

EXHIBIT 7

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 (JKF)
) (Jointly Administered)
Debtors.)
) **Related Docket Nos.: 14903**

**W.R. GRACE & CO.'S RESPONSE TO EMERGENCY MOTION OF THE OFFICIAL
COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS AND DAVID T.
AUSTERN THE COURT APPOINTED LEGAL REPRESENTATIVE FOR FUTURE
ASBESTOS PERSONAL INJURY CLAIMANTS TO COMPEL PRODUCTION OF
COMPLETE NAVIGABLE DATABASE**

The Official Committee of Asbestos Personal Injury Claimants ("PI Committee") and the Future Claimants' Representative ("FCR") have come to the Court seeking "emergency" relief. There is no "emergency." The PI Committee and the FCR offer no rationale for why this motion must be given emergency status -- nor could they, as they have known for at least a year that the Court-appointed claims agent, Rust Consulting, Inc. ("Rust"), has not coded the attachments to the W.R. Grace Asbestos Personal Injury Questionnaire responses.

And on its merits, the motion is no less perverse. At bottom, the motion seeks relief for a problem that, as this Court well knows already, is of the Claimants' own creation. No one, at this point, can forget how strenuously Grace sought an Order requiring all answers to be marked on the face of the Questionnaire, rather than being buried in a mass of undifferentiated attachments. The PI Committee turned a deaf ear to Grace's statements that it could not code all of these attachments into an objective database. The PI Committee *opposed* all requests that the Questionnaire be filled out, insisting instead that the Claimants be permitted to submit attachments without restriction.

Ultimately, the Court ordered that, to the extent the law firms wished to submit answers to the questions contained in the Questionnaire by attachment, they had to clearly cite the precise

pages on which the specific answer could be found, no more no less. Several law firms, however, to varying degrees have continued in their failure to comply, affecting thousands of Questionnaires. The PI Committee and the FCR apparently have done nothing to deter such non-compliance.

Under these circumstances, Grace has had no choice but to analyze attachments in connection with other expert work. The FCR's and the PI Committee's true intention is to cloak what is obviously a premature effort to obtain expert discovery through the specious device of claiming that Grace is responsible for a problem that the Claimants themselves created--notwithstanding Grace's repeated efforts to avoid it.

ARGUMENT

A. At All Times, The PI Committee And Rust Have Known That The Navigable Database Did Not Include Information Contained Solely In Attachments.

In their Motion, the PI Committee and the FCR imply that the first time they learned that the navigable database did not include information that they set forth in the attachments was on February 23, 2007, when Grace revealed that it had to retain a firm that specialized in the coding of medical attachments as part of its expert work. *See* 3/19/07 Emergency Motion of the Official Committee of Asbestos Personal Injury Claimants and David T. Austern the Court Appointed Legal Representative for Future Asbestos Personal Injury Claimants to Compel Production of Complete Navigable Database ("3/19/07 Motion to Compel") at ¶ 3. Nothing could be further from the truth. The PI Committee and the FCR have known *for at least a year* that the navigable database would not contain information provided solely in attachments appended by Claimants to their Questionnaire responses, but not included on the face of the Questionnaire.

First, Grace invited the PI Committee and the FCR to participate in the process by which Rust, the Court-appointed Claims Agent, would capture the data from the Questionnaire

responses before the work to compile the database even began. On January 31, 2006, Grace provided the preliminary protocols that Rust would use to create the navigable database to the PI Committee and the FCR, and asked that they provide any questions or comments regarding those protocols. *See* 1/31/06 A. Basta email (attached as Ex. 1). Those protocols made clear that only data contained in the Questionnaires themselves would be coded and that information contained in attachments would not be contained in the database. Critically, the database protocols did not contain any processes or procedures for the coding of attachments. Neither the PI Committee nor the FCR raised the issue of whether attachments would be coded, or suggested that the attachments should be coded. Instead, the PI Committee simply stated that “[w]ith respect to the protocols for reviewing the questionnaires,” the Committee has:

[N]o obligation to improve your discovery efforts and our experts will identify the flaws in Rust’s approach and any reliance your experts place upon the database Rust constructs at the appropriate time in the process, which in our view is in connection with the expert reports from our estimation experts.

2/7/06 N. Finch email (attached as Ex. 2). They chose instead to position themselves to disrupt the use of the database.

