “the amounts paid by each of the Trusts to the plaintiffs in the Mesothelioma Cases.”² This request includes the seven trusts’ claim files and settlement payment history for more than 7000 individuals — potentially encompassing hundreds of thousands of pages of individuals’ detailed

¹ See Application of the Official Committee of Unsecured Creditors Holding Asbestos-Related Claims for an Order Pursuant to Bankruptcy Rule 2004 Authorizing the Taking of Document Discovery and Deposition Testimony from the Debtors and from General Motors LLC, Its Subsidiaries and Affiliate Companies [Dkt. No. 6382].

² Motion of the Official Committee of Unsecured Creditors of Motors Liquidation Company for an Order Pursuant to Bankruptcy Rule 2004 Directing Production of Documents By (I) the Claims Processing Facilities for Certain Trusts Created Pursuant to Bankruptcy Code Section 524(g), and (II) General Motors LLC and the Debtors [Dkt. No. 6383] (“**Motion**”) at 2.

medical files and evidence of exposure to asbestos-containing products of other companies. The discovery sought by the Creditors Committee raises serious practical and legal concerns, and threatens to jeopardize the efficiency and utility of the estimation proceeding.

Rule 2004 requires the Court to weigh the relevance of and necessity for the information sought by examination. In re Drexel Burnham Lambert Group, Inc., 123 B.R. 702, 712 (Bankr. S.D.N.Y. 1991). Rule 2004 may not be used to “stray into matters not relevant to the basic inquiry.” In re Bakalis, 199 B.R. 443, 448 (Bankr. E.D.N.Y. 1996). *Cf.* Fed. R. Civ. P. 26(b)(1) (for good cause, the court may order discovery relevant to the subject matter involved in the action). Here, the mass of information the Creditors Committee seeks from the trusts is irrelevant and unnecessary to estimation, and leads the estimation process down a path that will result in delay and error. As a practical matter, the Creditors Committee’s request will quickly overwhelm the available time and resources available for creating an asbestos trust. From the outset of this bankruptcy case, speed has been the watchword, and the Debtors, the United States Treasury, and other parties in interest have aspired to an expedited schedule for plan formulation and confirmation. Wading through tens of thousands of individual claim files relating to the liability of entities other than the Debtors would delay estimation and confirmation for months or, more likely, years. This Court should therefore deny the Creditors Committee’s Rule 2004 motion to the extent it seeks trust materials.

ARGUMENT

I. ESTIMATION MUST BE FOCUSED ON ITS CORE PURPOSE AND THE DEBTORS' OWN CLAIMS HISTORY

a. The proper scope of estimation is the Debtors' aggregate liability, not the merits of individual cases

Estimation of asbestos-related liability is an integral step in the process of formulating and confirming a plan of reorganization in an asbestos bankruptcy and allocating the value of the estate among the competing stakeholders. *See, e.g., In re Federal-Mogul Global Inc.*, 330 B.R. 133, 154 (D. Del. 2005) (the objective of an estimation proceeding is to establish the estimated value of asbestos-related claims in order to formulate a plan); *Owens Corning v. Credit Suisse First Boston (In re Owens Corning)*, 322 B.R. 719, 722 (D. Del. 2005) (the aim of aggregate estimation is to measure the overall value of claims and demands upon the estate held by asbestos victims as a group, so that the entitlement of this constituency can be compared to those of any rival creditors and the shareholder in order to formulate a confirmable plan of reorganization); *see also In re Chemtura Corp.*, Case No. 09-11233 (Bankr. S.D.N.Y. April 7, 2010) (Hearing Transcript at 38) (Ex. 1) (“**Chemtura Hr’g Tr.**”) (the “estimation procedure, as I’ve understood it, has about four purposes: feasibility, voting, reserves, and crafting a plan”).

Rightly conceived, estimation is of the Debtors’ aggregate liability only. The Court must determine how the present and future asbestos claims as a whole “would have been valued in the state court system had the debtor never entered bankruptcy.” *In re Armstrong World Indus., Inc.*, 348 B.R. 111, 123 (D. Del. 2006) (citing *Owens*

Corning, 322 B.R. at 722)); Federal-Mogul, 330 B.R. at 155; In re Eagle-Picher Indus., Inc., 189 B.R. 681, 683 (Bankr. S.D. Ohio 1995). *See also* Raleigh v. Ill. Dep't of Revenue, 530 U.S. 15, 20 (2000) (claims in bankruptcy must be given the value they would have under applicable non-bankruptcy state law); Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co., 549 U.S. 443, 450-51 (2007) *vacated and remanded to* 525 F.3d 885 (9th Cir. 2008) (“the basic federal rule in bankruptcy is that state law governs the substance of claims, Congress having generally left the determination of property rights in the assets of a bankrupt’s estate to state law.”) (citations and internal quotations omitted)).

Estimation must respect the individual rights of asbestos claimants. Federal-Mogul, 330 B.R. at 154-55 (an estimation does not implicate the procedural rights of the individual claimants). An estimation proceeding does not and can not decide “how much each claimant will actually be entitled to receive.” Owens Corning, 322 B.R. at 722. Merits determinations must await ultimate distribution procedures. *See* Eagle-Picher, 189 B.R. at 683 (distinguishing an estimation for purposes of allowance from estimation for purposes of distribution under 11 U.S.C. § 524(g)); Chemtura Hr’g Tr. at 34, 73-74 (recognizing that the purpose of the estimation hearing was to estimate the debtor’s aggregate liability rather than to determine the validity or value of any individual claim). If estimation is used as a vehicle for litigating the merits of claims, whether individually or in categories, it would give rise to important constitutional considerations, including due process rights and the right to trial by jury. *See, e.g.,* In re La Rouche Indus., Inc., 307 B.R. 774, 781 (D. Del. 2004) (estimating claims for

allowance purposes without providing the necessary notice and hearing to each individual claimant would violate due process); In re Roman Catholic Archbishop of Portland, 339 B.R. 215, 223 (Bankr. D. Or. 2006) (where estimation is in effect for purposes of distribution, due process requires individualized estimation); Federal-Mogul, 330 B.R. at 154 (“the focus is on [the debtor’s] aggregate personal injury liability for the creation of a trust, not the merits of individual or class of individuals claims. . . . the latter[] would require that each claimant be afforded the procedural protections of the due process clause of the Fifth Amendment, thereby requiring cases that presented disputed issues of fact a trial by jury”); 28 U.S.C. § 1411(a) (“this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim”).

As this Court has noted, an aggregate liability estimate implies that the estimation process is fundamentally a high-level economic analysis that avoids becoming mired in evaluating, or re-evaluating, individual cases. *See Chemtura Hr’g Tr.* at 26 (“[A]n estimation . . . is a macroeconomic process which is intended to avoid the very kinds of prolonged litigation that at least some of the people in the room may have in mind.”). Indeed, in the Chemtura bankruptcy case, where this Court agreed to estimate the debtor’s aggregate diacetyl-related liability, the Court noted that it would not be realistic to do a merits-based analysis of the 375 pending individual diacetyl claims, and, moreover, that such an analysis would be “the exact opposite” of what the Court intended to achieve – *i.e.*, a proper aggregate estimation. *Chemtura Hr’g Tr.* at

34; *see also id.* (acknowledging that the aggregate estimation is not about the allowance of individual claims). This Court also indicated that it would not allow “merits-based discovery” unless it were “consistent with the macroeconomic approach,” because the Court was not deciding “the individual entitlements of any particular injured party against the estate” and it had “material doubts” as to how any merits-based discovery “would advance the ball” in such an estimation. *Id.* at 77.

Here, tens of thousands of individual asbestos-related claims have been asserted against Old GM and many more will be asserted over the course of several decades to come. Even more so than in Chemtura, an analysis of the merits or demerits of these thousands of individual claims in connection with approximating the debtor’s aggregate liability is neither realistic nor in keeping with the proper purpose of estimation. Any attempt at individual merits determinations would result in an essentially unmanageable situation that would destroy the efficiencies that an aggregate estimation is meant to achieve and would seriously hinder plan formulation and confirmation. It is thus vital to maintain an appropriate focus on the debtor’s *aggregate* liability, as opposed to litigating the merits of individual or categories of claims. As it did in Chemtura, this Court should refuse to allow discovery that does not relate to aggregate estimation.

b. The Debtors’ own claims history is the touchstone for estimation

Because the objective of an estimation of a debtor’s aggregate asbestos-related liability is how the claims “would have been valued in the state court system had the debtor never entered bankruptcy,” Armstrong, 348 B.R. at 123, estimation should focus on the debtor’s own claims resolution history. No source of information other

than the debtor's claims history provides a comparable window into the claims against the debtor and how those claims fared in the tort system. *See, e.g., Owens Corning*, Case No. 00-3837-3854 (Bankr. D. Del. Aug. 19, 2004) (Order) [Dkt. No. 12520] (Ex. 2) (the court set a truncated case management order for the estimation proceeding that did not provide fact discovery deadlines, and stated that "the data now available – the Debtor's claim history, the experience in other cases, etc. – viewed in light of the expert testimony at the scheduled hearing, should probably suffice for Claims Estimation purposes").

Like the matter before this Court, the Owens Corning, Armstrong, Federal-Mogul, and Eagle-Picher cases all involved an estimate of a debtor's aggregate asbestos-related liability for purposes of formulating a plan. In each case the aggregate estimation was largely based on each debtor's past claims resolution and settlement history, combined with actuarially-based estimates of future claims tied to the overall projected asbestos disease incidence in the United States. Eagle-Picher, 189 B.R. at 686; Armstrong, 348 B.R. at 123-24; Owens Corning, 322 B.R. at 722; Federal-Mogul, 330 B.R. at 157. *See also Eagle-Picher*, 189 B.R. at 686 ("In valuation, the only sound approach is, if possible, to begin with what is known").³

³ These estimation cases establish that the key considerations that should enter into a court's estimate of a debtor's aggregate asbestos liability are: (1) the past claims resolution history of the debtor company; and (2) *foreseeable* trends in the incidence of asbestos related diseases and in the real world litigation landscape in which the claims would have been resolved, but for the bankruptcy. *See Armstrong*, 348 B.R. at 123-24; Owens Corning, 322 B.R. at 721-25; Federal-Mogul, 330 B.R. at 155; Eagle-Picher, 189 B.R. at 690-92.

In the present case, Old GM had a great deal of experience litigating asbestos claims in the tort system before resorting to bankruptcy. That history generated a body of data that, when provided to the ACC, the FCR, and the Creditors Committee, will make it possible to estimate the Debtors' remaining liability in an objective way, as was done in the asbestos estimation cases described above. Each asbestos defendant is stuck, for better or for worse, with the data that can be extracted from their individual history in the tort system, and that data provides the *only* realistic starting point for deriving a reasonable estimate of that defendant's remaining asbestos-related liability. Inevitably, any estimate of Old GM's remaining asbestos liability must be informed by its *own* actual history in receiving and resolving asbestos claims. The pending unresolved claims and those that will be asserted in the future grow out of that real-world context. There is no alternative source of data from which any realistic and non-speculative estimate can be derived of what it would cost Old GM to resolve *its* pending and future asbestos claims if there were no bankruptcy, which is the ultimate determination that must be made.

This is not to say that estimation is some kind of "black box" into which a debtor's historical claims resolution data is injected to produce automatically a numerical estimation. Estimation "by definition, is an approximation" and "mathematical precision cannot be achieved in the prediction being undertaken." Federal-Mogul, 330 B.R. at 156. *See also Owens Corning*, 322 B.R. at 725. "The task, therefore, cannot be to simply determine which expert makes a more compelling argument as to a particular variable in their formula, insert the most credible figure,

and then continue with the calculus” rather, “[a]fter consideration of the expert reports in this matter, it is evident that the Court must make reasonable adjustments based on the record created at trial and embrace the methodology it finds more reliable, while remaining vigilant to the potential bias that a party’s expert may have on his or her estimation figures.” Federal-Mogul, 330 B.R. at 156.

The Creditors Committee can fully and fairly develop its estimation of the Debtors’ aggregate liability by using the Debtors’ claims resolution history and discovery aimed at illuminating how the Debtors dealt with the claims in the tort system and the dynamics that shaped their claims-handling practices, coupled with the testimony of experts who are appropriately qualified and rest their opinions on an adequate foundation. Other parties can respond in kind. This Court can then consider the competing estimates and make any adjustments warranted by the evidence. *See Federal-Mogul*, 330 B.R. at 155 (“similar to Owens Corning . . . this estimation did not involve the discovery of individual claims, but rather focused on [the debtor’s] historical claims-handling practices, and expert testimony on trends and developments in the asbestos tort system.”). That informational process, as other courts have found, provides the appropriate basis for aggregate estimation.

II. DISCOVERY FROM OTHER ASBESTOS PERSONAL INJURY TRUSTS IS IRRELEVANT TO ESTIMATION IN THIS CASE

In its motion, the Creditors Committee proposes to stray from the proper scope of estimation and issue discovery against seven asbestos personal injury trusts relating to approximately 7400 individuals’ claims not against GM, but against the bankrupt

defendants that are the predecessors of those trusts. Specifically, the Creditors Committee seeks:

1. Any and all claims forms and other Documents submitted by each of the Claimants to each of the Trusts.
2. All Documents relating to payments made or to be made to each of the Claimants by each of the Trusts, or reflecting decisions or resolutions concerning the Claimants' claims against the Trusts.

Motion at Ex. D. Their requests appear to call for every scrap of paper submitted by these 7400 claimants and every document reflecting the deliberations of the trusts and their ultimate settlements of these claims.

The materials demanded are irrelevant to estimating the Debtors' aggregate liability based on its own claims history. Claims made upon an asbestos trust asserting the liability of a bankrupt manufacturer other than GM cannot retrospectively erase or reduce GM's own liability. Any resulting settlement payments reflect not GM's liability, but the bankrupt's, and are further shaped by a variety of factors having nothing to do with GM's liability. As a result, obtaining and processing a massive quantity of materials on these subjects from non-party trusts will simply squander time and resources.

