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ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>W.R. GRACE, ALAN R. STRINGER, HENRY A. ESCHENBACH, JACK W. WOLTER, WILLIAM J. McCAIG, ROBERT J. BETTACCHI, O. MARIO FAVORITO, ROBERT C. WALSH v §</p> <p>Defendants.</p>	<p>CR 05 - 07 -M-DWM</p> <p><u>INDICTMENT</u></p> <p>CONSPIRACY (Count I) Title 18 U.S.C. §371 (Penalty: Five years imprisonment, \$250,000 fine, and three years supervised release; \$1,000,000 fine per violation for organization)</p> <p>CLEAN AIR ACT VIOLATIONS (Counts II, III, IV) Title 42 U.S.C. § 7413(c)(5)(A) (Penalty: Fifteen years imprisonment, \$250,000 fine, and three years supervised release; \$1,000,000 fine per violation for organization)</p>
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1.

	<p>WIRE FRAUD (Counts V, VI) 18 U.S.C. §§ 1343, 2 (Penalty: Ten years imprisonment, \$250,000 fine, and three years supervised release)</p> <p>OBSTRUCTION OF JUSTICE (Counts VII, VIII, IX, X) 18 U.S.C. §§ 1505, 2 (Penalty: Five years imprisonment, \$250,000 fine, and three years supervised release)</p>
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THE GRAND JURY CHARGES:

INTRODUCTION

A. BACKGROUND

At all times material to this Indictment:

1. In the late 1800s, gold miners discovered a significant body of vermiculite ore in an area located in the mountains approximately seven miles northeast of the town of Libby, Montana (the "Libby Mine").
2. Vermiculite is a mineral that expands, or pops, at high temperatures in an "expansion" or "exfoliation" process.
3. Expanded vermiculite that originated at the Libby Mine had many uses, including as an attic insulation (marketed as "Zonolite Attic Insulation"), as an ingredient in fireproofing products (marketed as "Monokote"), as an ingredient in masonry fill, and as an additive in potting soils and fertilizers.
4. The vermiculite deposits at the Libby Mine were contaminated with amphibole asbestos. The amphibole asbestos found at the Libby Mine is composed of a family of closely related minerals including tremolite, winchite, richterite, actinolite

and others. This amphibole asbestos has been commonly called "tremolite" and, for the purposes of this Indictment, it will be referred to as "tremolite," "tremolite asbestos" and "amphibole asbestos."

5. On or about 1939, the Zonolite Company (originally known as Universal Zonolite Insulation Company) was formed to mine and process vermiculite from the ore deposit at the Libby Mine.
6. Pursuant to the Agreement and Plan of Reorganization dated January 17, 1963, between W.R. Grace & Co., a Connecticut corporation, and the Zonolite Company ("Zonolite Agreement"), W.R. Grace & Co. acquired "substantially all of the properties and assets of Zonolite" under the terms and conditions contained in that agreement.
7. The employees of the Zonolite Company remained at the mine and processing facilities as employees of W.R. Grace & Co.
8. W.R. Grace & Co. operated the Libby Mine until on or about 1992.
9. W.R. Grace & Co. acquired the rights to the name "Zonolite" as part of the transaction with the Zonolite Company and continued to manufacture and sell Zonolite's product line, including vermiculite concentrate, expanded vermiculite, and Zonolite Attic Insulation.
10. In 1988, W.R. Grace & Co., the same Connecticut corporation that entered into the Zonolite Agreement, changed its name to W.R. Grace & Co. - Conn. as part of a corporate reorganization, and became a subsidiary of a newly-created New York corporation named W.R. Grace & Co. In 1998, W.R. Grace & Co., a

Delaware corporation, was incorporated. W.R. Grace & Co. - Conn., became a wholly owned subsidiary of the Delaware corporation.