Nevertheless, Grace provided the PI Committee and the FCR yet another opportunity to join this database process -- and again made them aware that attachments were not being included in the navigable database when it submitted to the PI Committee and the FCR updated data protocols in October 2006. *See* 10/31/06 A. Basta email (attached as Ex. 3). Following that, in response to a request from the FCR and the PI Committee, Grace agreed to a site visit and meeting between Rust and the PI Committee’s and the FCR’s experts and lawyers. In early November 2006, the PI Committee, the FCR and their experts conducted this site visit to Rust during which they met with the Rust personnel responsible for developing and implementing the data capture protocols and had an opportunity to ask questions regarding those protocols. It

should have been clear from the revised protocols and their meeting that Rust was capturing only information written on the face of the Questionnaires and was not coding any attachments that it received.

Critically, in July 2006, Grace informed this Court, the PI Committee and the FCR that attachments were not being coded by Rust personnel when it sought an order prohibiting Claimants from responding to the Questionnaire by means of attachment. *See* 7/17/06 Motion to Compel Asbestos Personal Injury Claimants to Respond to the W.R. Grace Asbestos Personal Injury Questionnaire (“7/17/06 Motion to Compel”) at 21-24 (Docket No. 12823). Yet again, the PI Committee and the FCR did not seek an order requiring all attachments to be coded, nor did they ever question whether the attachments would be coded.

Finally, to the extent there was any question as to what was included in the navigable database, that was clarified by the actual rolling production of the navigable database. Grace has been producing the database to the PI Committee and to the FCR *at least once a month since August 15, 2006*.¹ Nowhere in any of these database updates were coded attachments. Thus, it is clear that at all relevant times, the PI Committee and the FCR have known that the database consisted solely of information that appears on the face of the Questionnaire responses and yet have not objected until now, less than 3 weeks before the final database is due to be delivered. There is no emergency -- just a late effort at gamesmanship on the part of the PI Committee and the FCR.

B. Grace’s Strenuous Efforts to Avoid The Attachment Problem, The Court’s Ultimate Order, The Continued Non-Compliance, And Grace’s Current Review Of Certain Attachments.

¹ Grace has produced the database to the parties to the estimation on the following dates: August 15, 2006; September 7, 2006; October 11, 2006; November 17, 2006; December 13, 2006; December 20, 2006; December 27, 2006; January 9, 2007; February 8, 2007; February 20, 2007; February 26, 2007; and March 2, 2007.

The attachment problem is a separate problem and the history of that problem is well-known to the Court. Specifically:

- When the Claimants filed their PIQs there were huge attachment problems. Grace brought this problem to the attention of the Claimants immediately by sending a letter to all Claimants' counsel. In that letter, Grace stated:

All persons who complete the Questionnaire must answer all questions asked as completely and accurately as possible. *See* Questionnaire at i. ***Specifically, questions must not be answered by means of attaching documents.*** While documentation supporting a person's claim is required, Questionnaire at ii-iv, supporting documentation may not be submitted in lieu of answering the questions contained in the Questionnaire.

2/6/06 Ltr. from B. Harding (attached as Ex. 8).

- Grace also brought the attachment problem to the Court's attention as early in the process as was practicable. Grace first raised the issue in a status report it filed on March 20, 2006. *See* 3/20/06 W.R. Grace & Co.'s Status Report Regarding Completion of the W.R. Grace Asbestos Personal Injury Questionnaire ("3/20/06 Status Report") (Docket No. 12093). In the 3/20/06 Status Report, Grace stated:

Rust also has observed that a large number of Questionnaires are being responded to in whole or in part via attachment, with the response, "see attached" Providing the requested information by means of attachment instead of completing the Questionnaire itself is highly problematic [P]roviding answers to portions of the Questionnaire solely by means of attachment makes it difficult, if not impossible, to discern to which question the information contained in the attachment responds [Further,] the purpose of the Questionnaire is to understand what the ***claimant*** believes is the claim, not Grace's guess based upon attachments.

See 3/20/06 Status Report at 3-4.

- Grace again brought the problem to the Court's attention at the June 19, 2006 omnibus hearing. *See* 6/19/06 Hr'g Tr. at 27-29 (discussing deficiencies in Questionnaire responses, including use of attachments as substantive responses).
- Within a week of the Questionnaire submission deadline, Grace filed the 7/17/06 Motion to Compel. The issue of whether response by attachment was appropriate was extensively briefed over the next two months. *See* 7/17/06 Motion to Compel at 20-27; *see also* 8/25/06 Debtors' Reply to Various Responses to Debtors' Motion to Compel Asbestos Personal Injury Claimants to Respond to the W.R. Grace Asbestos Personal Injury Questionnaire at 6-8 (Docket No. 13067); 9/7/06 Summary of Issues Not Resolved in Mediation for W.R. Grace's Motion to Compel (Docket No. 13111).