- a. **Claims submitted to trusts responsible for entities other than GM are not relevant to Old GM's liability**

The Creditors Committee suggests that, if the Court permits it to obtain claims submissions from numerous section 524(g) trusts, it will be able to divine the "true" value of claims against old GM and show that the actual values at which GM historically resolved its claims were wrong. Motion at 8. While the Creditors

Committee does not fully explain its theory, it offers a few hints. For example, the Motion submits that many of claimants who settled with Old GM have since filed claims against new section 524(g) trusts. *Id.* The Creditors Committee posits that Old GM's litigation defenses would have been stronger against claimants who subsequently made a claim against such a trust, and so it apparently proposes to airbrush such claimants out of Old GM's claims history, or re-evaluate their claims.

Such revisionist history is logically and practically flawed. Logically, Old GM's liability does not depend on whether another defendant also exposed the claimant to asbestos. Old GM is subjected to liability when exposure to asbestos-containing products of Old GM is a "substantial contributing factor" to causation of claimants' illnesses. In 1973, Borel v. Fibreboard Paper Products Corp., 493 F.2d 1076 (5th Cir. 1973), confirmed this basic "substantial contributing factor" framework for determining "cause in fact" in asbestos personal injury cases. While courts since Borel have wrestled with how to determine whether, in an asbestos case, exposure to a particular defendant's product was a "substantial contributing factor" in causing a claimant's injury, and some have adopted variations on the test, Borel remains the benchmark for asbestos personal injury claims across the country and is fully consistent with general tort law. *E.g.*, Restatement (Second) of Torts § 431 ("The actor's negligent conduct is a legal cause of harm to another if (a) his conduct is a substantial factor in bringing about the harm, and (b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm.").

Consistent with Borel, asbestos personal injury plaintiffs often allege, and courts and juries often find, that an individual's injury was caused by exposure to asbestos-containing products from more than one defendant. No court has held that an asbestos personal injury plaintiff can recover from a particular defendant only if he or she can establish that he or she was exposed *solely* to the products of that one defendant. Indeed, courts have repeatedly sustained verdicts in asbestos personal injury cases against particular defendants whose contributions, on a percentage basis, to overall causation were relatively low. *See, e.g., Cadlo v. Metalclad Insulation Corp.*, 61 Cal. Rptr. 3d 104, 108 (Ct. App. 2007) (3 percent); *Jones v. John Crane, Inc.*, 35 Cal. Rptr. 3d 144, 149 (Ct. App. 2005) (1.95 percent); *Barnes v. Owens-Corning Fiberglas Corp.*, 201 F.3d 815, 817 (6th Cir. 2000) (2 percent); *Wilson v. John Crane, Inc.*, 97 Cal. Rptr. 2d 240, 244 (Ct. App. 2000) (2.5 percent). Thus, it is entirely consistent with Old GM's liability that a person injured by asbestos exposure may also claim against other parties.

Practically, moreover, Old GM's historical settlement values already reflect Old GM's assessment of the likelihood that other parties were responsible for any given claimant's injury. That assessment is "baked into" GM's own claims history. Historical settlement values represent Old GM's best contemporaneous evaluation, with the guidance of its experienced risk managers and counsel, of Old GM's individual share of liability in any given case. It bears emphasis that, in regard to channeled asbestos claims, each trust stands in the shoes of a former defendant that was litigating alongside Old GM in the tort system and was available for discovery as Old GM

received and resolved its cases and thereby built up the claims data now available. In each case, Old GM had the ability to obtain information about any individual claimant's exposure to asbestos-containing products from other manufacturers in discovery. Knowing what other sources of recovery might be available to an individual claimant, or at least having the opportunity to develop alternative exposure evidence from the claimant or co-defendants, Old GM bought peace with individual claimants by fixing its own share of liability. The Creditors Committee offers no explanation of why a claimant's pursuit of redress from the other defendants – claims delayed by the other defendants' bankruptcies but known or knowable to Old GM back when it resolved its own liability — would change anything.

Nor are the actual claim documents on file with the various trusts likely to provide any significant quantity of material relevant to the estimation of Old GM's liability. An asbestos trust is charged with paying, in an efficient and fair manner, only the asbestos liabilities of the entity whose bankruptcy occasioned that trust's creation. Such trusts therefore adapt their claim processing procedures to establish that individual claimants who present claims have offered evidence sufficient to meet the criteria for approval of the claim at the claimed disease level. They do not generally request the totality of a claimants' exposure against all potential defendants. For example, the current medical and exposure requirements for an expedited review mesothelioma claim to the USG Asbestos Personal Injury Trust include (1) a diagnosis of mesothelioma, and (2) "meaningful and credible exposure" to USG asbestos-containing products before December 31, 1982 or A.P. Green asbestos-containing products before January

2, 1968. See USG Asbestos PI Trust Distribution Procedures (Mar. 29, 2010 rev.) § 5.3(a)(3), 5.7(b)(3).⁴ The Creditors Committee cannot therefore expect to find in the submissions by claimants to such trusts information about any claimant's exposure to Old GM asbestos-containing products. The fact that the information required by the trusts is not comprehensive also limits any inferences that may be drawn from this data as a whole.

b. Trust payment amounts for non-GM exposure are not relevant to GM's liability

Nor will the amounts asbestos trusts paid individual claimants who had exposure to other manufacturer's asbestos-containing products assist the Court in conducting this estimation. First, a section 524(g) trust pays no more to any individual than the several share of liability attributable to the bankrupt entity whose asbestos liability that trust has assumed. They do not make determinations about the value of any individual's asbestos personal injury claim as a whole, against all possible defendants, or attempt to ascertain the "true value" of other potential or actual co-defendants' shares of liability.

Second, the trust payment itself rarely reflects the full value of even the bankrupt's share of liability. A section 524(g) trust typically pays only a fraction of its several share of liability, because the funds available to each trust are only a fraction of the bankrupt entity's estimated liability, and because the trust is required to conserve resources for future claimants. This fraction has nothing to do with the individual merits of any claim, but is instead a function of limited funding. Thus, the amount

⁴ The USG TDP are available at <http://www.usgasbestostrust.com/files/USGTDP.pdf>.

actually paid by a trust generally differs from the full theoretical several share of the bankrupt entity.

III. THE PROPOSED DISCOVERY AND THE ESTIMATION PLAN IT IMPLIES WOULD DELAY CONFIRMATION SIGNIFICANTLY

The Creditors Committee's request demonstrates that they, like others before them in the history of asbestos bankruptcies, hope to convert what should properly be a macro-level, aggregate estimation into an "alternative tort system" in which thousands of individuals' claims are evaluated against new criteria dreamed up by experts in an effort to reduce liability. History has shown, however that such attempts lead to massive costs and delays and ultimately collapse. This Court should not permit this proceeding to be shunted down that path.

a. The history of asbestos estimation shows that firm control of the discovery process will result in a speedy and fair proceeding

Estimation proceedings can be efficient, fair and beneficial, provided the focus is maintained on the aggregate liability, and the discovery and trial are tailored to serve the limited goals of estimation in the aggregate. For example, in the Federal-Mogul bankruptcy case, the district court held a five-day estimation hearing, and, less than three months later, issued a decision estimating the company's aggregate asbestos-related liability in the United States at 9 billion dollars. *See* Federal-Mogul, 330 B.R. at 135, 164.⁵ The Federal-Mogul court found that the estimation proceeding was "fruitful" and furthered the Bankruptcy Code's goals of "speedy and efficient"

⁵ *See also* Armstrong, 348 B.R. at 123 (after a three day hearing, the court estimated the debtor's aggregate asbestos-related liability as "at least" \$3.1 billion).

reorganization because the estimation focused on the debtor's aggregate asbestos-related liability, rather than the merits of individual claims or classes of claims. *Id.* at 154-55. The court also stressed that “similar to Owens Corning . . . this estimation did not involve the discovery of individual claims, but rather an inquiry focused on [the debtor's] historical claims-handling practices, and expert testimony on trends and developments in the asbestos tort system.” *Id.* at 155. The court cautioned that “[t]o do otherwise [*i.e.*, to focus on the merits of claims, or to involve the discovery of individual claims] **would eviscerate the purposes of the estimation process and place additional financial burdens on the very trust which the Court is trying to create.**” *Id.* (emphasis added).

As noted in the Federal-Mogul estimation decision, attempts to perform discovery beyond the scope of aggregate estimation were struck down in Owens Corning, resulting in an efficient estimation proceeding. An agent of holders of bank debt, Credit Suisse First Boston (“**Credit Suisse**”), applied to the court to establish a procedure to obtain a random sampling of the medical records of the 1000 asbestos personal injury claimants who have asserted nonmalignant claims against Owens Corning. Credit Suisse was constrained to inform the court that even its relatively narrow sample would require postponing the estimation hearing by “a period of six months to a year.” In re Owens Corning, Case Nos. 00-3837-3854 (Bankr. D. Del. Nov. 22, 2004) (Memorandum and Order at 1) [Dkt. No. 13407] (Ex. 3).

District Judge John P. Fullam denied Credit Suisse's request and rejected the proposed discovery on the grounds that “no useful purpose would be served by further

delaying matters, and running up additional legal bills, to prove what is already reasonably well known.” *Id.* at 2. He observed:

The relevant data have been available for analysis for many years. The conclusions drawn by experts have long been debated, and will be fully aired at the January hearing. In the unlikely event that the information now available proves insufficient to enable a reasonably correct estimate of future claims, that issue, too, will be considered at the hearing in January.

Id. at 1-2.

Rather than undertaking Credit Suisse’s proposed sample of 1000 individual claims, the parties engaged in a streamlined discovery process lasting only a few months. As a result of this discipline, the estimation hearing ultimately held in Owens Corning lasted only six days, and, less than three months later, the court handed down a Memorandum and Order estimating Owens Corning’s liability for present and future asbestos claims at 7 billion dollars. *See Owens Corning*, 322 B.R. 719. The court viewed its task as one of applying informed judgment to historical facts regarding the tort system, based on a review of Owens Corning’s claims litigation and resolution history and the testimony of experts proffered by the several parties. *See id.* at 721-22. The court did not endeavor to infer what Owens Corning’s liability would have been if the tort system had been different than it was, but grounded its analysis on the realities confronting Owens Corning at the time it filed for bankruptcy, as well as developments and trends in the tort system that are likely to influence the value of anticipated future claims. *Id.*

b. **Unchecked discovery and attempts to make individual claims determinations will take the estimation process off track for months and perhaps years**

Conversely, estimations performed in other asbestos bankruptcies teach that if the scope of discovery and trial are permitted to stray from the limited purpose of aggregate estimation into the merits of claims or whether settlement values are appropriate, the efficiencies an estimation is intended to provide are eviscerated, and fruitless delays and enormous costs result. For example, in the W.R. Grace bankruptcy case, on which the Creditors Committee relies (*see* Motion at 12), the debtor sought extensive discovery from numerous collateral sources, including several trusts established pursuant to section 524(g). As a result, the estimation discovery phase in W.R. Grace spanned more than three years, the evidentiary hearing on estimation was originally scheduled to take up nearly twenty days of the court's time over several months (a number that swelled as the proceeding unfolded), and the entire estimation process consumed inordinate financial and judicial resources.

In 2005, at the urging of the debtor, the bankruptcy court ordered all claimants with current claims against W.R. Grace to answer a detailed, multi-page questionnaire about their claims, disclosing medical and exposure information. *See In re W.R. Grace & Co.*, Case. No. 01-1139 (Bankr. D. Del. Aug. 29, 2005) (Case Management Order for the Estimation of Asbestos Personal Injury Liabilities) [Dkt. No. 9301] (Ex. 4). The current claimants ultimately submitted over 100,000 responses to the questionnaires, with voluminous corroborating documentary evidence attached, all at enormous cost to that constituency. The court was forced to extend the discovery

deadlines and the estimation hearing no fewer than eleven times.⁶ The process took the better part of two years and gave rise to numerous discovery motions that took months to resolve, eventually leading Judge Fitzgerald to declare that she had “had this questionnaire until the cows come home” and “would never do this again” because it was a “nightmare.” In re W.R. Grace & Co., Case No. 01-01139 (Bankr. D. Del.

⁶ See In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. Dec. 21, 2005) (Order Modifying the Case Management Order for the Estimation of Asbestos Personal Injury Liabilities Regarding the Extension of Time for Claimants to Respond to Questionnaires and to Designate Non-Expert Witnesses) [Dkt. No. 11403]; In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. Jan. 10, 2006) (Revised Order Modifying the Case Management Order for the Estimation of Asbestos Personal Injury Liabilities Regarding the Extension of Time for Claimants to Respond to Questionnaires and to Designate Non-Expert Witnesses) [Dkt. No. 11515]; In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. Jan. 31, 2006) (Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities) [Dkt. No. 11697]; In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. Feb. 21, 2006) (Order Modifying the Case Management Order for the Estimation of Asbestos Personal Injury Liabilities Regarding the Extension of Time for Claimants to Respond to Questionnaires) [Dkt. No. 11885]; In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. Mar. 27, 2006) (Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities) [Dkt. No. 12151]; In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. April 27, 2006) (Order Modifying the Case Management Order for the Estimation of Asbestos Personal Injury Liabilities Regarding the Extension of Time for Claimants to Respond to Questionnaires) [Dkt. No. 12314]; In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. July 24, 2006) (Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities) [Dkt. No. 12858]; In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. Dec. 19, 2006) (Order Regarding Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities) [Dkt. No. 14079]; In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. Apr. 2, 2007) (Order Regarding Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities) [Dkt. No. 15078]; In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. June 1, 2007) (Newly Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities) [Dkt. No. 15923]; In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. July 9, 2007) (Modified Second Newly Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities) [Dkt. No. 16260] (the amended case management orders are attached collectively as Ex. 5).