11. For the purposes of this Indictment, "W.R. GRACE" refers to W.R. Grace & Co., a Connecticut corporation, both before and after it changed its name to W.R. Grace & Co.-Conn. in 1988.
12. As part of its operations, defendant W.R. GRACE mined and milled vermiculite ore at the Libby Mine. The milled vermiculite ore was known as "vermiculite concentrate."
13. As part of its operations, defendant W.R. GRACE disposed of mining waste and mill tailings (a waste product of the milling process) at the Libby Mine.
14. From on or about 1963 until on or about 1991, defendant W.R. GRACE operated a Screening Plant, a processing plant at which vermiculite concentrate was separated into different sized grades through a mechanical screening process (the "Screening Plant").
15. Prior to the mid-1970s, the Screening Plant was located at the Libby Mine.
16. After the mid-1970s, the Screening Plant was located down Rainy Creek Road from the Libby Mine, at the intersection of Highway 37 and Rainy Creek Road on the bank of the Kootenai River, about four miles from Libby, Montana.
17. Prior to the construction of the new Screening Plant at the intersection of Highway 37 and Rainy Creek Road, defendant W.R. GRACE used this property as a holding point for vermiculite concentrate trucked from the Screening Plant at the Libby Mine.

18. A facility known as the "Export Plant" was located across the railroad tracks from downtown Libby, Montana near where Highway 37 crosses the Kootenai River.
19. From on or about 1963 to at least on or about 1992, defendant W.R. GRACE trucked small amounts (relative to the volume shipped to customers from the rail loading station near the Screening Plant) of vermiculite concentrate to the Export Plant from the Screening Plant, where it was stockpiled and then placed in bags for distribution to locations in other states.
20. Defendant W.R. GRACE shipped the vermiculite concentrate (in hopper railroad cars or, in lesser amounts, in bags) to defendant W.R. GRACE owned and licensed expansion facilities and to customers throughout the United States.
21. In the operation of the Screening Plant, there were occasionally spills, processing errors, or lack of demand for certain size grades of vermiculite concentrate.
22. At various times between 1963 and 1992, defendant W.R. GRACE placed the vermiculite concentrate that had spilled, vermiculite concentrate that was affected by processing errors, or vermiculite concentrate of a grade for which there was no immediate demand in various locations on the grounds of the Screening Plant.
23. At various times between 1963 and 1990, defendant W.R. GRACE allowed employees and residents of Libby, Montana to take vermiculite concentrate for their personal use.
24. At some unknown time in the 1970s, an employee of defendant W.R. GRACE informed the Libby Public School District that vermiculite materials from the Libby Mine could be used as a surface for the Libby High School running track.

25. At some unknown time, employees of defendant W.R. GRACE transported vermiculite materials to the Libby High School and the Libby Junior High School where they were laid and served as a surface for the running tracks at both schools for approximately seven years.
26. On or about 1981, employees of defendant W.R. GRACE transported vermiculite materials to Plummer Elementary School in Libby, Montana where they were laid and served as the foundation for an outdoor ice skating rink.
27. In 1990, defendant W.R. GRACE ceased vermiculite mining at the Libby Mine. Defendant W.R. GRACE continued vermiculite processing operations at the Libby Mine and the Screening Plant until approximately 1992.
28. In the mid-1990s, defendant W.R. GRACE sold several of the properties associated with its former vermiculite operations in and near Libby, Montana.
29. On or about December 17, 1993, defendant W.R. GRACE sold the Screening Plant to Lincoln County residents Mel and Lerah Parker.
30. From approximately 1993 to on or about June, 2000, Mel and Lerah Parker used the Screening Plant for commercial operations (a commercial nursery and mushroom farm) and their personal residence.
31. From on or about 1977 to on or about 1994, the defendant W.R. GRACE leased a portion of the Export Plant to various people and entities to use for organized youth baseball games and practices.
32. From on or about 1987 to sometime before on or about May 12, 1994, defendant W.R. Grace leased a portion of the Export Plant to Jim Regh, Melvin Burnett, and others for use as their place of business.

33. In separate transactions on or about May 12, 1994 and on or about February 23, 1995, defendant W.R. GRACE transferred portions of the former Export Plant property to the City of Libby.
34. From on or about 1995 to on or about 1997, the City of Libby leased a portion of the Export Plant to various people and entities to use for organized youth baseball games and practices.
35. From on or about May 12, 1994 to on or about 2000, the City of Libby leased a portion of the Export Plant to Melvin Burnett, who used the location for a retail lumber yard and related operations.
36. On or about 1994, defendant W.R. GRACE sold to an entity known as Kootenai Development Corporation ("KDC") approximately 3,600 acres of mountainous land that comprises the Libby Mine, 1,200 acres of which had been actively mined, and an approximately 20-acre parcel now known as the "Flyway," which is located between Highway 37 and the Kootenai River, adjacent to and south of the former Screening Plant.
37. On or about November 23, 1999, Environmental Protection Agency ("EPA") representatives arrived in Libby, Montana to investigate reports of a potential hazardous waste emergency relating to asbestos contaminated vermiculite.
38. As a result of its investigation, EPA concluded that the conditions at the site presented an imminent and substantial threat to human health and the environment. The site was ultimately declared a Superfund Site pursuant to federal law. As of December 31, 2001, EPA had incurred 55,100,000.00 dollars in cleanup costs.