- While ultimately the Court ruled that Claimants could submit responses by means of attachment, it placed strict limitations on the manner in which such responses could be provided, stating:

[I]f a response is made by way of an attachment, the attachment must have the answer to the question, must be in a recognizable, legible format that are either numbered (whether by Bates number or some other appropriate numbering system or method) or otherwise identified (such as behind an exhibit tab) and the response must reference clearly the specific page(s) of the attachment so that the Debtors understand which page(s) of the attachment provides the answer to a specific Question in the Questionnaire. Pages that do not contain the answer should not be referenced.

See 10/12/06 Order Concerning Debtors' Motion to Compel Asbestos Personal Injury Claimants to Respond to the W.R. Grace Asbestos Personal Injury Questionnaire at ¶ 2 ("10/12/06 Order") (Docket No. 13393).

Notwithstanding all these efforts there continue to be compliance problems. Several of the firms still fail to comply with the attachment protocol, in varying degrees, and there is no evidence that the PI Committee or the FCR have done anything to reign in this conduct. For example, the law firm of Kelley & Ferraro, which has submitted *over 41,000 Questionnaires*, answers questions regarding all Claimants' medical information by stating "[s]ee ILO, PFT, Causal Report attached to original questionnaire." *See* Supplemental PIQ of R.M. at WR GRACE SDA 010410-0009 -- 010410-0017 (attached as Ex. 4). But, each Claimant often has more than one medical report attached to his or her original Questionnaire, making it impossible to determine which is intended to respond to a given question. *See* PIQ of R.M. at WR GRACE PIQ 28491-0026-28491-0029 (attaching reports of Dr. L.C. Rao and Dr. Alvin Schonfeld) (attached as Ex. 5). Kelley & Ferraro neither "number[s]" or "otherwise identifie[s]" which attachment contains the responsive information. Other firms have similarly responded. *See, e.g.,* Motley Rice Supplemental Questionnaire Response (answering questions by stating, "[n]o additional information at this time -- see documents previously provided on all," and "see

medical records attached to Q”) (attached as Ex. 6); *compare* PIQ of H.A. at WR GRACE PIQ 62495-0021, 62495-0025-62495-0028 (attached as Ex. 7) (attaching reports of Dr. Alvin Schonfeld and Dr. Jay Segarra).² Thus, deciphering which attachments respond to each question becomes even more labor-intensive and burdensome.

Faced with this situation, Grace has had no choice but to try to capture attachment information by some other means. It was never contemplated that Rust would code attachments, and it is beyond their expertise to do so. Therefore, Grace has had to retain other experts for the purpose of coding the attachments. The material that has been generated as the result of this expert analysis will be provided in a timely fashion and upon a schedule to which the parties to the estimation agreed.

As in many cases, the parties to the estimation, including the FCR, the PI Committee, and Grace, entered into a stipulation regarding the discoverability of materials considered by experts. The stipulation, which was filed with this Court, provides that:

Simultaneous with the service of all expert reports, and except as provided in paragraph 2 below, the parties shall produce the specific documents, data, and written information that the expert directly relied upon in forming his or her expert opinions in this matter. ***To the extent that the disclosures include exhibits, information, or data processed or modeled by computer at the direction of a disclosed expert in the course of forming the expert’s opinions, machine readable copies of such exhibits, information, or data shall be produced.***

² Certain firms supplemented their responses by providing an EXCEL spreadsheet containing responses for all Claimants. In such cases, while Rust has not coded the information provided in the spreadsheets, it has provided copies of the spreadsheet in native format to the parties for use in their analyses.

Due to its volume, Grace has provided only an excerpt of the Motley Rice Supplemental Questionnaire spreadsheet as Exhibit 6. The spreadsheet, which runs 1125 pages, is comprised of 20 columns. Grace has included only a single page of the spreadsheet and only the following columns in Exhibit 6: “Last Name”; “First Name”; “Are you aware of any relationship between the MD and legal counsel”; “Part V”; and “Pathology for Meso Claimants.”

Other examples of law firms whose supplemental responses do not comply with the 10/12/06 Order or who did not supplement their original responses to bring them into compliance are: The Ferraro Law Firm; Weitz & Luxenburg; The Law Offices of Peter G. Angelos.