Sept. 25, 2006) (Hearing Transcript at 197, 200) (Ex. 6). Even after this extreme delay and expense, the debtor never used more than a small fraction of the information. Instead, the debtor complained that simply *coding* all the information submitted by each claimant would take another *eight years*.⁷

In 2007, the debtor in the W.R. Grace bankruptcy subpoenaed numerous asbestos trusts, including the Celotex Asbestos Trust. This subpoena also resulted in protracted motion practice, culminating in the bankruptcy court ordering the Celotex Asbestos Trust to produce the data contained in claimants' responses to just certain sections of the trust's claim form. *See* Motion at 12 (citing to In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. Oct. 3, 2007) (Order Regarding W.R. Grace & Company's Motions to Compel Discovery Materials from the Celotex Asbestos Settlement Trust) (a copy was attached as Ex. F to the Motion)). The debtor made little use of this information. It warrants emphasis, moreover, that the information the court ordered the Celotex Trust to produce in W.R. Grace (selected fields from claim forms) was far narrower in scope than what the Creditors Committee demands here (complete claims forms, all claims submissions, all payment information, and all documents reflecting the claims evaluation discussions of seven different trusts).

Eventually, the estimation trial was finally set down for approximately 18 hearing days between January and April of 2008. *See* In re W.R. Grace & Co., Case

⁷ In re W.R. Grace & Co., Case No. 01-01139 (Bankr. D. Del. Mar. 26, 2007) (Response to Emergency Motion of The Official Committee of Asbestos Claimants and David T. Austern the Court Appointed Legal Representative for Future Asbestos Personal Injury Claimants to Compel Production of Complete Navigable Database) [Dkt. No. 14973] at 9 (Ex. 7).

No. 01-1139 (Bankr. D. Del. July 9, 2007) (Modified Second Newly Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities) [Dkt. No. 16260] (Ex. 8). Over the course of the hearings, the court contemplated setting aside even more time for the estimation trial. *See* In re W.R. Grace & Co., Case No. 01-1139 (Bankr. D. Del. April 1, 2008) (Hearing Transcript at 167-72) (Ex. 9). Ultimately, W.R. Grace abandoned its scheme for a mass evaluation of the entire claimant population, and the parties settled before the estimation proceeding was completed, with the debtor agreeing to pay several billion dollars into a settlement trust to resolve its asbestos liabilities.

The Creditors Committee's proposed discovery against the trusts threatens to turn estimation into a multi-year estimation fiasco along the lines of the W.R. Grace proceeding. If it is permitted to force the targeted trusts to produce their claim forms, supporting claimant submissions, payment information and deliberative records for 7400 mesothelioma claimants, it would take years to obtain, review and use that information. And if the Creditors Committee did use the information, other parties would have no choice but to delve into that material as well. Such a diversion would not only be legally inappropriate but practically disastrous from the standpoint of conducting estimation swiftly and efficiently in the manner most conducive to the formulation and confirmation of a suitable plan.

CONCLUSION

The Creditors Committee's request to serve discovery on trusts threatens to turn what should be a relatively efficient estimation proceeding into a long, unwieldy battle. Discovery that would not lead to any admissible evidence, including discovery aimed at gathering information regarding the merits of individual claims or settlements with non-GM entities, should not be permitted. The Rule 2004 Motion should be denied.

Date: August 2, 2010

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Unsecured Creditors Holding Asbestos-
Related Claims*

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-11233(REG)

- - - - -x

In the Matter of:

CHEMTURA CORPORATION, et al.

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

April 7, 2010
9:50 AM

B E F O R E:

HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE

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HEARING re Debtors' Motion for Entry of an Order Authorizing
the Estimation of Diacetyl Claims, Establishing Estimation
Procedures, and Granting Certain Related Relief

HEARING re Objection of the Official Committee of Unsecured
Creditors of Chemtura Corporation, et al., to the Counsel for
Education and Research on Toxics' Claim Nos. 12051, 12053, and
12055

HEARING re Debtors' Eleventh Omnibus Tier I Objection to
Certain Proofs of Claim (Amended and Superseded Claims)

HEARING re Debtors' Fifteenth Omnibus Objection to Certain Tier
I Proofs of Claim (Amended and Superseded, Docketed in Error,
Duplicate, Equity Interests, Facially Defective, Paid in Full
and Partially Paid Claims)

HEARING re Debtors' Sixteenth Tier I Omnibus Objection to
Certain Proofs of Claim (Insufficient Information)

HEARING re Debtors' Seventeenth Tier I Omnibus Objection to
Certain Proofs of Claim (Insufficient Information)

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HEARING re Debtors' Eighteenth Tier I Omnibus Objection to
Certain Proofs of Claim (Insufficient Information)

HEARING re Debtors' Nineteenth Tier I Omnibus Objection to
Certain Proofs of Claim (Insufficient Information)

HEARING re Debtors' Twentieth Omnibus Tier I Objection to
Certain Proofs of Claim (Wrong Debtor Claims)

HEARING re Motion for Extension of Time to File Late Proofs of
Claim

Transcribed by: Lisa Bar-Leib

1 ongoing.

2 MR. LIESEMER: That's correct.

3 THE COURT: Okay. So this is your next point after
4 those two?

5 MR. LIESEMER: Yes, yes. I have another point.

6 THE COURT: All right. Go on.

7 MR. LIESEMER: The other -- we're still early in this
8 process. And I don't think the parties have fully formed what
9 their estimation case is going to be. The debtors are trying
10 to establish a streamline process and basically provide in the
11 CMO that the only individuals who can testify are experts. And
12 I think that really deprives the parties of putting on the kind
13 of case that they might need to. In other words, I think there
14 are certain circumstances --

15 THE COURT: I saw that contention in your brief and in
16 the reply to it but I was scratching my head in figuring out
17 why in the world I might want to hear from document custodians
18 --

19 MR. LIESEMER: Well, it's not --

20 THE COURT: -- and why in the world anybody could have
21 anything else that could be relevant to an estimation which is
22 a macroeconomic process which is intended to avoid the very
23 kinds of prolonged litigation that at least some of the people
24 in the room may have in mind.

25 MR. LIESEMER: Correct, Your Honor. We're not just

1 THE COURT: I would think if you're going to be
2 analyzing 375 individual claims, it wouldn't be realistic. But
3 I thought that's the exact opposite of what we're trying to do.

4 MR. LIESEMER: Well, that's my understanding, Your
5 Honor. But we received the limited objection of the equity
6 committee in which they say that they may "request discovery
7 relating to pulmonary function tests, imaging studies, other
8 clinical or lab tests, copies of medical records relating to
9 pulmonary issues, alternative causes of disease such as
10 smoking, information regarding date of birth, height and weight
11 of the claimant, product id information, dates of exposure,
12 results of environmental or personal exposure monitoring for
13 diacetyl and other organic vapors." This is in footnote 2 of
14 their limited objection.

15 And, Your Honor, I don't think the schedule, as the
16 debtors have crafted it, is built to accommodate that kind of
17 thing. After all, we're not -- this isn't about the allowance
18 of individual claims.

19 THE COURT: I understand your point.

20 MR. LIESEMER: And --

21 THE COURT: You don't need to say anymore on that.

22 MR. LIESEMER: Thank you, Your Honor.

23 (Pause)

24 MR. LIESEMER: I have two more points, Your Honor.
25 Another one -- this has come out of the response and we're

1 litigation going on and that Your Honor's estimation decision
2 is not going to bind them in any way then we're really talking
3 about a proceeding that's not going to yield a reliable result
4 that's not going to be helpful for the debtor or to this Court
5 and could be prejudicial at the end of the day to my clients.

6 THE COURT: Well, what do you think the guy in the
7 robe should do then? I mean, do you think I should just
8 scuttle the entire estimation proceeding --

9 MR. LIESEMER: No.

10 THE COURT: -- because I am pretty firm in my view
11 that I can't screw insurers as part of this? I mean, I -- this
12 estimation procedure, as I've understood it, has about four
13 purposes: feasibility, voting, reserves and crafting a plan
14 which also includes getting our arms around whether claims are
15 low enough so there might be something for equity. And unless
16 I'm going to put blinders over my eyes and forget about the
17 fact that the insurers have policies, whether or not they cover
18 anything, what do you think I should do --

19 MR. LIESEMER: Your Honor, I think --

20 THE COURT: -- other than throw up my arms in
21 frustration?

22 MR. LIESEMER: I'm not asking the Court to throw up
23 its arms in frustration. There certainly should be an
24 aggregate estimate of the liability. My concern is that if we
25 go hard to try to estimate the insurance coverage, it's not

1 is on the protective order. We certainly have no problem with
2 allowing Citrus's or Unger's bankruptcy counsel, as long as
3 it's okay with the claimants, we have no problem with them
4 seeing the settlement-related information so they can
5 participate in this process. And I think that's easy to craft.

6 With that, Your Honor, I've tried to hit the issues.
7 If you have any other questions, otherwise we're finished.

8 THE COURT: All right, just a minute, please.

9 MR. ZOTT: Yes, sir.

10 (Pause)

11 THE COURT: No, I have no further questions, Mr. Zott.

12 All right, we'll take a recess. I want everybody back
13 here in ten minutes. We're in recess.

14 (Recess from 12:08 p.m. until 12:22)

15 THE COURT: All right. Ladies and gentlemen, the
16 recommendations of the debtors vis-a-vis how we're going to
17 proceed with this estimation hearing as modified before today's
18 hearing and as further modified by matters that Mr. Zott said
19 he would agree to, are approved, subject to the refinements
20 that I'll articulate as part of the remarks that follow.

21 The following are the bases for the exercise of my
22 discretion in this regard:

23 I agree with the determination that two weeks, but no
24 more, than that should be added to the schedule. Except to the
25 relatively minor extent to which implementing certain changes

1 that I'll prefer on briefing and expert reports would require
2 adjustments to that. The whole idea of an estimation
3 proceeding is to avoid the prejudice to the stakeholders in a
4 case that would result but for the presence of the estimation
5 proceeding.

6 We defeat the purpose of that if we put too much slack
7 into the schedule or we approach the work that we need to do
8 into a leisurely fashion. An extension of two weeks, but no
9 more than that, is necessary to achieve the objectives of an
10 estimation proceeding. And should be sufficient to get done
11 what we need to do once we proceed on the assumption, which I
12 am articulating expressly, that we are talking about a
13 macroeconomic approach, and not looking at individual claims
14 and defense. Either vis-a-vis claims by diacetyl claimants
15 against the estate, or to the extent relevant, which now
16 appears to be less relevant, as between the estate and any
17 insurers.

18 There will be no change in the schedule vis-a-vis
19 first wave expert reports. As my questions to counsel
20 indicated, I have a different view of expert reports than some
21 in the courtroom may. As far as I look at the matter they're a
22 value to help people prepare for live expert depositions and to
23 determine the extent to which they need to get their own expert
24 reports, or own experts to say the kinds of things they hope
25 their experts will say. For that reason, I am less sure than

1 except only for -- if the equity committee can convince the
2 debtors' counsel that some of the extra stuff they wanted is
3 consistent with a macroeconomic approach. And the equity
4 committee has convinced the debtors that there's a good reason
5 for it. I won't say no. But I want to underscore that I am
6 looking for the high altitude approach here. I am not,
7 consistent with my earlier rulings, looking to decide the
8 individual entitlements of any particular injured party against
9 the estate. And I have material doubts as to how any such
10 discovery would advance the ball within the context of the type
11 of proceeding that I envision.

12 The next matter and the one that is potentially most
13 debatable even though the creditors' committee articulate
14 fairly strong reasons for its position, is whether or not the
15 reserve will be a cap on the entitlements of individual
16 claimants down the road. I'm not going to decide that issue
17 today. I was persuaded by Mr. Zott's point that it's
18 premature. Everybody will have a reservation of rights on that
19 issue. And it's at least possible that I'm going to want to
20 get further briefing on it. But I'm not going to decide that
21 today.

22 I understand where both sides are coming from with
23 respect to their respective positions, and my decision is
24 likely going to be based not on who's got the more sympathetic
25 positions, but what the case law tells me in way of how issues

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	:	Chapter 11
OWENS CORNING, <i>et al.</i> ,	:	Case No. 00-3837 to3854 (JKF)
Debtors.	:	

ORDER


AND NOW, this ^{6th} day of August, 2004, upon consideration of Claims Estimation Issues,

It is ORDERED:

1. That an initial hearing on Claims Estimation will be held on January 13, 2005, at 10:00 a.m., in Courtroom 15A, 601 Market Street, Philadelphia, PA 19106.
2. Parties intending to present expert testimony at such hearing shall file with the Court, and forward to other counsel, expert reports by October 15, 2004.
3. Depositions of experts shall be completed by December 15, 2004.
4. The Court has preliminarily determined that the data now available – the Debtor’s claim history, the experience in other cases, etc. – viewed in light of the expert testimony at the scheduled hearing, should probably suffice for Claims Estimation purposes. If by the end of the January hearing, the Court determines that additional information is needed, this order will be reconsidered.

It is further ORDERED that Counsel for the Debtor shall make sure that a copy of this order is sent promptly to those on the service list.

BY THE COURT:



 John P. Fullam, Sr. J.

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	:	Chapter 11
	:	
OWENS CORNING, et al.,	:	Case Nos. 00-3837 to 3854 (JPF)
	:	
Debtors.	:	

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 22, 2004

On August 19, 2004, I entered an order scheduling a claims estimation hearing for January 13, 2005, and directing the parties to file their respective expert reports by October 15, 2004. Credit Suisse First Boston, as agent for a group of participating banks ("CSFB"), has filed a motion to modify that scheduling order. CSFB asks the court "to establish procedures to obtain a sample of medical records, including x-rays, from asbestos personal injury claimants asserting nonmalignant claims against the debtors ...," and to postpone the January hearing until the suggested procedures have been completed - a period of six months to a year. For several reasons, the motion will be denied.