39. At various dates alleged in this Indictment, defendant ALAN R. STRINGER held different positions with defendant W.R. GRACE, including: from on or about September 8, 1981 to on or about 1988, he was the Libby Mine Supervisor; from on or about 1988 to on or about 1994, he was the General Manager of Operations at the Libby Mine; and from on or about 1999 to the present, he served as defendant W.R. GRACE's representative relating to EPA's Superfund Cleanup.
40. At various dates alleged in this Indictment, defendant HENRY "HARRY" A. ESCHENBACH held different positions with defendant W.R. GRACE, including: from on or about 1971 to on or about 1977, he was an Industrial Hygienist in the Industrial Chemicals Group ("ICG"); and from on or about 1977 to on or about December 31, 1996, he was the Director of Health, Safety, and Toxicology for ICG.
41. At various dates alleged in this Indictment, defendant JACK W. WOLTER held different positions with defendant W.R. GRACE, including: from on or about September 15, 1975 to on or about 1988, he was Vice-President of Mining and Engineering for the Construction Products Division ("CPD"); and from on or about 1988 to on or about 1994, he was Vice-President and General Manager of CPD.
42. At various dates alleged in this Indictment, defendant WILLIAM J. McCAIG held different positions with defendant W.R. GRACE, including: from on or about January, 1971, he was a Maintenance Engineer at the Libby Mine; from on or about 1976 to on or about 1979, he was Maintenance Superintendent at the Libby Mine; from on or about 1979 to on or about 1988, he was General Manager

of Operations at the Libby Mine; and from on or about 1988 to on or about August 31, 1995, he was Manufacturing Manager of Specialty Vermiculite of CPD Business Unit in Enoree, South Carolina.

43. At various dates alleged in this Indictment, defendant ROBERT J. BETTACCHI held different positions with defendant W.R. GRACE, including: from on or about 1979 to on or about 1986, he was General Manager of CPD; from on or about 1986 to on or about 1989, he was Vice-President of CPD; and from on or about 1989 to the present, he was President of CPD and Senior Vice-President of defendant W.R. GRACE.
44. At various dates alleged in this Indictment, defendant O. MARIO FAVORITO held different positions with defendant W.R. GRACE, including: from on or about 1970 to on or about 1993, he was corporate legal counsel for ICG; and from an unknown time but no earlier than on or about 1993 to the present, he was Assistant Secretary of defendant W.R. GRACE and Chief Group Counsel.
45. At various dates alleged in this Indictment, defendant ROBERT C. WALSH held different positions with defendant W.R. GRACE, including: from on or about 1982 to on or about 1989, he was President of CPD; from on or about 1989 to an unknown time he was Executive Vice President of Grace Specialty Chemicals Co.; and from an unknown time to on or about 1994, he was Senior Vice-President of defendant W.R. GRACE.
46. From 1976 to 1990 the Directors, Officers, and Shareholders of W.R. GRACE enjoyed at least \$140 million in after tax profits arising largely from products made with vermiculite contaminated with tremolite asbestos from the Libby Mine.

B. ASBESTOS RELATED DISEASES

47. Modern science has not established a safe level for asbestos exposure for which there is no increased risk of disease.
48. Airborne exposure to tremolite asbestos by breathing into human lungs causes scarring of the lung tissues and can cause the disease known as "asbestosis."
49. Asbestosis is a progressive disease that destroys the human lung's ability to absorb oxygen, and in severe cases, results in severe disability or death.
50. The rate of asbestosis mortality of the Libby population is 40 to 80 times higher than expected when compared to rates for Montana and the United States.
51. Airborne exposure to tremolite asbestos causes lung cancer in humans.
52. The rate of lung cancer mortality of the Libby population is approximately 30 percent higher than expected when compared to rates for Montana and the United States.
53. Airborne exposure to tremolite asbestos can cause an aggressive and fatal form of cancer in humans known as "mesothelioma." This form of cancer is extremely rare, resulting in no more than 9 cases per 1 million individuals in the United States general population, and is uniquely associated with exposure to asbestos. This form of cancer is not related to cigarette smoking.
54. Over twenty cases of mesothelioma have been identified to date among persons who lived or worked in Libby. This is a significant finding for this small population of approximately 8,000 people.
55. Airborne exposure to tremolite asbestos can cause the disease of pleural fibrosis, which is scarring of the pleural tissues surrounding the lungs. Pleural fibrosis can

result in impaired functioning of the lungs, and in more severe cases, disability and death. The development and progression of pleural fibrosis is not related to cigarette smoking.