10/2/06 Stipulation Regarding Expert Discovery at ¶ 1 (“Expert Stipulation”) (Docket No.13337) (emphasis added). The materials at issue, namely the results of the attachment coding, being performed at the direction of Grace’s estimation and non-estimation experts, fall squarely within the definition of materials that are to be turned over simultaneously with the production of expert witness reports. The PI Committee and the FCR as signatories to the Expert Stipulation (and indeed as the main proponents of the agreement) cannot simply ignore its provisions because they want the data now.³ Thus, the request for production of the results of the coding of the sample simply is premature. The PI Committee and the FCR must await the production of Grace’s estimation expert reports, at which time they will receive the data collected from the attachment coding exercise, just as Grace must wait for the PI Committee and the FCR’s estimation expert reports prior to obtaining any similar data from the PI Committee and the FCR.

C. The Requested Relief Is Yet Another Attempt To Create Enormous Expense And To Delay The Estimation Trial Further.

The PI Committee and the FCR ask that this Court require that “[t]he information that is contained in the Questionnaires, supplemental Questionnaires *and all attachments* thereto shall be compiled into a navigable database and made available to any parties to the estimation proceedings, including those parties’ experts and advisors on or before April 13, 2007.” See [Proposed] Order Granting the Emergency Motion of the Official Committee of Asbestos Personal Injury Claimants and David T. Austern, the Court Appointed Legal Representative For Future Asbestos Personal Injury Claimants To Compel Debtors’ Production Of Complete Navigable Database (emphasis added). Simply put, this is not realistic.

³ Notably, when asked by Grace whether they intended to turn over any coding of attachments their experts had performed, the PI Committee and the FCR refused.

As an initial matter, the practical impossibility of coding all attachments is evident when measured in terms of the sheer volume of documents involved. To date, Rust has received approximately 3.8 million pages of attachments accompanying Questionnaires for approximately 100,000 Claimants. To properly capture the data from all such attachments requires analyzing each attachment to determine the question or questions for which it is being submitted and then correlating each piece of substantive information with its corresponding database field. Such a task would require Grace to hire highly-trained personnel with experience coding legal and medical documents. The PI Committee's own estimation expert has recognized this, stating that to render the information from the Questionnaires:

[T]he parties would have to retain expensive medical coders and doctors to help analyze hundreds of thousands of pages of medical records.

9/6/01 Affidavit of Mark Peterson at ¶ 30. This is why Grace requested that the Questionnaire be filled out -- a request that the Committee opposed.

But even if Grace were to hire such highly-trained medical and legal personnel, the time it would take to code all such documents could be years. For instance, as part of work undertaken at the direction of its estimation experts, Grace, using an outside vendor, has coded a sample of approximately 2,000 Questionnaire responses and their attachments. That work took 2 months and is still ongoing, as supplemental materials also must be coded. At that rate and given the approximately 100,000 Questionnaires that have been submitted to date, it would take an estimated 8 years to code all information contained in all attachments submitted in connection with the Claimants' Questionnaire responses -- a timeframe plainly incompatible with the Court's current schedule.

CONCLUSION

There is no emergency, as the PI Committee and the FCR have been aware that the navigable database does not include information contained in attachments for well over a year. Simply put, if the PI Committee and the FCR wanted this information, they could have spoken up long ago. Their strategic ignorance should not be countenanced. When stripped down to the "real" relief requested, the PI Committee and the FCR's motion is nothing more than a transparent attempt to avoid the very terms of the Expert Stipulation that it so strenuously fought to obtain and to prematurely obtain certain materials that will form the basis for Grace's estimation expert report. The PI Committee and the FCR will get those materials in the time frame and under the terms to which it agreed when it became a signatory to the Expert Stipulation. Accordingly, Grace respectfully requests that the PI Committee and the FCR's motion be denied in all respects.

Wilmington, Delaware
Dated: March 26, 2007

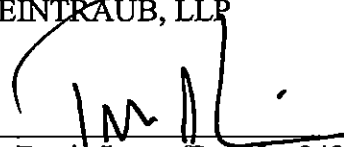
Respectfully submitted,

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EXHIBIT 8

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.

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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 9

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 01-1139 (JKF)
. .
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. 600 Grant Street
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Debtors. .
. April 1, 2008
. 9:08 a.m.

TRANSCRIPT OF TRIAL
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1 THE ATTORNEYS: No.