The record already contains substantial evidence to support the notion that Owens Corning's history of dealing with asbestos claims has included payments to large numbers of claimants who actually sustained little or no harm from their exposure to Owens Corning's products. The relevant data have been available for analysis for many years. The conclusions drawn by experts have long been debated, and will be fully aired at the January hearing. In the

unlikely event that the information now available proves insufficient to enable a reasonably correct estimate of future claims, that issue, too, will be considered at the hearing in January.

It bears emphasis that the task is to determine what amount of money will be necessary, and sufficient, to cover Owens Corning's liability to claimants in the real world in which such claims will be resolved. It will then be necessary to structure a program of payments which, to the extent possible, recognizes only legitimate claims, and accords the appropriate priority to the claims of all creditors.

The bottom line is that no useful purpose would be served by further delaying matters, and running up additional legal bills, to prove what is already reasonably well known.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE


IN RE:	:	Chapter 11
	:	
OWENS CORNING, et al.,	:	Case Nos. 00-3837 to 3854 (JPF)
	:	
Debtors.	:	

ORDER

AND NOW, this 22nd day of November, 2004, upon consideration of the motion of CSFB, as agent, to establish procedures to obtain a sample of medical records (etc.), and the responses to that motion, IT IS ORDERED:

That the motion is DENIED.

BY THE COURT:



John P. Fullam, Sr. J.

EXHIBIT 4

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
))
W. R. GRACE & CO., *et al.*,¹) Case No. 01-1139 (JKF)
) (Jointly Administered)
Debtors.)

*Re item 17
8/29/05*

**CASE MANAGEMENT ORDER FOR THE ESTIMATION
OF ASBESTOS PERSONAL INJURY LIABILITIES**

WHEREAS, on April 2, 2001, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"), which have been consolidated for administrative purposes only; and

WHEREAS, on November 13, 2004, the Debtors filed their Motion for Entry of an Order Seeking the Estimation of Asbestos Claims and Certain Related Relief (the "Estimation Motion"); and

¹ The Debtors consist of the following 62 entities: W. R. Grace & Co. (*f/k/a* Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (*f/k/a* Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (*f/k/a* Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (*f/k/a* Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (*f/k/a* Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (*f/k/a* Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (*f/k/a* GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (*f/k/a* Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (*f/k/a* Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (*f/k/a* British Nursing Association, Inc.), Remedium Group, Inc. (*f/k/a* Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (*f/k/a* Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

WHEREAS, a hearing on the Estimation Motion (the "Estimation Motion Hearing") was held on January 21, 2005; and

WHEREAS, at the Estimation Motion Hearing, the Court ordered the Asbestos Personal Injury Committee, the Futures Claimants Representative (the "FCR"), and the Debtors to negotiate a case management order to govern the estimation of Asbestos Personal Injury Claims (the "PI Estimation"); and

WHEREAS, the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and

WHEREAS, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and

WHEREAS, venue of this proceeding is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

IT IS HEREBY:

1. ORDERED that the Asbestos Personal Injury Questionnaire (the "Questionnaire"), attached to this Order as *Exhibit A*, is approved; and it is further
2. ORDERED that all holders of Asbestos PI Pre-Petition Litigation Claims are required to complete and serve the Questionnaire; and it is further
3. ORDERED that the following schedule shall govern the deadlines with respect to the Questionnaire:
 - A. The Debtors shall serve the Questionnaire on counsel of record for all holders of asbestos personal injury claims for which litigation was commenced prior to the Petition Date (the "Asbestos PI Pre-Petition Litigation Claims") (or the holders themselves where not represented by counsel and the holder's identity and address are known) via direct U.S.

mail on or before September 12, 2005 (fourteen calendar days after entry of this Order);²

- B. The Debtors shall mail the Questionnaire to the Office of the United States Trustee, counsel to the official committees appointed in these Chapter 11 Cases, and counsel to the FCR on or before September 12, 2005 (fourteen calendar days after entry of this Order);
- C. Persons who believe that they hold, or attorneys who believe they represent persons who hold, Asbestos PI Pre-Petition Litigation Claims against any of the Debtors shall complete and serve the Questionnaire on or before 5:00 p.m. (Eastern Standard Time) on January 12, 2006; Questionnaires that are postmarked as mailed on or before January 12, 2006, but are actually received thereafter, will be considered timely served;
- D. The Debtors' claims processing agent shall compile the Questionnaire information into a navigable database and make it available to the Debtors and any parties in the estimation proceedings, including those parties' experts and advisors, on or before March 13, 2006;³ and it is further

4. ORDERED that the Debtors, the official committees, and the FCR will use their best efforts, consistent with their duties, to include in any trust distribution procedures approved as part of a plan of reorganization provisions prioritizing the processing of claims for which Questionnaires have been timely returned as completely and accurately as possible; and it is further

5. ORDERED that all parties seeking to call one or more experts to testify shall designate the categories to be addressed by such experts on or before November 14, 2005. The categories of experts may be supplemented on or before November 28, 2005; and it is further

6. ORDERED that all parties seeking to call one or more experts to testify shall designate such expert(s) on or before December 19, 2005. Subsequent to December 19, 2005, a

² If any date provided in this Order conflicts with the parenthetical description of the number of days, the date listed shall control over the number of days listed in such parenthetical.

³ Upon request, any of the parties shall have access to the original Questionnaires and documents attached thereto.

party, for good cause shown, may substitute and/or add one or more experts not previously designated on or before December 19, 2005; and it is further

7. ORDERED that not later than December 22, 2005, all parties shall each exchange preliminary designations of the non-expert witnesses each intends to call at the Asbestos PI Estimation Hearing. Subsequent to December 22, 2005, a party, for good cause shown, may substitute and/or add one or more non-expert witnesses not previously designated on or before December 22, 2005; and it is further

8. ORDERED that all parties seeking to call one or more experts to testify as to matters other than the number, amount, and value of present and future asbestos claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert on or before February 16, 2006. Such expert reports may be supplemented ^{or rebutted} on or before April 13, 2006; and it is further

9. ORDERED that all parties seeking to call one or more experts to testify as to an estimated value of the Debtors' Asbestos Personal Injury Claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert on or before April 13, 2006. Such expert reports may be supplemented ^{or rebutted} on or before June 12, 2006; and it is further

10. ORDERED that a preliminary pre-trial conference on the Asbestos PI Estimation shall be held at the first omnibus hearing after June 30, 2006, at which time the Court may set a final pre-trial conference date in August 2006 and a trial date in September 2006 (the "Asbestos PI Estimation Hearing") for the Asbestos PI Estimation; and it is further

11. ORDERED that all written fact discovery may commence at any time but must be concluded by July 28, 2006; and it is further

new # Ordered, that the Debtors' experts shall be deposed first, followed by experts of other parties, to be followed by supplemental depositions.

12. ORDERED that depositions of expert and non-expert witnesses may commence at any time, but must be concluded by July 28, 2006; and it is further

13. ORDERED that, pursuant to Rules 26(a)(3)(A) and 26(a)(3)(B) of the Federal Rules of Civil Procedure, parties shall file a final fact witness/expert list on or before July 28, 2006; and it is further

14. ORDERED that any pre-trial motions, including *motions in limine*, *Daubert*, and summary judgment motions, shall be filed not later than August 1, 2006. Responses to such motions shall be filed not later than 21 days after the filing of any such motion. Replies shall be filed not later than 7 days after the filing of the response to the motion. ^{Replies shall be limited to 5 pages.} A hearing on such motions will be at the Court's direction; and it is further

15. ORDERED that on or before 21 calendar days prior to the final pre-trial conference, pursuant to Rule 16.4(d) of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware (the "Local Rules") and Rule 26(a)(3)(C) of the Federal Rules of Civil Procedure, parties shall file with the Court: (i) a proposed pre-trial order, signed by counsel for each party participating in the PI Estimation; (ii) copies of all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing; and (iii) stipulations regarding admissibility of exhibits; and it is further

16. ORDERED that on or before 21 calendar days prior to the final pre-trial conference, pursuant to Rule 26(a)(3)(C) of the Federal Rules of Civil Procedure, parties shall exchange copies of (or, when appropriate, make available for inspection) all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing; and it is further

17. ORDERED that any trial briefs shall be filed on or before 21 calendar days prior to the Asbestos PI Estimation Hearing and that no responses thereto shall be allowed; and it is further

18. ORDERED that notwithstanding anything in this Order, the deadlines specified herein may be extended by consent of the parties or by the Court upon motion of any party participating in the PI Estimation, after notice (which may be shortened and limited by the Court as it deems appropriate) and hearing; and it is further

19. ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: August 29, 2005

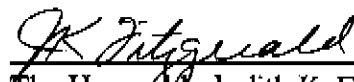

The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

EXHIBIT 5

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	) Chapter 11
)
W.R. GRACE & CO., <i>et al.</i>,	) Case No. 01-1139 (JKF)
	) Jointly Administered
Debtors.)
	) Re: Docket Nos. 9301, 11023

**ORDER MODIFYING THE CASE MANAGEMENT ORDER
FOR THE ESTIMATION OF ASBESTOS PERSONAL INJURY
LIABILITIES REGARDING THE EXTENTION OF TIME FOR
CLAIMANTS TO RESPOND TO QUESTIONNAIRES
AND TO DESIGNATE NON-EXPERT WITNESSES**

WHEREAS, on August 29, 2005 the Court entered a Case Management Order for the Estimation of Asbestos Personal Injury Liabilities (“CMO”) (D.I. 9301); and

WHEREAS, the CMO directed persons who hold Asbestos PI Pre-Petition Litigation Claims against any of the Debtors to complete and serve the Questionnaire (attached as Exhibit A to D.I. 9301) on or before January 12, 2005 at 5:00 p.m. Eastern Standard Time; and

WHEREAS, counsel to the Official Committee of Asbestos Personal Injury Claimants made an oral application to this Court on December 19, 2005 to extend the time for holders of Asbestos PI Pre-Petition Litigation Claims to respond to the Questionnaire by sixty (60) days;

IT IS HEREBY:

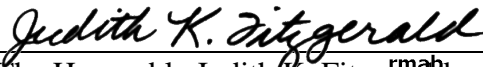
1. ORDERED that the time for holders of Asbestos PI Pre-Petition Litigation Claims to complete and serve the Questionnaire is extended to March 13, 2005 at 5:00 p.m. Eastern Standard Time; and it is further

2. ORDERED that the time for the exchange of preliminary designations of non-expert witnesses is extended from December 22, 2005 to January 10, 2006; and it is further

3. ORDERED that an additional Order modifying the CMO will be submitted, modifying the future dates accordingly; and it is further

4. ORDERED that within ten (10) days of the entry of this Order, the Debtors will serve the Order upon all parties who have received the Questionnaire.

Dated: December 21, 2005



The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	) Chapter 11
)
W.R. GRACE & CO., <i>et al.</i>,	) Case No. 01-1139 (JKF)
	) Jointly Administered
Debtors.)
	) Re: Docket Nos. 9301, 11023, 11403

**REVISED ORDER MODIFYING THE CASE MANAGEMENT ORDER
FOR THE ESTIMATION OF ASBESTOS PERSONAL INJURY
LIABILITIES REGARDING THE EXTENTION OF TIME FOR
CLAIMANTS TO RESPOND TO QUESTIONNAIRES
AND TO DESIGNATE NON-EXPERT WITNESSES**

WHEREAS, on August 29, 2005 the Court entered a Case Management Order for the Estimation of Asbestos Personal Injury Liabilities (“CMO”) (D.I. 9301); and

WHEREAS, the CMO directed persons who hold Asbestos PI Pre-Petition Litigation Claims against any of the Debtors to complete and serve the Questionnaire (attached as Exhibit A to D.I. 9301) on or before January 12, 2006 at 5:00 p.m. Eastern Standard Time; and

WHEREAS, counsel to the Official Committee of Asbestos Personal Injury Claimants made an oral application to this Court on December 19, 2005 to extend the time for holders of Asbestos PI Pre-Petition Litigation Claims to respond to the Questionnaire by sixty (60) days;

IT IS HEREBY:

1. ORDERED that the time for holders of Asbestos PI Pre-Petition Litigation Claims to complete and serve the Questionnaire is extended to March 13, 2006 at 5:00 p.m. Eastern Standard Time; and it is further

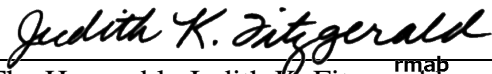
2. ORDERED that the time for the exchange of preliminary designations of non-expert witnesses is extended from December 22, 2005 to January 10, 2006; and it is further

3. ORDERED that an additional Order modifying the CMO will be submitted, modifying the future dates accordingly; and it is further

4. ORDERED that within ten (10) days of the entry of this Order, the Debtors will serve the Order upon all parties who have received the Questionnaire.

Dated: 1/10/2006

Dated: 11:02:28, 2005



The Honorable Judith K. Fitzgerald ^{rmab}
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
W. R. GRACE & CO., et al.,¹	)	Case No. 01-1139 (JKF)
	)	(Jointly Administered)
Debtors.	)	Re: Docket No. 9301

**AMENDED CASE MANAGEMENT ORDER FOR THE ESTIMATION
OF ASBESTOS PERSONAL INJURY LIABILITIES**

WHEREAS, on April 2, 2001, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"), which have been consolidated for administrative purposes only; and

WHEREAS, on November 13, 2004, the Debtors filed their Motion for Entry of an Order Seeking the Estimation of Asbestos Claims and Certain Related Relief (the "Estimation Motion"); and

¹ The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

WHEREAS, a hearing on the Estimation Motion (the "Estimation Motion Hearing") was held on January 21, 2005; and

WHEREAS, at the Estimation Motion Hearing, the Court ordered the Asbestos Personal Injury Committee, the Futures Claimants Representative (the "FCR"), and the Debtors to negotiate a case management order to govern the estimation of Asbestos Personal Injury Claims (the "PI Estimation"); and

WHEREAS, on August 29, 2005 the Court entered the Case Management Order for the Estimation of Asbestos Personal Injury Liabilities; and

WHEREAS, the Case Management Order required all holders of asbestos personal injury claims for which litigation was commenced prior to the Petition Date (the "Asbestos PI Pre-Petition Litigation Claims")² to complete and return the Questionnaire by January 12, 2006; and

WHEREAS, upon the oral motion of the PI Committee at the December 19, 2005 Omnibus Hearing, the Court granted an additional 60 days to persons who hold Asbestos PI Pre-Petition Litigation Claims to complete and return the Questionnaire; and

WHEREAS, the parties seeking to call experts to testify designated both the categories to be addressed by these experts and the experts themselves; and

WHEREAS, the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and

WHEREAS, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and

WHEREAS, venue of this proceeding is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

² Asbestos PI Pre-Petition Litigation Claims do not include those claims for which an enforceable settlement agreement was entered into between the claimant and the Debtors prior to the bankruptcy petition date.