56. Pleural fibrosis is associated with a greater risk of developing mesothelioma and lung cancer.
57. To date, approximately 1,200 residents of the Libby, Montana area have been identified as having asbestos related pleural abnormalities as a result of being exposed to tremolite asbestos produced by W.R. GRACE at the Libby Mine. Of this group, 70 percent are not former employees at the Libby Mine. Individuals have been identified with asbestos related disease whose only exposure to asbestos has been through asbestos containing vermiculite from the Libby Mine located throughout the community.
58. Asbestos related diseases have a latency period ranging from 3 to 40 years or more. That is, a person exposed to asbestos by breathing will not manifest symptoms of disease until 3 to 40 or more years after exposure.
59. Airborne exposure to tremolite asbestos can cause bloody pleural effusions. A bloody pleural effusion is a pathological collection of bloody fluid between the pleural lining and the lung. They are considered to be a possible manifestation of early stages of mesothelioma.

C. STATUTORY BACKGROUND

I. CLEAN AIR ACT

60. The Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*, is the United States' comprehensive air pollution control statute. The purpose of the CAA is "to protect

and enhance the quality of the nation's air resources." 42 U.S.C. § 7401(b)(1);
see also 42 U.S.C. § 7470.

61. Under the CAA, any person who knowingly releases into the ambient air any hazardous air pollutant or any extremely hazardous substance, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury is subject to criminal penalties. 42 U.S.C. § 7413(c)(5)(A).
62. Asbestos is a hazardous air pollutant. 42 U.S.C. § 7412(b)(1).
63. A "person" includes a corporation, individual and "any responsible corporate officer." 42 U.S.C. § 7602(e); 42 U.S.C. § 7413(c)(6).
64. Congress defined "serious bodily injury" as "bodily injury which involves a substantial risk of death, . . . extreme physical pain, . . . or protracted loss or impairment of the function of a bodily member, organ, or mental faculty." 42 U.S.C. § 7413(c)(5)(F).

II. TOXIC SUBSTANCES CONTROL ACT

65. The Toxic Substances Control Act, 15 U.S.C. § 2601 et. seq. ("TSCA"), regulates chemical substances and mixtures whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury to health or the environment.
66. Section 8(e) of TSCA, 42 U.S.C. § 2607(e) requires that any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of EPA of such

information, unless the person has actual knowledge that the Administrator has been adequately informed of such information.

67. At times relevant to this Indictment, EPA interpreted the requirement under TSCA 8(e) that a person "immediately inform" the Administrator to be met if the person submitted the information to EPA within 15 working days after the date the person obtained such information.

III. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (SUPERFUND)

68. The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA" or "Superfund"), authorizes designated EPA personnel to conduct response actions to address releases or threatened releases of hazardous substances into the environment. 42 U.S.C. § 9604(a)(1). Asbestos is defined as a "hazardous substance" under CERCLA and EPA's implementing regulations. 42 U.S.C. § 9601(14); 40 C.F.R. 302.4.
69. Under Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), designated EPA personnel "may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information and documents relating to such matter:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

(C) Information relating to the ability of a person to pay for or perform a cleanup.

