

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

In re:

W.R. GRACE & CO., *et al.*,
Debtors.

Chapter 11

Case No. 01-1139(JKF)

Jointly Administered

Related to Dkt. No. 20872

**STIPULATION OF FACTS REGARDING FIREMAN'S FUND INSURANCE
COMPANY'S PHASE II "SURETY CLAIM"-RELATED OBJECTIONS TO
CONFIRMATION OF THE FIRST AMENDED JOINT PLAN OF REORGANIZATION**

Fireman's Fund Insurance Company ("Fireman's Fund"), debtors W.R. Grace & Co., *et al.* (collectively, the "Debtors"), The Official Committee Of Asbestos Personal Injury Claimants, the Asbestos PI Future Claimants' Representative, and The Official Committee Of Equity Security Holders stipulate to the following facts for purposes of the Phase II hearing on confirmation of the First Amended Joint Plan Of Reorganization Under Chapter 11 Of The Bankruptcy Code Of W.R. Grace & Co. (Dkt. No. 20872, as the same may be amended, the "Plan"), but for no other purpose:

1. In April, 2000, W.R. Grace & Co. and W.R. Grace & Co.-Conn. (together, "Grace") suffered a judgment in Texas state court in five consolidated asbestos personal injury cases, styled Edwards, et al. v. Pittsburgh Corning Corp., et al.
2. Exhibit 1 hereto is a true and correct copy of the "Final Judgment" in Edwards, et al. v. Pittsburgh Corning Corp., et al., No. B-150,896-J (Tex. Dist. Ct., Jefferson Cty., 60th Judicial Dist.) (the "Edwards judgment").
3. Under the Edwards judgment, the Edwards plaintiffs were awarded compensatory damages against Grace totaling \$16,927,617.78, punitive damages against Grace in the amount of \$21.5 million, and post-judgment interest at the rate of 12 percent per annum.

4. Grace timely appealed the Edwards judgment.

5. To stay execution of the Edwards judgment while it appealed, Grace obtained a Supersedeas Bond (the “Bond”) from Fireman’s Fund in the amount of \$43,038,931.91.

6. Exhibit 2 hereto is a true and correct copy of the Bond issued by Fireman’s Fund on behalf of Grace.

7. In connection with issuing the Bond, Fireman’s Fund and Grace entered into an agreement titled the “Specialty Surety Indemnity Agreement” (the “Indemnity Agreement”).

8. Exhibit 3 hereto is a true and correct copy of the Indemnity Agreement between Grace and Fireman’s Fund.

9. Grace’s payment obligations under the Indemnity Agreement are backed by an Irrevocable Standby Letter Of Credit, No. LC870-122413, in the amount of \$13 million issued by Wachovia Bank, N.A., which names Fireman’s Fund as the Beneficiary (the “Letter of Credit”).

10. Exhibit 4 hereto is a true and correct copy of the Letter of Credit.

11. To date, Fireman’s Fund has drawn approximately \$1.8 million on the Letter of Credit for premiums on the Bond, leaving approximately \$11,204,000.00 available.

12. Before Debtors commenced these Chapter 11 cases, Grace filed its opening brief as appellant in the Texas Court of Appeals in its appeal of the Edwards judgment.

13. Exhibit 5 hereto is a true and correct copy of the Brief of Appellant filed by Grace in the Texas Court of Appeals in W.R. Grace & Co. v. Edwards, et al.,

No. 06-00-00112-CV.

14. On April 13, 2001, after learning of Debtors' bankruptcy filing, the Texas Court of Appeals suspended the appeal of the Edwards judgment, and entered an order stating that "for administrative purposes this case is abated and will be treated as closed."

15. Exhibit 6 hereto is a true and correct copy of the April 13, 2001 Opinion entered by the Texas Court of Appeals in W.R. Grace & Co. v. Edwards, et al., No. 06-00-00112-CV.

16. At the time proceedings in Grace's appeal of the Edwards judgment were suspended, Grace had filed its opening brief on the appeal, but no other proceedings had taken place in the appeal. In particular, the appellees have not yet filed any response in the Texas Court of Appeals to Grace's opening appellate brief.

17. No decision has been rendered in the Edwards appeal. The appeal remains abated.

18. Grace asserts that (a) the trial that resulted in entry of the Edwards judgment was infected with errors as set forth in the brief that Grace filed in the Texas Court of Appeals, (b) it has a very strong position on appeal, and (c) the appeal should be pursued.

19. Fireman's Fund asserts that there is at least a 60-70% chance that Grace will obtain some relief on appeal, either in the form of a reversal and rendition of judgment or, more likely, a reversal and remand for new trial.

20. On March 27, 2003, Fireman's Fund timely filed a proof of claim against Debtors, No. 15175 (the "Fireman's Fund Proof of Claim"), setting forth its alleged claim with respect to the Indemnity Agreement and the Bond.

21. Exhibit 8 hereto is a true and correct copy of the Fireman's Fund Proof of Claim.

22. To date, no party has objected to the Fireman's Fund Proof of Claim.

23. The claim asserted in Fireman's Fund Proof of Claim is treated as an Asbestos PI Claim pursuant to § 3.1.6(b) of the Plan, to be resolved pursuant to the "Indirect PI Trust Claims" provision set forth in § 5.6 of the TDP.

24. Pre-petition, Fireman's Fund issued certain comprehensive general liability policies to Grace (the "Fireman's Fund Policies").

25. Exhibits 9(a) through 9(o) hereto are true and correct copies of the Fireman's Fund Policies.

26. Under the Plan, the proceeds of the Fireman's Fund Policies would be transferred to the Asbestos PI Trust.

27. The exhibits attached hereto shall be admitted into evidence at the Confirmation Hearing.

28. This stipulation does not limit the right or ability of any party to offer additional testimony and documents into evidence at the Confirmation Hearing.

SO STIPULATED this 25th day of August, 2009.

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