IT IS HEREBY:

1. ORDERED that all holders of Asbestos PI Pre-Petition Litigation Claims are required to complete and serve the Questionnaire; and it is further

2. ORDERED that the following schedule shall govern the deadlines with respect to the Questionnaire:

- A. Persons who believe that they hold, or attorneys who believe they represent persons who hold, Asbestos PI Pre-Petition Litigation Claims against any of the Debtors shall complete and serve the Questionnaire on or before 5:00 p.m. (Eastern Standard Time) on March 13, 2006; Questionnaires that are postmarked as mailed on or before March 13, 2006, but are actually received thereafter, will be considered timely served;
- B. The Debtors' claims processing agent shall compile the Questionnaire information into a navigable database and make it available to the Debtors and any parties in the estimation proceedings, including those parties' experts and advisors, on or before May 12, 2006;³ and it is further

3. ORDERED that the Debtors, the official committees, and the FCR will use their best efforts, consistent with their duties, to include in any trust distribution procedures approved as part of a plan of reorganization provisions prioritizing the processing of claims for which Questionnaires have been timely returned as completely and accurately as possible; and it is further

4. ORDERED that a party, for good cause shown, may substitute and/or add one or more experts not previously designated; and it is further

³ Upon request, any of the parties shall have access to the original Questionnaires and documents attached thereto.

5. ORDERED that not later than February 3, 2006, each party shall exchange preliminary designations of the non-expert witnesses that it intends to call at the Asbestos PI Estimation Hearing. Subsequent to February 3, 2006, a party, for good cause shown, may substitute and/or add one or more non-expert witnesses not previously designated; and it is further

6. ORDERED that all parties seeking to call one or more experts to testify as to matters other than the number, amount, and value of present and future asbestos claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert on or before April 19, 2006. Such expert reports may be supplemented or rebutted on or before July 10, 2006; and it is further

7. ORDERED that all parties seeking to call one or more experts to testify as to an estimated value of the Debtors' Asbestos Personal Injury Claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert on or before June 13, 2006. Such expert reports may be supplemented or rebutted on or before August 28, 2006; and it is further

8. ORDERED that a preliminary pre-trial conference on the Asbestos PI Estimation shall be held at the first omnibus hearing after August 31, 2006, at which time the Court may set a final pre-trial conference date in October 2006 and a trial date in November 2006 (the "Asbestos PI Estimation Hearing") for the Asbestos PI Estimation; and it is further

9. ORDERED that all written fact discovery may commence at any time but must be concluded by September 29, 2006; and it is further

10. ORDERED that depositions of expert and non-expert witnesses may commence at any time but must be concluded by September 29, 2006; and it is further

11. ORDERED that the Debtors' experts shall be deposed first, followed by experts of other parties, to be followed by supplemental depositions; and it is further

12. ORDERED that, pursuant to Rules 26(a)(3)(A) and 26(a)(3)(B) of the Federal Rules of Civil Procedure, parties shall file a final fact witness/expert list on or before September 29, 2006; and it is further

13. ORDERED that any pre-trial motions, including *motions in limine*, *Daubert*, and summary judgment motions, shall be filed not later than October 9, 2006. Responses to such motions shall be filed not later than 21 days after the filing of any such motion. Replies shall be filed not later than 7 days after the filing of the response to the motion. Replies shall be limited to five pages. A hearing on such motions will be at the Court's direction; and it is further

14. ORDERED that on or before 21 calendar days prior to the final pre-trial conference, pursuant to Rule 16.4(d) of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware (the "Local Rules") and Rule 26(a)(3)(C) of the Federal Rules of Civil Procedure, parties shall file with the Court: (i) a proposed pre-trial order, signed by counsel for each party participating in the PI Estimation; (ii) copies of all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing; and (iii) stipulations regarding admissibility of exhibits; and it is further


15. ORDERED that on or before 21 calendar days prior to the final pre-trial conference, pursuant to Rule 26(a)(3)(C) of the Federal Rules of Civil Procedure, parties shall exchange copies of (or, when appropriate, make available for inspection) all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing; and it is further

16. ORDERED that any trial briefs shall be filed on or before 21 calendar days prior to the Asbestos PI Estimation Hearing and that no responses thereto shall be allowed; and it is further

17. ORDERED that notwithstanding anything in this Order, the deadlines specified herein may be extended by consent of the parties or by the Court upon motion of any party participating in the PI Estimation, after notice (which may be shortened and limited by the Court as it deems appropriate) and hearing; and it is further

18. ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: Jan. 31, 2006


The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
)	
	)	Case no. 01-01139 (JFK)
W.R. GRACE & CO., <i>et al.</i>,	)	Jointly Administered
	)	Re: Docket Nos. 9301, 11023, 11403,
Debtors	)	11515, 11549, 11756

**ORDER MODIFYING THE CASE MANAGEMENT ORDER FOR THE ESTIMATION
OF ASBESTOS PERSONAL INJURY LIABILITIES REGARDING THE EXTENSION
OF TIME FOR CLAIMANTS TO RESPOND TO QUESTIONNAIRES**

WHEREAS, on August 29, 2005 the Court entered a Case Management Order for the Estimation of Asbestos Personal Injury Liabilities ("PI CMO") (Docket No. 9301); and

WHEREAS, on December 21, 2005 the Court entered an order providing holders of Asbestos PI Pre-Petition Litigation Claims¹ with an additional sixty (60) days to respond to the W.R. Grace Asbestos Personal Injury Questionnaire ("Questionnaire") (Docket No. 11403)²; and

WHEREAS, the Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities ("Amended PI CMO") (Docket No. 11549), provides that all holders of Asbestos PI Pre-Petition Litigation Claims are required to complete and return the Questionnaire on or before March 13, 2006; and

WHEREAS, the Official Committee of Asbestos Personal Injury Claimants has requested that the time for holders of Asbestos PI Pre-Petition Litigation Claims be extended by an additional sixty (60) days;

¹ All capitalized terms shall retain the meaning they held in the PI CMO.

² A revised Amended PI CMO was subsequently entered on January 10, 2006 in order to correct certain typographical errors. See Revised Order Modifying the Case Management Order for the Estimation of Asbestos Personal Injury Liabilities (Docket No. 11515)

IT IS HEREBY:

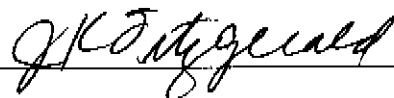
1. ORDERED that the time for holders of Asbestos PI Pre-Petition Litigation Claims to complete and serve the Questionnaire is extended to May 12, 2006 at 5:00 p.m. Eastern Standard Time; and it is further

2. ORDERED that an additional order modifying the PI CMO will be submitted, modifying the future dates accordingly; and it is further

3. ORDERED that within ten (10) days of entry of this Order, the Debtors will serve the Order on all parties who have received the Questionnaire.

SO ORDERED

Dated: 2/21, 2006



The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
)	
W. R. GRACE & CO., <i>et al.</i> , ¹	)	Case No. 01-1139 (JKF)
	)	(Jointly Administered)
Debtors.	)	Re: Docket No. 9301

**AMENDED CASE MANAGEMENT ORDER FOR THE ESTIMATION
OF ASBESTOS PERSONAL INJURY LIABILITIES**

WHEREAS, on April 2, 2001, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"), which have been consolidated for administrative purposes only; and

WHEREAS, on November 13, 2004, the Debtors filed their Motion for Entry of an Order Seeking the Estimation of Asbestos Claims and Certain Related Relief (the "Estimation Motion"); and

¹ The Debtors consist of the following 62 entities: W. R. Grace & Co. (*f/k/a* Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (*f/k/a* Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (*f/k/a* Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (*f/k/a* Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (*f/k/a* Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (*f/k/a* Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (*f/k/a* GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (*f/k/a* Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (*f/k/a* Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (*f/k/a* British Nursing Association, Inc.), Remedium Group, Inc. (*f/k/a* Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (*f/k/a* Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

WHEREAS, a hearing on the Estimation Motion (the "Estimation Motion Hearing") was held on January 21, 2005; and

WHEREAS, at the Estimation Motion Hearing, the Court ordered the Asbestos Personal Injury Committee, the Futures Claimants Representative (the "FCR"), and the Debtors to negotiate a case management order to govern the estimation of Asbestos Personal Injury Claims (the "PI Estimation"); and

WHEREAS, on August 29, 2005 the Court entered the Case Management Order for the Estimation of Asbestos Personal Injury Liabilities; and

WHEREAS, the Case Management Order required all holders of asbestos personal injury claims for which litigation was commenced prior to the Petition Date (the "Asbestos PI Pre-Petition Litigation Claims")² to complete and return the Questionnaire by January 12, 2006; and

WHEREAS, the parties seeking to call experts to testify designated the categories to be addressed by these experts on November 14, 2005, and the experts themselves on December 19, 2005;

WHEREAS, upon the oral motion of the PI Committee at the December 19, 2005 Omnibus Hearing, the Court granted an additional 60 days to persons who hold Asbestos PI Pre-Petition Litigation Claims to complete and return the Questionnaire and on January 10, 2006 issued a Revised Case Management Order; and

WHEREAS the parties exchanged preliminary designations of the non-expert witnesses that it intends to call at the Asbestos PI Estimation Hearing on February 3, 2006; and

² Asbestos PI Pre-Petition Litigation Claims do not include those claims for which an enforceable settlement agreement was entered into between the claimant and the Debtors prior to the bankruptcy petition date. *See* Motion of Reaud, Morgan & Quinn, Inc. and Environmental Litigation Group, P.C. for Clarification of Case Management Order (Docket No. 9475) September 19, 2005.

WHEREAS, the Official Committee of Asbestos Personal Injury Claimants has requested that the time for holders of Asbestos PI Pre-Petition Litigation Claims be extended by an additional sixty (60) days; and

WHEREAS, on February 21, 2006 the Court granted Official Committee of Asbestos Personal Injury Claimants' request to extend the time for holders of Asbestos PI Pre-Petition Litigation Claims to complete and serve the Questionnaire to May 12, 2006 at 5:00 p.m. Eastern Standard Time, and that a revised CMO will be submitted; and

WHEREAS, the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and

WHEREAS, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and

WHEREAS, venue of this proceeding is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

IT IS HEREBY:

1. ORDERED that all holders of Asbestos PI Pre-Petition Litigation Claims are required to complete and serve the Questionnaire; and it is further

2. ORDERED that the following schedule shall govern the deadlines with respect to the Questionnaire:

- A. Persons who believe that they hold, or attorneys who believe they represent persons who hold, Asbestos PI Pre-Petition Litigation Claims against any of the Debtors shall complete and serve the Questionnaire on or before 5:00 p.m. (Eastern Daylight Time) on May 12, 2006; Questionnaires that are postmarked as mailed on or before May 12, 2006, but are actually received thereafter, will be considered timely served;
- B. The Debtors' claims processing agent shall compile the Questionnaire information into a navigable database and make it available to the Debtors

and any parties in the estimation proceedings, including those parties' experts and advisors, on or before July 11, 2006;³ and it is further

3. ORDERED that the Debtors, the official committees, and the FCR will use their best efforts, consistent with their duties, to include in any trust distribution procedures approved as part of a plan of reorganization provisions prioritizing the processing of claims for which Questionnaires have been timely returned as completely and accurately as possible; and it is further

4. ORDERED that a party, for good cause shown, may substitute and/or add one or more experts not previously designated; and it is further

5. ORDERED that a party, for good cause shown, may substitute and/or add one or more non-expert witnesses not previously designated on February 3, 2006; and it is further

6. ORDERED that all parties seeking to call one or more experts to testify as to matters other than the number, amount, and value of present and future asbestos claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert on or before June 20, 2006. Such expert reports may be supplemented or rebutted on or before September 11, 2006; and it is further

7. ORDERED that all parties seeking to call one or more experts to testify as to an estimated value of the Debtors' Asbestos Personal Injury Claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert on or before

³ Upon request, any of the parties shall have access to the original Questionnaires and documents attached thereto.