**COUNT I
(Conspiracy)**

70. Paragraphs 1 through 69 are incorporated here as if set forth in full.
71. That beginning on or about 1976, and continuing until on or about 2002, at Libby, and other locations within and without the District of Montana, the defendants, W.R. GRACE, ALAN R. STRINGER, HENRY A. ESCHENBACH, JACK W. WOLTER, WILLIAM J. McCAIG, ROBERT J. BETTACCHI, O. MARIO FAVORITO, and ROBERT C. WALSH, and others known and unknown to the grand jury did knowingly combine, conspire and agree among themselves and others:

OBJECTS OF THE CONSPIRACY

- a. To knowingly release and cause to be released into the ambient air a hazardous air pollutant, namely asbestos, and at the time knowingly placed persons, including: families of employees of W.R. GRACE Libby vermiculite mining and processing operations; residents of Libby, Montana and surrounding communities in Lincoln County; and others in imminent danger of death or serious bodily injury in violation of 42 U.S.C. § 7413(c)(5)(A).
- b. To defraud the United States and others by impairing, impeding, and frustrating the governmental functions of the United States, including the United States Environmental Protection Agency (EPA) and the Department of Health and Human Services, specifically, the National Institute for Occupational Safety and Health ("NIOSH");

being federal agencies responsible for administering federal laws and regulations designed to protect public health and safety and the environment in violation of 18 U.S.C. § 371.

72. It was a purpose of the conspiracy to conceal and misrepresent the hazardous nature of the tremolite asbestos contaminated vermiculite, thereby enriching defendants and others.
73. It was a purpose of the conspiracy to increase profits and avoid liability by misleading the government and preventing the government from using its authorities to protect against risks to human health and the environment associated with the manufacture, processing, distribution, commerce, use, handling, disposal, and release of tremolite asbestos contaminated vermiculite.

MANNER AND MEANS OF THE CONSPIRACY

The following manner and means, among others, were used by the defendants to effectuate and perpetuate the conspiracy set forth above:

74. It was part of the conspiracy that the defendants obtained knowledge of the hazardous nature of the tremolite asbestos contaminated vermiculite through various means, including, but not limited to: scientific testing and analysis, including animal studies; epidemiological studies of employees; employee medical screening and examinations; employee medical record reviews; collection and evaluation of a deceased employee's lung tissue; review of employee death certificates; conducting employee morbidity and mortality studies; employee autopsy reviews; review of medical and scientific literature; reviewing

reports from insurance carriers; and reviewing employee worker's compensation claims.

75. It was part of the conspiracy that the defendants obtained knowledge of the propensity of tremolite asbestos contaminated vermiculite, when disturbed, to release fibers into the ambient air (also known as "friability") through various means, including, but not limited to: product testing, including attic simulation and vermiculite materials handling tests ("drop tests"); and air and bulk sampling at the Libby Mine and other defendant W.R. GRACE facilities in and around Libby, Montana, at defendant W.R. GRACE owned and licensed expansion plants, at the facilities of customers using vermiculite materials, and at the Libby High School track.
76. It was part of the conspiracy that the defendants concealed the full extent of their knowledge of the hazardous nature and friability of the tremolite asbestos contaminated vermiculite from employees of defendant W.R. GRACE Libby vermiculite mining and processing operations; families of employees of defendant W.R. GRACE Libby vermiculite mining and processing operations; industrial customers of defendant W.R. GRACE Libby vermiculite products; employees of industrial customers of defendant W.R. GRACE Libby vermiculite products; residents of Libby, Montana and surrounding communities in Lincoln County, Montana; and government authorities.
77. It was part of the conspiracy that the defendants obstructed, impeded, and frustrated the governmental authorities by withholding information regarding the hazardous nature and friability of the tremolite asbestos contaminated vermiculite

and asserting that the Libby Mine operations and Libby vermiculite posed no risk to public health and safety and the environment.

78. It was part of the conspiracy that the defendants marketed and sold tremolite asbestos contaminated vermiculite and products containing tremolite asbestos contaminated vermiculite.
79. It was part of the conspiracy that the defendants sold and leased tremolite asbestos contaminated real property and withheld information about the contamination from the purchasers of the property.
80. It was part of the conspiracy that defendants provided and distributed tremolite asbestos contaminated vermiculite material to the community, resulting in releases of asbestos into the ambient air in and around Libby, Montana and surrounding communities in Lincoln County, Montana.
81. It was part of the conspiracy that defendants caused W.R. GRACE employees and their personal effects and clothing to be contaminated with tremolite asbestos and allowed them to leave the Libby mine with these contaminated clothes, resulting in releases of tremolite asbestos into the ambient air in and around Libby, Montana and surrounding communities in Lincoln County, Montana.
82. It was part of the conspiracy that the defendants falsely described, concealed from, and failed to reveal to the government the hazardous nature and friability of the tremolite asbestos in the Libby vermiculite and the health hazards associated with exposure to tremolite asbestos.