2 MR. FINCH: No, that's not what we gave them, Your
3 Honor.

4 MR. BERNICK: Well, this is -- well, I believe this
5 is absolutely the best and most current information that we
6 have.

7 MR. FINCH: No. We certainly didn't have Mr. Longo's
8 testimony on June 3rd and 4th. Let me back up, Your Honor.

9 MR. BERNICK: No, no. You had Longo -- we put the
10 dates in driven by the time estimates. These are not the dates
11 that you all had because you didn't consider the time period
12 that had been allotted for the examination of any of these
13 people. You artificially had everybody crammed in to a shorter
14 period of time. It's not going to happen because the time
15 estimates and the scope of testimony that you all have proposed
16 is completely out of sync with the calendar. That's the
17 problem

18 THE COURT: All right. Let me start from the
19 beginning. Is this the accurate list of witnesses that you
20 expect to call?

21 MR. FINCH: We -- yes, Your Honor, but we never
22 intended to read the deposition testimony in open court of Mr.
23 Hughes or Mr. Beber or anyone else. We had intended to proceed
24 by summaries and in handing out the depositions for the Court
25 for the record so the debtor can object or do whatever it wants

1 to with that. But we were going to proceed with respect to
2 those depositions the way they just proceeded this afternoon
3 with respect to some of the doctors who testified by
4 deposition. So that's not going to take any -- we shouldn't
5 take any courtroom time. Secondly, I think --

6 UNIDENTIFIED ATTORNEY: Two days. That takes care of
7 two days.

8 MR. FINCH: That takes care of two days on this. I
9 think that --

10 MR. BERNICK: So now we're to June 3rd.

11 UNIDENTIFIED ATTORNEY: Could we finish?

12 MR. FINCH: May I please continue, Your Honor? We
13 had our first witness Dr. Brody. I had not anticipated that we
14 would finish in time with him today to bring Dr. Welch in so
15 that's my fault that Dr. Welch is not here this afternoon. But
16 our next two witnesses are Dr. Roggli who's available on the
17 7th only, and Dr. Welch who's available on the 7th and 8th. So
18 we would have Dr. Roggli's direct examination and cross
19 examination on the 7th and Dr. Welch's direct examination. And
20 I don't know whether we would finish the cross on the 7th or
21 not.

22 On the 8th there would be the testimony from an
23 industrial hygienist Steven Hays. And then as to the next two
24 witnesses are Marshal Shapo and Steven Snyder. And it is --
25 that is the order in which we will present them although the

1 one caveat to that is Mr. Snyder is available on the 9th and
2 the 14th only and not on the 15th. And so we very well may
3 decide that Mr. Shapo may be a rebuttal witness or a sir
4 rebuttal witness rather than a direct case witness. And so I
5 would anticipate that we would get to Mr. Krause on the 14th.

6 I don't think we need to call Mr. Radecki at all.
7 Mr. Radecki is being proffered for solely for purposes of the
8 discount rate and the inflation factor for one of our -- the
9 discount rate for two of our experts and inflation factor for
10 one. I don't think there's going to be any big dispute. This
11 case is not going to -- the turn on which discount rate a
12 witness use. I would hope that we could work out a stipulation
13 on the discount rate with the debtor.

14 And it was my intention or my thought that on the
15 15th of April we would put Dr. Peterson on. His testimony, I
16 assume, would take a day like Dr. Florence's. The 16th of
17 April would be Ms. Biggs. And then on the 5th of May we would
18 finish our case with Mr. Longo and Mr. Myer and Mr. Stallard.

19 MR. BERNICK: All in one day?

20 MR. FINCH: Well, perhaps it would spill over to the
21 6th, but I think we would basically be done by the 6th of May.

22 MR. BERNICK: Well, first of all, that's not the
23 list. That's now an amended list. I'm very happy to have it
24 amended. But what I would ask the Court to do is to have them
25 put that down in writing so we can see where it ends up and

1 we're still going to have a problem with time. There is a
2 rebuttal case. And the rebuttal case is not an insignificant
3 case. And that's not just our doing it's their doing as well.
4 So all I ask Your Honor is that they come up with a schedule
5 that's a real world schedule. It's very helpful to know that
6 Mr. Shapo will be a rebuttal witness if he's called, that Mr.
7 Radecki doesn't need to testify.