September 15, 2006. Such expert reports may be supplemented or rebutted on or before November 10, 2006; and it is further

8. ORDERED that a preliminary pre-trial conference on the Asbestos PI Estimation shall be held at the first omnibus hearing after November 2, 2006, at which time the Court may set a final pre-trial conference date in December 2006 and a trial date in January 2007 (the "Asbestos PI Estimation Hearing") for the Asbestos PI Estimation; and it is further

9. ORDERED that all written fact discovery may commence at any time but must be concluded by November 30, 2006; and it is further

10. ORDERED that depositions of expert and non-expert witnesses may commence at any time but must be concluded by November 30, 2006; and it is further

11. ORDERED that the Debtors' experts shall be deposed first, followed by experts of other parties, to be followed by supplemental depositions; and it is further

12. ORDERED that, pursuant to Rules 26(a)(3)(A) and 26(a)(3)(B) of the Federal Rules of Civil Procedure, parties shall file a final fact witness/expert list on or before November 30, 2006; and it is further

13. ORDERED that any pre-trial motions, including *motions in limine*, *Daubert*, and summary judgment motions, shall be filed not later than December 8, 2006. Responses to such motions shall be filed not later than 30 days after the filing of any such motion. Replies shall be filed not later than 10 days after the filing of the response to the motion. Replies shall be limited to five pages. A hearing on such motions will be at the Court's direction; and it is further

14. ORDERED that on or before 21 calendar days prior to the final pre-trial conference, pursuant to Rule 16.4(d) of the Local Rules of Civil Practice and Procedure of the

United States District Court for the District of Delaware (the "Local Rules") and Rule 26(a)(3)(C) of the Federal Rules of Civil Procedure, parties shall file with the Court: (i) a proposed pre-trial order, signed by counsel for each party participating in the PI Estimation; (ii) copies of all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing; and (iii) stipulations regarding admissibility of exhibits; and it is further

15. ORDERED that on or before 21 calendar days prior to the final pre-trial conference, pursuant to Rule 26(a)(3)(C) of the Federal Rules of Civil Procedure, parties shall exchange copies of (or, when appropriate, make available for inspection) all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing; and it is further

16. ORDERED that any trial briefs shall be filed on or before 21 calendar days prior to the Asbestos PI Estimation Hearing and that no responses thereto shall be allowed; and it is further

17. ORDERED that notwithstanding anything in this Order, the deadlines specified herein may be extended by consent of the parties or by the Court upon motion of any party participating in the PI Estimation, after notice (which may be shortened and limited by the Court as it deems appropriate) and hearing; and it is further

18. ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: 8/27, 2006


The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	) Chapter 11
)
W.R. GRACE & CO., <i>et al.</i>,	) Case No. 01-1139 (JKF)
	) Jointly Administered
Debtors.)
	) Re: Docket Nos. 9301, 11023, 11403, 11515,
	) 11697, 11885, 12151

**ORDER MODIFYING THE CASE MANAGEMENT ORDER
FOR THE ESTIMATION OF ASBESTOS PERSONAL INJURY
LIABILITIES REGARDING THE EXTENTION OF TIME FOR
CLAIMANTS TO RESPOND TO QUESTIONNAIRES**

WHEREAS, on August 29, 2005 the Court entered a Case Management Order for the Estimation of Asbestos Personal Injury Liabilities (D.I. 9301); and

WHEREAS, on March 27, 2006, this Court signed the Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities ("Amended PI CMO") (D.I. 12151) which provides that holders of Asbestos PI Pre-Petition Litigation Claims are to complete and serve the Questionnaire (attached as Exhibit A to D.I. 9301) on or before May 12, 2006 at 5:00 p.m. Eastern Standard Time; and

WHEREAS, counsel to the Official Committee of Asbestos Personal Injury Claimants made an oral application to this Court on April 17, 2006 to extend the time for holders of Asbestos PI Pre-Petition Litigation Claims to respond to the Questionnaire by sixty (60) days;

IT IS HEREBY:

1. ORDERED that the time for holders of Asbestos PI Pre-Petition Litigation Claims to complete and serve the Questionnaire is extended to July 12, 2006 at 5:00 p.m. Eastern ~~Standard~~ ^{Prevailing} Time; and it is further

2. ORDERED that an additional order modifying the Amended PI CMO will be submitted, modifying the future dates by an additional sixty (60) days (or by a duration of more than 60 days if the parties agree to such a duration); and it is further

3. ORDERED that within ten (10) days of the entry of this Order, the Debtors will serve the Order upon all parties who have received the Questionnaire.

Dated: April 27th, 2006

Judith K. Fitzgerald

The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

J

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
W. R. GRACE & CO., et al.,¹	)	Case No. 01-1139 (JKF)
	)	(Jointly Administered)
Debtors.	)	Re: Docket No.

**AMENDED CASE MANAGEMENT ORDER FOR THE ESTIMATION
OF ASBESTOS PERSONAL INJURY LIABILITIES**

WHEREAS, on April 2, 2001, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"), which have been consolidated for administrative purposes only; and

WHEREAS, on November 13, 2004, the Debtors filed their Motion for Entry of an Order Seeking the Estimation of Asbestos Claims and Certain Related Relief (the "Estimation Motion"); and

¹ The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCIIP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

WHEREAS, a hearing on the Estimation Motion (the "Estimation Motion Hearing") was held on January 21, 2005; and

WHEREAS, at the Estimation Motion Hearing, the Court ordered the Asbestos Personal Injury Committee (the "PI Committee"), the Futures Claimants Representative (the "FCR"), and the Debtors to negotiate a case management order to govern the estimation of Asbestos Personal Injury Claims (the "PI Estimation"); and

WHEREAS, on August 29, 2005 the Court entered the Case Management Order for the Estimation of Asbestos Personal Injury Liabilities; and

WHEREAS, the Case Management Order required all holders of asbestos personal injury claims for which litigation was commenced prior to the Petition Date (the "Asbestos PI Pre-Petition Litigation Claims")² to complete and return the Questionnaire by January 12, 2006; and

WHEREAS, the parties seeking to call experts to testify designated the categories to be addressed by these experts on November 14, 2005, and the experts themselves on December 19, 2005;

WHEREAS, upon the oral motion of the PI Committee at the December 19, 2005 Omnibus Hearing, the Court granted an additional 60 days to persons who hold Asbestos PI Pre-Petition Litigation Claims to complete and return the Questionnaire, and issued Revised Case Management Orders on January 10, 2006 and January 31, 2006; and

WHEREAS the parties exchanged preliminary designations of the non-expert witnesses that it intends to call at the Asbestos PI Estimation Hearing on February 3, 2006; and

² Asbestos PI Pre-Petition Litigation Claims do not include those claims for which an enforceable settlement agreement was entered into between the claimant and the Debtors prior to the bankruptcy petition date. See Motion of Reaud, Morgan & Quinn, Inc. and Environmental Litigation Group, P.C. for Clarification of Case Management Order (Docket No. 9475) September 19, 2005.

WHEREAS, upon the oral motion of the PI Committee at the February 21, 2006 Omnibus Hearing, the Court granted an additional 60 days to persons who hold Asbestos PI Pre-Petition Litigation Claims to complete and return the Questionnaire, and issued Revised Case Management Orders on February 21, 2006 and March 27, 2006, and;

WHEREAS, upon the oral motion of the PI Committee at the April 17, 2006 Omnibus Hearing, the Court granted an additional 60 days to persons who hold Asbestos PI Pre-Petition Litigation Claims to complete and return the Questionnaire to July 12, 2006 at 5:00 p.m. Eastern Prevailing Time, and issued a Revised Case Management Order on April 27, 2006 and ordered that an additional order modifying the other future dates by sixty days (or by a duration of more than 60 days if the parties agree to such a duration) will be submitted; and

WHEREAS, the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and

WHEREAS, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and

WHEREAS, venue of this proceeding is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

IT IS HEREBY:

1. ORDERED that all holders of Asbestos PI Pre-Petition Litigation Claims are required to complete and serve the Questionnaire; and it is further

2. ORDERED that the following schedule shall govern the deadlines with respect to the Questionnaire:

- A. Persons who believe that they hold, or attorneys who believe they represent persons who hold, Asbestos PI Pre-Petition Litigation Claims against any of the Debtors shall complete and serve the Questionnaire on or before 5:00 p.m. (Eastern Prevailing Time) on July 12, 2006; Questionnaires that are postmarked as mailed on or before July 12, 2006, but are actually received thereafter, will be considered timely served;

- B. The Debtors' claims processing agent shall compile the Questionnaire information into a navigable database and make it available to the Debtors and any parties in the estimation proceedings, including those parties' experts and advisors, on or before October 12, 2006, with interim versions of the navigable database being provided to the parties on a rolling basis prior to October 12, 2006 as they become available, but no less frequently than once per calendar month beginning in August 2006;³
- C. Persons who are required by the Court to submit a cured response to the Questionnaire must serve the cured Questionnaire response on or before 5:00 p.m. (Eastern Prevailing Time) on the applicable cure date, if any, that the Court may designate upon consideration of any objections to the Questionnaire (the "Cure Date"); Questionnaires that are postmarked as mailed on or before the applicable Cure Date, but are actually received thereafter, will be considered timely served;
- D. The Debtors' claims processing agent shall compile the Questionnaire information provided in cured responses to the Questionnaire and make it available to the Debtors and any parties in the estimation proceedings, including those parties' experts and advisors, on or before 30 days from each Cure Date, with interim versions of the navigable database being provided to the parties on a rolling basis as they become available, but no less frequently than once per calendar month beginning in August 2006;

3. ORDERED that the Debtors, the official committees, and the FCR will use their best efforts, consistent with their duties, to include in any trust distribution procedures approved as part of a plan of reorganization provisions prioritizing the processing of claims for which Questionnaires have been timely returned as completely and accurately as possible; and it is further

4. ORDERED that all parties seeking to call one or more experts to testify shall designate such expert(s), and/or substitute one or more experts not previously designated, on or before August 21, 2006; and it is further

³ Upon request, any of the parties shall have access to the original and any cured Questionnaires and documents attached thereto.

5. ORDERED that all parties seeking to call one or more non-expert witnesses to testify shall make a good faith effort to compile a final list of such non-expert(s), and/or substitute one or more non-experts not previously designated, on or before thirty (30) days prior to the cutoff for all fact and expert discovery; and it is further

6. ORDERED that all parties seeking to call one or more experts to testify as to matters other than the number, amount, and value of present and future asbestos claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert on or before September 20, 2006. Such expert reports may be supplemented or rebutted on or before December 11, 2006; and it is further

7. ORDERED that all parties seeking to call one or more experts to testify as to the number, amount, and value of present and future asbestos claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert on or before December 1, 2006. Such expert reports may be supplemented or rebutted on or before February 1, 2007; and it is further

8. ORDERED that a preliminary pre-trial conference on the Asbestos PI Estimation shall be held at the first omnibus hearing after April 2, 2007, at which time the Court may set a final pre-trial conference date in May 2007 and a trial date in June 2007 (the "Asbestos PI Estimation Hearing") for the Asbestos PI Estimation; and it is further

9. ORDERED that all written fact discovery may commence at any time but must be concluded by April 2, 2007; and it is further

10. ORDERED that depositions of expert and non-expert witnesses may commence at any time but must be concluded by April 2, 2007; and it is further

11. ORDERED that the Debtors' experts shall be deposed first, followed by experts of other parties, to be followed by supplemental depositions; and it is further

12. ORDERED that, pursuant to Rules 26(a)(3)(A) and 26(a)(3)(B) of the Federal Rules of Civil Procedure, parties shall file a final fact witness/expert list on or before April 16, 2007; and it is further

13. ORDERED that any pre-trial motions, including *motions in limine*, *Daubert*, and summary judgment motions, shall be filed not later than May 4, 2007. Responses to such motions shall be filed not later than 21 days after the filing of any such motion. Replies shall be filed not later than 10 days after the filing of the response to the motion. Replies shall be limited to five pages. A hearing on such motions will be at the Court's direction; and it is further

14. ORDERED that on or before 10 calendar days prior to the final pre-trial conference, pursuant to Rule 16.4(d) of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware (the "Local Rules") and Rule 26(a)(3)(C) of the Federal Rules of Civil Procedure, parties shall file with the Court: (i) a proposed pre-trial order, signed by counsel for each party participating in the PI Estimation; (ii) copies of all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing; *premarked for identification* and (iii) stipulations regarding admissibility of exhibits; and ~~it~~ (iv) *objections to exhibits; and it* is further

15. ORDERED that on or before 10 calendar days prior to the final pre-trial conference, pursuant to Rule 26(a)(3)(C) of the Federal Rules of Civil Procedure, parties shall exchange copies of (or, when appropriate, make available for inspection) all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing; and it is further

16. ORDERED that any trial briefs shall be filed on or before 10 calendar days prior to the Asbestos PI Estimation Hearing and that no responses thereto shall be allowed; and it is further

17. ORDERED that notwithstanding anything in this Order, the deadlines specified herein may be extended by consent of the parties or by the Court upon motion of any party participating in the PI Estimation, after notice (which may be shortened and limited by the Court as it deems appropriate) and hearing; and it is further

18. ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

19. Trial will commence in Pittsburgh, PA on June 13, 2007, at 9:00 A.M. and be continued from day to day thereafter.

Dated: 7/24, 2006

⊕ final pretrial conference and the trial dates

Judith K. Fitzgerald
The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

⊕ as the court determines.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
)
)
W.R. GRACE & CO., *et al.*,) Case no. 01-01139 (JFK)
) Jointly Administered
) Re: Docket Nos. 9876, 9885 & 9301
Debtors) 11/14/05 Agenda Item No. 8

**ORDER REGARDING AMENDED CASE MANAGEMENT ORDER FOR THE
ESTIMATION OF ASBESTOS PERSONAL INJURY LIABILITIES**

Pursuant to the agreement of the parties to the estimation in conformity with paragraph 17 of the Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities, the following dates contained in the Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities (Docket No. 12858) (attached as Exhibit A) are amended as follows:

- January 12, 2007 -- All supplemental responses to the W.R. Grace Asbestos Personal Injury Questionnaire due;
- March 2, 2007 -- The Debtors' Claims Agent shall compile the information contained in the supplemental Questionnaire responses into a navigable database;
- March 16, 2007 -- All parties seeking to call one or more experts to testify as to the number, amount, and value of present and future asbestos claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert;
- March 30, 2007 -- All experts testifying as to matters other than the number, amount, and value of present and future asbestos claims may file supplemental or rebuttal reports;
- April 27, 2007 -- All experts testifying as to the number, amount, and value of present and future asbestos claims must submit any supplemental or rebuttal reports; and
- June 1, 2007 -- Deadline for the completion of all written and deposition discovery.