83. It was part of the conspiracy that the defendants obstructed, impaired, impeded, and misled EPA during the course of EPA's emergency response to the asbestos contamination in and around Libby, Montana.

OVERT ACTS

In furtherance of the conspiracy and to effect its objectives, defendants, together with each other and with other persons known and unknown to the grand jury committed numerous overt acts in the District of Montana and elsewhere including, but not limited to, the following:

Eschenbach Study

84. Sometime prior to August 23, 1976 defendant ESCHENBACH gathered information regarding the lung health of defendant W.R. GRACE employees at the Libby Mine. This information was reported by an employee of defendant W.R. GRACE to defendant WOLTER in a memo dated August 23, 1976:

Statistics provided by Harry Eschenbach indicated of eighteen (18) age sixty-five (65) normal retirements, three (3) had normal chests, one (1) had no records and fourteen (14) had positive lung disease, i.e. either significant scar tissue on the lung or significant fibrosis; there have been five (5) long term disability claims, three (3) of these were employees with six (6) years of service and two (2) with between fifteen (15) and twenty-five (25) years of service. Sixty-three (63) percent of all Libby employees with over ten (10) years of service test positive.

Commission of the Fairleigh Dickinson Animal Toxicology Study (Hamster Study)

85. On or about March 15, 1976, defendants W.R. GRACE and co-conspirators contracted with Dr. William Smith of Fairleigh Dickinson University to conduct animal toxicological studies on Libby Mine tremolite asbestos and vermiculite for

70,000.00 dollars (the "Hamster Study"). The contract between defendant W.R. GRACE and Dr. Smith prohibited Dr. Smith from publishing the results of the study in scientific literature without the permission of defendant W.R. GRACE.

86. From on or about January 1977 through approximately October 1977, Dr. Smith and an employee of defendant W.R. GRACE provided regular status reports to defendants W.R. GRACE, FAVORITO, ESCHENBACH, and WOLTER on the findings of the Hamster Study showing progressive evidence of asbestos related lung disease, including a significant incidence of mesothelioma.
87. On or about May 25, 1978, Dr. Smith provided defendant W.R. GRACE a preliminary draft Final Report of the Hamster Study. The draft report concluded that 10 hamsters had died of mesothelioma, and that the findings of tumors were evidence that tremolite asbestos fibers in the sizes tested were carcinogenic (caused cancer).
88. A consultant hired by defendant W.R. GRACE revised Dr. Smith's preliminary draft Final Report including the removal of the statement that the findings of tumors in response to tremolite asbestos fibers were evidence that tremolite asbestos fibers in the sizes tested were carcinogenic (caused cancer). Defendant W.R. GRACE did not grant Dr. Smith permission to publish the results of the study in scientific literature.

The Enbionics Review

89. On or about March 29, 1977, an employee of defendant W.R. GRACE wrote a memo directing another employee of defendant W.R. GRACE to coordinate a meeting to discuss a professional epidemiological study of defendant W.R.

GRACE employees exposed to tremolite asbestos fibers. Defendants ESCHENBACH, WOLTER and FAVORITO were copied on the memo. According to the memo, two of the goals of the epidemiological study were to develop a methodology for tracking improvements in employees' health that may result from improvement in dust controls at the Libby Mine and to determine the risk of developing cancer through analysis of cause of death from selected groups of past employees.

90. On or about March 30, 1977, defendant ESCHENBACH responded to the March 29, 1977 memo regarding the proposed epidemiological study, warning that such a study would likely become public knowledge and should not be initiated unless "they [defendant W.R. GRACE] are prepared to deal with that situation."

91. On or about July 1977, defendants W.R. GRACE and ESCHENBACH hired Enbionics, a consulting firm specializing in epidemiological studies, to review employee x-rays from defendant W.R. GRACE vermiculite mines in Libby, Montana and Enoree, South Carolina.

92. On or about August 25, 1978, defendants W.R. GRACE and ESCHENBACH received Enbionics' report, which stated:

As you indicated before the project began, there is a substantial difference in the attack rates of asbestos and possible asbestos disease between the South Carolina and Montana facilities. In fact, we had only one case of clear asbestos disease in South Carolina and a few cases of possible asbestos disease. There are numerous cases of asbestos disease in Montana. The incidence of disease is independent of age, since there are a number of quite young individuals with obvious asbestos disease in Montana. Probably the difference lies in total exposure, fiber size, and mineral form.