8 MR. MULLADY: Well, just to clarify, that decision
9 hasn't been made yet about Professor Shapo. He's an FCR
10 witness. The present intention is that he will be here
11 testifying April 9th. I think what Mr. Finch said accurately
12 is that it's possible that he will be pulled and submitted as a
13 sur reply witness.

14 THE COURT: Yes. That's what he said.

15 MR. MULLADY: Okay. Thank you.

16 MR. BERNICK: That is precisely the problem. They're
17 still trying to figure out what they want to do and they're
18 doing it at our expense. We gave them committed lists and we
19 met with them and we met them and that saved them a ton of work
20 in the process. We chopped off all kinds of witnesses. We
21 need the same treatment and response and we ask that revised
22 list be submitted by Friday that shows that we are in fact
23 going to finish this case by the 4th. And if we're not going
24 to finish the case by the 4th then we need to take up next
25 Monday what's going to happen with the balance of the case. We

1 can't have the case continue to spill along at the convenience
2 of or subject to the schedules of counsel.

3 THE COURT: By the 4th of June?

4 MR. BERNICK: No. Yes. That was the plan. By the
5 4th of June.

6 THE COURT: Okay. I'm sorry. I just lost whether
7 you were talking about the ACC/FCR case they said May 6th or
8 whether you were talking the entire case. I just wasn't --

9 MR. BERNICK: The entire case --

10 THE COURT: Okay.

11 MR. BERNICK: -- is supposed to be done by the 4th of
12 June.

13 THE COURT: All right. I think the concept of
14 getting a final list is what I had ordered earlier. So, yes --

15 MR. FINCH: And we gave them that list, Your Honor.
16 We gave them that list. We filed it on March the -- last
17 Friday. Whatever day that was.

18 MR. BERNICK: For three days we now see that it's
19 already changed.

20 MR. FINCH: No. The only thing that has changed is
21 we told you -- it wasn't a change, we told you that we didn't
22 intend to read the Hughes and Beber material to the Court. And
23 the only change is the possibility solely based on --

24 THE COURT: All right. Folks, you know this really
25 is not a discussion you ought to have to have here in court.

1 This is really a discussion that you folks ought to be having
2 on your own. I honestly don't know what it is that I'm going
3 to add to this except that it seems to me that if they're
4 telling you they're going to be done by May 6th they should be
5 done by May 6th. And yes, you should get a final witness list
6 and an order so that you can adequately prepare cross
7 examination.

8 MR. BERNICK: Yes. Unless we have unfortunately, we
9 have these discussions before the Court it just doesn't get
10 done.

11 THE COURT: Well, I'm ordering it to get done. I
12 mean, you folks talk to each other about everything else. Why
13 don't you talk to each other about schedules?

14 MR. FINCH: We filed a list that -- the order of
15 witnesses is what he put up there. The time estimates and the
16 time that he showed up there is very different from our
17 conception of the list.

18 THE COURT: All right. Then get together about the
19 time estimates. Because, you know, folks, you've been doing
20 this a long time. You ought to know by now. Dr. Peterson has
21 testified in how many asbestos estimation cases? At least a
22 half a dozen. You ought to know by now how long your case is
23 going to take with him.

24 MR. FINCH: We do.

25 THE COURT: Well then talk to each other about it so

1 that it shouldn't be an issue. Both for direct and cross you
2 ought to know how long the cases are going to take for these
3 doctors. And if it's going to be a one day/one doctor deal
4 then say that and we'll know.

5 MR. HOROWITZ: Your Honor, Greg Horowitz for the
6 equity committee. Since you mentioned the getting together on
7 time estimates I want to make one thing clear. Nobody has
8 talked to the equity committee about any estimates of time that
9 we would have for cross. We do intend to cross some of these
10 witnesses. Notwithstanding what Mr. Bernick put up that is not
11 a complete list of the time estimates as far as we're
12 concerned. And we've never seen any of these estimates. We
13 have not been involved in any of these discussions we think we
14 should be.

15 THE COURT: Fine. I'm ordering all counsel for all
16 parties, that includes the creditors' committee, to get
17 together as soon as today's hearing is adjourned. You are not
18 free to leave this courtroom until you have come together on a
19 schedule of all witnesses, how long it will take to do the
20 direct and cross. If you miss your planes, so be it.
21 Hopefully that will be a time period which will be meaningful
22 to you so that you can get out of town on time. Okay. Next,
23 Mr. Bernick.

24 MR. BERNICK: Yes. We have motions that are pending
25 with respect to Messrs. Krause and Snyder. And I've got some