So Ordered

Judith K Fitzgerald
12/19/06

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
	)	Case No. 01-01139 (JFK)
	)	Jointly Administered
W.R. GRACE & CO., <i>et al.</i>,	)	Re: Docket Nos. 12858, 14079
	)	2/26/07 Agenda Item No. 14 15
Debtors)	

**ORDER REGARDING AMENDED CASE MANAGEMENT ORDER FOR THE
ESTIMATION OF ASBESTOS PERSONAL INJURY LIABILITIES**

The following dates contained in the Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities (Docket No. 12858) (Jul. 24, 2006) (attached as Exhibit A) and the Order Regarding Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities (Docket No. 14079) (Dec. 19, 2006) (attached as Exhibit B) are amended as follows:

- January 31, 2007-- All supplemental responses to the W.R. Grace Asbestos Personal Injury Questionnaire and all responses required by the Order Regarding Questionnaires To Be Filed for Non-Settled Pre-Petition Asbestos PI Claims (Docket No. 14092) due, except as otherwise stipulated or ordered by the Court;
- March 1, 2007-- As of this date, the Debtors' Claims Agent will acknowledge receipt of but will not process any subsequent responses or supplemental submissions, with the exception of documents required pursuant to the X-Ray Order or Supplemental X-Ray Order;
- March 21, 2007-- Debtors' Motion(s) regarding compliance with the Supplemental Order Regarding Motions to Compel Claimants to Respond to the W. R. Grace & Co. Asbestos Personal Injury Questionnaire (Docket No. 14150) (the "Consulting Expert Order") due;
- March 30, 2007-- Debtors' Motion(s) regarding compliance with the Order Regarding X-Ray Evidence (Docket No. 14148) (Dec. 20, 2006) ("X-Ray Order") or the Supplemental Order Regarding Production of X-Rays By Non-Mesothelioma Cancer Patients (Docket No. 14608) (Feb. 20, 2007) ("Supplemental X-Ray Order") due;
- April 4, 2007-- Responses to Debtors' Motion(s) regarding compliance with the Consulting Expert Order due.

- April 11, 2007 (1:30 p.m.) -- The Court will hear Debtors' Motion(s) regarding compliance with the Consulting Expert Order.
- April 13, 2007-- Responses to Debtors' Motion(s) regarding compliance with the X-Ray Order and Supplemental X-Ray Order due.
- April 13, 2007 -- The Debtors' Claims Agent shall compile the information contained in the Questionnaires and supplemental Questionnaire responses received as of March 1, 2007 into a navigable database and make it available to the Debtors and any parties in the estimation proceedings, including those parties' experts and advisors;¹
- May 2, 2007-- The Court will hear Debtors' Motion(s) with regard to the X-Ray Order and the Supplemental X-Ray Order.
- May 10, 2007-- Experts who will testify as to matters other than the number, amount, and value of present and future asbestos claims may file supplemental or rebuttal reports;
- May 17, 2007-- All parties seeking to call one or more experts to testify as to the number, amount, and value of present and future asbestos claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert;
- June 22, 2007-- Experts who will testify as to matters other than the number, amount, and value of present and future asbestos claims may file supplemental or rebuttal reports;
- June 26, 2007-- Status conference with the Court, at which the Court will set a briefing schedule for the submission of *Daubert* motions and address other topics as necessary;
- July 6, 2007-- Experts who will testify as to the number, amount, and value of present and future asbestos claims may file supplemental or rebuttal reports;
- July 20, 2007-- Deadline for all parties seeking to call one or more non-expert witnesses to testify to make a good faith effort to compile a final list of such non-expert(s), and/or substitute one or more non-experts not previously designated;
- July 30, 2007-- Status conference with the Court, if necessary;
- August 24, 2007-- Deadline for the completion of all written and deposition discovery;

¹ The Debtors also shall provide copies of the proofs of claim forms, Questionnaires, supplemental and/or cured Questionnaires, and all documents attached thereto, regardless of when such materials are received.

- September 7, 2007-- Deadline for the submission of pre-trial binders, which shall contain, *inter alia*, (i) trial briefs; (ii) a proposed pretrial order signed by counsel for each party participating in the Asbestos PI Estimation Hearing; (iii) copies of all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing pre-marked for identification; (iv) stipulations regarding the admissibility of exhibits; and (v) objections to exhibits.
- September 17, 2007-September 19, 2007-- *Daubert* motions heard; estimation hearing begins;
- September 27, 28, October 31, November 1, November 2-- Estimation hearing continues.
- TBD-- Additional dates for the continuation of the estimation hearing (if necessary).

Expedited Motion Protocol

In the event a party needs to file a motion requiring the Court's immediate attention, the motions practice shall proceed according to the following schedule:

- Party files motion;
- Responses must be filed within 14 days of service of the motion;
- Replies must be filed within 7 days of service of the response;
- The Court will schedule a telephonic hearing at its earliest convenience after the responses and replies to the motion are filed.

Other Hearing Dates

The following additional dates are set by the Court to address any matters not otherwise addressed in the above schedule: April 11, 2007, 1:30 - 4:00 p.m.; April 13, 2007, 9:00 a.m. - 12:00 p.m.; May 14, 2007, 9:00 a.m.; June 21, 2007, 9:00 a.m.; July 31, 2007 and August 1, 2007, 9:00 a.m. All such hearing shall be held in Pittsburgh, PA. Debtors will notify the Court as soon as reasonably possible but not later than 3 business days prior to any hearing date outlined herein, if the parties agree that a hearing date is not needed.

SO ORDERED

This 2 day of April, 2007

J.K. Fitzgerald

The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
W. R. GRACE & CO., *et al.*,¹) Case No. 01-1139 (JKF)
) (Jointly Administered)
Debtors.) Re: Docket No.

AMENDED CASE MANAGEMENT ORDER FOR THE ESTIMATION
OF ASBESTOS PERSONAL INJURY LIABILITIES

WHEREAS, on April 2, 2001, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"), which have been consolidated for administrative purposes only; and

WHEREAS, on November 13, 2004, the Debtors filed their Motion for Entry of an Order Seeking the Estimation of Asbestos Claims and Certain Related Relief (the "Estimation Motion"); and

¹ The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCIIP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA II Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., F&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

Date 7-25-06
Docket # 12858

WHEREAS, a hearing on the Estimation Motion (the "Estimation Motion Hearing") was held on January 21, 2005; and

WHEREAS, at the Estimation Motion Hearing, the Court ordered the Asbestos Personal Injury Committee (the "PI Committee"), the Futures Claimants Representative (the "FCR"), and the Debtors to negotiate a case management order to govern the estimation of Asbestos Personal Injury Claims (the "PI Estimation"); and

WHEREAS, on August 29, 2005 the Court entered the Case Management Order for the Estimation of Asbestos Personal Injury Liabilities; and

WHEREAS, the Case Management Order required all holders of asbestos personal injury claims for which litigation was commenced prior to the Petition Date (the "Asbestos PI Pre-Petition Litigation Claims")² to complete and return the Questionnaire by January 12, 2006; and

WHEREAS, the parties seeking to call experts to testify designated the categories to be addressed by these experts on November 14, 2005, and the experts themselves on December 19, 2005;

WHEREAS, upon the oral motion of the PI Committee at the December 19, 2005 Omnibus Hearing, the Court granted an additional 60 days to persons who hold Asbestos PI Pre-Petition Litigation Claims to complete and return the Questionnaire, and issued Revised Case Management Orders on January 10, 2006 and January 31, 2006; and

WHEREAS the parties exchanged preliminary designations of the non-expert witnesses that it intends to call at the Asbestos PI Estimation Hearing on February 3, 2006; and

² Asbestos PI Pre-Petition Litigation Claims do not include those claims for which an enforceable settlement agreement was entered into between the claimant and the Debtors prior to the bankruptcy petition date. See Motion of Reaud, Morgan & Quinn, Inc. and Environmental Litigation Group, P.C. for Clarification of Case Management Order (Docket No. 9475) September 19, 2005.

WHEREAS, upon the oral motion of the PI Committee at the February 21, 2006 Omnibus Hearing, the Court granted an additional 60 days to persons who hold Asbestos PI Pre-Petition Litigation Claims to complete and return the Questionnaire, and issued Revised Case Management Orders on February 21, 2006 and March 27, 2006, and;

WHEREAS, upon the oral motion of the PI Committee at the April 17, 2006 Omnibus Hearing, the Court granted an additional 60 days to persons who hold Asbestos PI Pre-Petition Litigation Claims to complete and return the Questionnaire to July 12, 2006 at 5:00 p.m. Eastern Prevailing Time, and issued a Revised Case Management Order on April 27, 2006 and ordered that an additional order modifying the other future dates by sixty days (or by a duration of more than 60 days if the parties agree to such a duration) will be submitted; and

WHEREAS, the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and

WHEREAS, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and

WHEREAS, venue of this proceeding is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

IT IS HEREBY:

1. ORDERED that all holders of Asbestos PI Pre-Petition Litigation Claims are required to complete and serve the Questionnaire; and it is further

2. ORDERED that the following schedule shall govern the deadlines with respect to the Questionnaire:

- A. Persons who believe that they hold, or attorneys who believe they represent persons who hold, Asbestos PI Pre-Petition Litigation Claims against any of the Debtors shall complete and serve the Questionnaire on or before 5:00 p.m. (Eastern Prevailing Time) on July 12, 2006; Questionnaires that are postmarked as mailed on or before July 12, 2006, but are actually received thereafter, will be considered timely served;

- B. The Debtors' claims processing agent shall compile the Questionnaire information into a navigable database and make it available to the Debtors and any parties in the estimation proceedings, including those parties' experts and advisors, on or before October 12, 2006, with interim versions of the navigable database being provided to the parties on a rolling basis prior to October 12, 2006 as they become available, but no less frequently than once per calendar month beginning in August 2006;³
- C. Persons who are required by the Court to submit a cured response to the Questionnaire must serve the cured Questionnaire response on or before 5:00 p.m. (Eastern Prevailing Time) on the applicable cure date, if any, that the Court may designate upon consideration of any objections to the Questionnaire (the "Cure Date"); Questionnaires that are postmarked as mailed on or before the applicable Cure Date, but are actually received thereafter, will be considered timely served;
- D. The Debtors' claims processing agent shall compile the Questionnaire information provided in cured responses to the Questionnaire and make it available to the Debtors and any parties in the estimation proceedings, including those parties' experts and advisors, on or before 30 days from each Cure Date, with interim versions of the navigable database being provided to the parties on a rolling basis as they become available, but no less frequently than once per calendar month beginning in August 2006;

3. ORDERED that the Debtors, the official committees, and the FCR will use their best efforts, consistent with their duties, to include in any trust distribution procedures approved as part of a plan of reorganization provisions prioritizing the processing of claims for which Questionnaires have been timely returned as completely and accurately as possible; and it is further

4. ORDERED that all parties seeking to call one or more experts to testify shall designate such expert(s), and/or substitute one or more experts not previously designated, on or before August 21, 2006; and it is further

³ Upon request, any of the parties shall have access to the original and any cured Questionnaires and documents attached thereto.

5. ORDERED that all parties seeking to call one or more non-expert witnesses to testify shall make a good faith effort to compile a final list of such non-expert(s), and/or substitute one or more non-experts not previously designated, on or before thirty (30) days prior to the cutoff for all fact and expert discovery; and it is further

6. ORDERED that all parties seeking to call one or more experts to testify as to matters other than the number, amount, and value of present and future asbestos claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert on or before September 20, 2006. Such expert reports may be supplemented or rebutted on or before December 11, 2006; and it is further

7. ORDERED that all parties seeking to call one or more experts to testify as to the number, amount, and value of present and future asbestos claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert on or before December 1, 2006. Such expert reports may be supplemented or rebutted on or before February 1, 2007; and it is further

8. ORDERED that a preliminary pre-trial conference on the Asbestos PI Estimation shall be held at the first omnibus hearing after April 2, 2007, at which time the Court may set a final pre-trial conference date in May 2007 and a trial date in June 2007 (the "Asbestos PI Estimation Hearing") for the Asbestos PI Estimation; and it is further

9. ORDERED that all written fact discovery may commence at any time but must be concluded by April 2, 2007; and it is further

10. ORDERED that depositions of expert and non-expert witnesses may commence at any time but must be concluded by April 2, 2007; and it is further

11. ORDERED that the Debtors' experts shall be deposed first, followed by experts of other parties, to be followed by supplemental depositions; and it is further

12. ORDERED that, pursuant to Rules 26(a)(3)(A) and 26(a)(3)(B) of the Federal Rules of Civil Procedure, parties shall file a final fact witness/expert list on or before April 16, 2007; and it is further

13. ORDERED that any pre-trial motions, including *motions in limine*, *Daubert*, and summary judgment motions, shall be filed not later than May 4, 2007. Responses to such motions shall be filed not later than 21 days after the filing of any such motion. Replies shall be filed not later than 10 days after the filing of the response to the motion. Replies shall be limited to five pages. A hearing on such motions will be at the Court's direction; and it is further

14. ORDERED that on or before 10 calendar days prior to the final pre-trial conference, pursuant to Rule 16.4(d) of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware (the "Local Rules") and Rule 26(a)(3)(C) of the Federal Rules of Civil Procedure, parties shall file with the Court: (i) a proposed pre-trial order, signed by counsel for each party participating in the PI Estimation; (ii) copies of all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing; *premarked for identification* and (iii) stipulations regarding admissibility of exhibits; and ~~it~~ (iv) *objections to exhibits; and it* is further

15. ORDERED that on or before 10 calendar days prior to the final pre-trial conference, pursuant to Rule 26(a)(3)(C) of the Federal Rules of Civil Procedure, parties shall exchange copies of (or, when appropriate, make available for inspection) all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing; and it is further

16. ORDERED that any trial briefs shall be filed on or before 10 calendar days prior to the Asbestos PI Estimation Hearing and that no responses thereto shall be allowed; and it is further

17. ORDERED that notwithstanding anything in this Order, the deadlines specified herein may be extended by consent of the parties or by the Court upon motion of any party participating in the PI Estimation, after notice (which may be shortened and limited by the Court as it deems appropriate) and hearing; and it is further

18. ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

19. Trial will commence in Pittsburgh, PA on June 13, 2007, at 9:00 A.M. and be continued from day to day thereafter.

Dated: 7/24, 2006

⊕ peroral pretrial conference and the trial dates

Judith K. Fitzgerald
The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

⊕ as the court determines.

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
)
W.R. GRACE & CO., et al.,) Case no. 01-01139 (JFK)
) Jointly Administered
) Re: Docket Nos. 9876, 9885 & 9301
Debtors) 11/14/05 Agenda Item No. 8

**ORDER REGARDING AMENDED CASE MANAGEMENT ORDER FOR THE
ESTIMATION OF ASBESTOS PERSONAL INJURY LIABILITIES**

Pursuant to the agreement of the parties to the estimation in conformity with paragraph 17 of the Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities, the following dates contained in the Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities (Docket No. 12858) (attached as Exhibit A) are amended as follows:

- January 12, 2007 -- All supplemental responses to the W.R. Grace Asbestos Personal Injury Questionnaire due;
- March 2, 2007 -- The Debtors' Claims Agent shall compile the information contained in the supplemental Questionnaire responses into a navigable database;
- March 16, 2007 -- All parties seeking to call one or more experts to testify as to the number, amount, and value of present and future asbestos claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert;
- March 30, 2007 -- All experts testifying as to matters other than the number, amount, and value of present and future asbestos claims may file supplemental or rebuttal reports;
- April 27, 2007 -- All experts testifying as to the number, amount, and value of present and future asbestos claims must submit any supplemental or rebuttal reports; and
- June 1, 2007 -- Deadline for the completion of all written and deposition discovery.

So Ordered.

Judith K. Fitzgerald
12/19/06

Date 12-20-07
Docket # 14079

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
W.R. GRACE & CO., *et al.*,) Case No. 01-01139 (JFK)
) Jointly Administered
Debtors) **Related to 15078, 12858, 14079, 15152, 15905**
5/21/07 agenda item 18

NEWLY AMENDED CASE MANAGEMENT ORDER
FOR THE ESTIMATION OF ASBESTOS PERSONAL INJURY LIABILITIES

The following dates contained in the Order Regarding Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities (Docket No. 15078) (April 2, 2007) are amended as follows:

- June 11, 2007-- Experts who will testify as to matters other than the number, amount, and value of present and future asbestos claims may file supplemental or rebuttal reports;
- June 18, 2007-- All parties seeking to call one or more experts to testify as to the number, amount, and value of present and future asbestos claims shall produce and serve a report in compliance with Federal Rule of Civil Procedure 26(a)(2) from each expert;
- June 21, 2007 – Hearing on ACC Motion for Protective Order concerning Depositions of Claimant Law Firms; Status Conference on the Schedule
- July 24, 2007-- Experts who will testify as to matters other than the number, amount, and value of present and future asbestos claims may file supplemental or rebuttal reports;
- July 30, 2007-- Status conference with the Court;
- August 8, 2007-- Experts who will testify as to the number, amount, and value of present and future asbestos claims may file supplemental or rebuttal reports;
- August 20, 2007-- Deadline for all parties seeking to call one or more non-expert witnesses to testify to make a good faith effort to compile a final list of such non-expert(s), and/or substitute one or more non-experts not previously designated;

- August 20, 2007-- Deadline for all parties seeking to call one or more non-expert witnesses to testify to make a good faith effort to compile a final list of such non-expert(s), and/or substitute one or more non-experts not previously designated;
- TBD (but not later than October 31, 2007)-- Deadline for the completion of all non-expert written and deposition discovery, including discovery from claimants or other persons or entities who are not expert witnesses;
- October 31, 2007 -- Deadline for the completion of all expert written and deposition discovery;
- T.B.D. -- Deadline for the submission of pre-trial binders, which shall contain, *inter alia*, (i) trial briefs; (ii) a proposed pretrial order signed by counsel for each party participating in the Asbestos PI Estimation Hearing; (iii) copies of all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing pre-marked for identification; (iv) stipulations regarding the admissibility of exhibits; and (v) objections to exhibits.
- T.B.D. – *Daubert* motions filed, responses to Daubert motions to be due 21 days later;
- T.B.D. -- Estimation Hearing Dates.

Expedited Motion Protocol

In the event a party needs to file a motion requiring the Court's immediate attention, the motions practice shall proceed according to the following schedule:

- Party files motion;
- Responses must be filed within 14 days of service of the motion;
- Replies must be filed within 7 days of service of the response;
- The Court will schedule a telephonic hearing at its earliest convenience after the responses and replies to the motion are filed.

Other Hearing Dates

The following additional dates are set by the Court to address any matters not otherwise addressed in the above schedule: June 21, 2007, ~~9:00~~ **8:30** a.m.; ~~July 31, 2007 and August 1, 2007, 9:00 a.m.~~ All such hearing shall be held in Pittsburgh, PA. Debtors will notify the

Court as soon as reasonably possible but not later than 3 business days prior to any hearing date outlined herein, if the parties agree that a hearing date is not needed.

SO ORDERED

Date: June 1, 2007


The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
W.R. GRACE & CO., *et al.*,) Case No. 01-01139 (JFK)
) Jointly Administered
Debtors)
) Re: Docket No. 15078

**MODIFIED SECOND NEWLY AMENDED CASE MANAGEMENT ORDER
FOR THE ESTIMATION OF ASBESTOS PERSONAL INJURY LIABILITIES**

The following remaining dates contained in the Newly Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities (Docket No. 15923) (June 1, 2007) are further amended as follows:

- July 24, 2007-- Experts who will testify as to matters other than the number, amount, and value of present and future asbestos claims may file supplemental or rebuttal reports;
- July 30, 2007-- 9:00 - 11:00 a.m.-- Status conference with the Court, if necessary;
- August 8, 2007-- Experts who will testify as to the number, amount, and value of present and future asbestos claims may file supplemental or rebuttal reports;
- August 20, 2007-- Deadline for all parties seeking to call one or more non-expert witnesses to testify to make a good faith effort to compile a final list of such non-expert(s), and/or substitute one or more non-experts not previously designated;
- October 31, 2007--Deadline for the completion of all non-expert written and deposition discovery, including discovery from claimants or other persons or entities who are not expert witnesses;
- November 15, 2007-- Deadline for the completion of all expert written and deposition discovery;
- November 30, 2007--Deadline for filing all *Daubert* motions;

- December 14, 2007 - Deadline for filing oppositions to *Daubert* motions;
- December 21, 2007--Deadline for filing reply briefs in support of *Daubert* motions;
- **December 27, 2007**, Deadline for the submission of pre-trial binders, which shall contain, *inter alia*, (i) trial briefs; (ii) a proposed pretrial order signed by counsel for each party participating in the Asbestos PI Estimation Hearing; (iii) copies of all exhibits to be offered and all schedules and summaries to be used at the Asbestos PI Estimation Hearing pre-marked for identification; (iv) stipulations regarding the admissibility of exhibits; and (v) objections to exhibits.

Debtors shall arrange delivery of a complete set to Judge Fitzgerald's home and a set to Pittsburgh chambers.

- January 14, 2008--9:00 a.m.--Argument on *Daubert* motions (limited to 90 minutes per side);
- January 14-16, 2008; January 22-23, 2008; March 3, 2008; March 5, 2008; March 24-26, 2008; March 31, 2008; April 1, 2008; April 7-9, 2008; April 14-16, 2008; each day commencing at 9:00 a.m.--Estimation Hearing Dates.

Expedited Motion Protocol

In the event a party needs to file a motion requiring the Court's immediate attention, the motions practice shall proceed according to the following schedule:

- Party files motion;
- Responses must be filed within 14 days of service of the motion;
- Replies must be filed within 7 days of service of the response;
- The Court will schedule a telephonic hearing at its earliest convenience after the responses and replies to the motion are filed.

[Remainder of Page Intentionally Left Blank]

Other Hearing Dates

The following additional dates are currently reserved by the Court to address any matters not otherwise addressed in the above schedule: September 27-28, 2007; October 31, 2007; November 1-2, 2007. All such hearings shall be held in Pittsburgh, PA. Debtors will notify the Court as soon as reasonably possible but not later than 3 business days prior to any hearing date outlined herein, if the parties agree that a hearing date is not needed.

SO ORDERED

This 9th day of July, 2007


The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

EXHIBIT 6

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 01-1139 (JKF)
. Chapter 11
W.R. GRACE, et al., .
. Bankruptcy Courtroom No. 2
. 824 Market Street
Debtors. . Wilmington, Delaware 19801
. .
. .
. . September 25, 2006
. . 2:03 P.M.
.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtors:

Kirkland & Ellis
By: DAVID M. BERNICK, ESQ.
JANET BAER, ESQ.
SAMUEL BLATNICK, ESQ.
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Appearances:
(Continued)

For the Property
Damage Committee:

Bilzin Sumberg Baena Price & Axelrod
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200 South Biscayne Boulevard
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Miami, Florida 33131-5340

Ferry & Joseph, PA
By: THEODORE TACCONELLI, ESQ.
824 North Market Street, No. 904
Wilmington, Delaware 19899

Dies and Hilp
By: MARTIN DIES, ESQ.

For Anderson:

Speights & Runyan
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For California State
University, et al.:

Speights & Runyan
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Hampton, South Carolina 29924

For Ad Hac Committee of
Equity Security Holders:

Weil Gotshal & Manges, LLP
By: JARRAD WRIGHT, ESQ.
Eye Street, NW, Suite 900
Washington, DC 20005

For Official Creditors'
Committee:

Stroock & Stroock & Lavan LLP
By: KENNETH PASQUALE, ESQ.
180 Maiden Lane
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For Prudential
Insurance Company of
America:

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Appearances:
(Continued)

For Asbestos P.I.
Claimants:

Campbell & Levine
By: MARK HURFORD, ESQ.
1201 Market Street, 15th Floor
Wilmington, Delaware 19801

Caplin & Drysdale
By: PETER LOCKWOOD, ESQ.
NATHAN FINCH, ESQ.
One Thomas Circle, N.W.
Washington, DC 20005

For Grace Certain
Cancer Claimants:

Montgomery McCracken
By: NATALIE RAMSEY, ESQ.
123 South Broad Street
Philadelphia, Pennsylvania 19109-1029

The U.S. Trustee:

Office of the U.S. Trustee
By: DAVID KLAUDER, ESQ.
844 King Street
Wilmington, Delaware 19899

For Canada/Montana:

Monzack & Monaco
By: FRANCIS A. MONACO, JR., ESQ.
1201 N. Orange Street, Suite 400
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For FCR:

Orrick, Herrington & Sutcliffe LLP
By: RICHARD WYRON, ESQ.
Washington Harbour, 3050 K Street N.W.
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Phillips, Goldman & Spence, PA
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1200 North Broom Street
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For BNSF:

Burns, White & Hickton
By: ANGELA ALLEN, ESQ.
Four Northshore Center
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Appearances:
(Continued)

For One Beacon/Seaton: Drinker Biddle & Reath LLP
By: MICHAEL BROWN, ESQ.
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For Prudential,
Motley Rice: Jspan Schlesinger Hoffman
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Motley Rice LLC
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Mount Pleasant, South Carolina 29465

For Various Firms: Stutzman, Bromberg, Esserman & Plifka
By: SANDER ESSERMAN, ESQ.
2323 Bryan Street, Suite 2200
Dallas, Texas 75201

For MCC: Connolly Bove Lodge & Hutz, LLP
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Post Office Box 2207
Wilmington, Delaware 19899

For Canadian ZAI
Claimants: The Hogan Firm
By: DANIEL K. HOGAN, ESQ.
1311 Delaware Avenue
Wilmington, Delaware 19806

For Ad Hoc Committee
of Equity Holders: The Bayard Firm
By: KATHRYN SALLIE, ESQ.
222 Delaware Avenue, Suite 900
P.O. Box 25130
Wilmington, Delaware 19899-5130

For UCC: Duane Morris, LLP
By: RICHARD W. RILEY, ESQ.
1100 North Market Street, Suite 1200
Wilmington, Delaware 19801

1 MR. FINCH: -- as if they had never been made.

2 THE COURT: No.

3 MR. FINCH: And as long as objections already
4 previously made are preserved, as long as people don't
5 supplement --

6 THE COURT: Right.

7 MR. FINCH: -- or if they do supplement, they restate
8 the objections --

9 THE COURT: Yes.

10 MR. FINCH: -- then I -- then I don't have a problem
11 with that.

12 MR. BERNICK: Yeah, well -- let's just --

13 THE COURT: Mr. Bernick, that's my ruling.

14 MR. BERNICK: Well, I understand --

15 THE COURT: I'm not going to hear any more argument
16 on it, not from anybody.

17 MR. BERNICK: Your --

18 THE COURT: I've had this questionnaire until the
19 cows come home and, frankly, that's enough.

20 MR. BERNICK: I don't even understand, Your Honor,
21 what was just said.

22 THE COURT: What was just said is this: Let's assume
23 that person A completed a questionnaire.

24 MR. BERNICK: Right.

25 THE COURT: And filed an objection on the

1 MR. BERNICK: -- before Your Honor gave guidance.
2 They will stand on those objections.

3 THE COURT: All right.

4 MR. BERNICK: They will not supplement. They will
5 not tell us whether or not they're going to supplement as to
6 those individual questions. And we will find out when they
7 finally give their submission at the end of the day for the
8 first time that, in fact, they're standing on their old
9 objections and they haven't changed anything. And for that
10 matter, they haven't even supplemented anything.

11 THE COURT: Well --

12 MR. BERNICK: But -- but I think that there's a much
13 simpler --

14 THE COURT: I will never do this again.

15 MR. BERNICK: Yes.

16 THE COURT: This was such a nightmare. I will never
17 do this again.

18 MR. BERNICK: Well, but, Your Honor, there's only --
19 just think what the alternative was.

20 THE COURT: The alternative would have been a whole
21 lot easier. We put everybody in a room and throw the key away
22 until you come out with one side either alive or dead.

23 MR. BERNICK: You have -- well, they're older than I
24 am, so we may have killed them in the process. But --

25 MR. LOCKWOOD: Your Honor -- Your Honor said you've