

# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Case No. 01-01139(JKF)  
. Chapter 11  
. Jointly Administered  
W.R. GRACE & CO., et al., .  
. 5414 USX Tower Building  
. Pittsburgh, PA 15222  
Debtors. .  
. February 28, 2005  
. . . . . 11:57 a.m.

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

APPEARANCES:

For the Debtors: Kirkland & Ellis, LLP  
By: JANET S. BAER, ESQ.  
DAVID M. BERNICK, ESQ.  
Aon Center  
200 East Randolph Drive  
Chicago, IL 60601  
(Mr. Bernick Telephonically)

For the Debtors: Pachulski, Stang, Ziehl, Young,  
Jones & Weintraub, P.C.  
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1 notice of the bar date, for different reasons, for different  
2 claims, not these. But they certainly were on notice. And you  
3 add that to the \$4 million that we spent to publish notice to  
4 the world, and we believe, Your Honor, that the bar date order  
5 is very clear and that they're barred.

6           Your Honor, again, their standard is to prove that we  
7 won't be prejudiced. That's not case here, Your Honor. This  
8 really puts at issue our publication notice. It puts at issue  
9 the validity of publication notices and spending this kind of  
10 money to do this extended kind of a program to let the world  
11 know and bring unknown claimants forward to file their proof of  
12 claim by the bar date. We complied with the Court's rules and  
13 under the Court's order, their claim should be barred.

14           I don't quite understand why the kind of discovery  
15 that's being requested here is necessary. They knew they owned  
16 the property. We didn't know that. We knew that we sold  
17 vermiculite to our customer. We notified our customer, and we  
18 published notice to everybody else telling them if they think  
19 they have a claim against Grace, step forward and file that  
20 claim by the bar date.

21           This isn't the first time you've had to deal with a  
22 late proof of claim, Your Honor, and there's nothing that  
23 particularly unique about this the circumstances. For the same  
24 reasons that you've denied late proofs of claim before here, we  
25 believe you have sufficient evidence right now to deny the

1 filing of the late proof of claim.

2 THE COURT: Well, I'm still not clear how there is  
3 even a claim against this estate by these entities. What  
4 you're telling me is that the debtor had a relationship with  
5 Intermountain by which it supplied Intermountain vermiculite.  
6 Intermountain was actually the entity that had possession of  
7 the property that's owned by Pacific, not the debtor.

8 MS. BAER: That's exactly correct, Your Honor.

9 THE COURT: Well --

10 MS. BAER: We don't know -- we don't know either, and  
11 now they want the right to file something. That's our  
12 position, that they're barred.

13 THE COURT: Mr. Cobb, I don't see -- number one, I'm  
14 not sure I see a claim, but even if I do, I don't see how the  
15 debtor has any duty to search out your client under these  
16 circumstances.

17 MR. COBB: Your Honor, Richard Cobb again. Well,  
18 Your Honor, let's start with the simple fact that we're not  
19 dealing with adjacent property, like the cases that are cited  
20 by the debtors, and we're not dealing with personal injury  
21 claimants. We're dealing with property, the identical  
22 property, that was owned by PacifiCorp and the Van Cott plan.

23 THE COURT: But they debtor wasn't in possession of  
24 it.

25 MR. COBB: But the debtor --

1 THE COURT: The debtor's customer was in possession  
2 of it.

3 MR. COBB: That's correct, Your Honor, but the debtor  
4 put into the marketplace and the debtor knowingly shipped to  
5 that location products which ended up, we allege, contaminating  
6 that soil, which has resulted in significant monetary claims  
7 being asserted by --

8 THE COURT: No, that's too attenuated. I'm sorry.  
9 It's just too attenuated. If anything, as the owner of that  
10 property your client certainly had the duty to make sure that  
11 it was aware of the bar date. If it knew that Intermountain  
12 was getting vermiculite from some source other than the  
13 property itself, then it had a duty to seek that out and  
14 determine whether or not it should file a claim here. So, as  
15 to that one, I see no basis. I'm not permitting discovery.  
16 I'm simply going to deny the late proof of claim. This debtor  
17 is well on the road toward trying to get a confirmable plan  
18 together. Having late filed claims at this point in time will  
19 jeopardize that process. It will certainly change  
20 distributions to other creditors within certain classes. The  
21 claim itself seems to be highly attenuated. I'm not even sure  
22 there is an allowable claim against the estate, but I don't  
23 need to go there at this point in time because obviously that's  
24 not at issue today. The only question today is whether the  
25 claim should be permitted to be filed at all. But I don't see

1 a basis for it.

2 MR. COBB: Your Honor, I would respectfully request  
3 that we be given an opportunity to present the factual evidence  
4 to the Court. The case law directly states, Your Honor, that  
5 the Court is to make a factual investigation of the nature of  
6 the reason why the claims were not filed timely. Your Honor,  
7 you -- Your Honor, the Van Cott plan did not have notice of the  
8 bar date. Your Honor, Van Cott plan did not even have a claim  
9 that it knew that it could lodge against this debtor until well  
10 after the bar date. The Van Cott is a little different  
11 factually. With respect to PacifiCorp, PacifiCorp, under its  
12 trade name, Utah Power & Light, filed something like a fifteen  
13 hundred dollar claim relating to electricity, as I understand  
14 it.

15 THE COURT: That's enough isn't it?

16 MR. COBB: Your Honor, due process requires that my  
17 client had been given notice of the bar date --

18 THE COURT: No, it doesn't. Due process --

19 MR. COBB: -- not general notice of the bankruptcy.

20 THE COURT: No, due process requires that if your  
21 client was a creditor known to the debtor that it had -- that  
22 it get actual notice, but your client, at this point in time,  
23 I'm not even convinced -- I'm talking about Pacific at the  
24 moment.

25 MR. COBB: Correct.

1 THE COURT: I'm not convinced is a creditor of the  
2 debtor, number one. Number two, the debtor had no direct  
3 relationship with Pacific. It wasn't leasing property from  
4 Pacific. It wasn't dealing with Pacific in any kind of  
5 customer capacity. You've already said this isn't a personal  
6 injury action. Therefore, how is the debtor ever to know that  
7 it has -- I mean, under that theory, everybody in the world  
8 could potentially have a claim against the debtor, and the  
9 debtor would have to notify every single person, entity,  
10 company in the entire world that it may have a claim based on  
11 some third-party transaction. That's too much. That's not  
12 what the Code requires. That's what the publication notice is  
13 all about. Under these circumstances, Grace did widespread  
14 publication. This is an -- if it's a creditor at all, it's a  
15 clearly unknown creditor. That publication notice as to  
16 Pacific is sufficient, and I don't need any further factual  
17 investigation on that score. So that claim -- the motion as to  
18 that is denied. Now, what's the difference between Pacific and  
19 Van Cott?

20 MR. COBB: Your Honor, with respect to Van Cott, Van  
21 Cott did not even know that it had a claim against the debtors  
22 until well after the bar date, number one. Number two, Van  
23 Cott would provide evidence that it never received notice of  
24 the bar date. In fact, I believe Van Cott had knowledge of the  
25 bankruptcy, but it may have. I can't sit here today, Your

1 Honor, and provide testimony as a lawyer in that respect. But  
2 I can tell you that they would be prepared to testify they  
3 never received notice of the bar date, so they never had actual  
4 notice in that respect.

5 THE COURT: Okay. And the debtor's affidavits  
6 indicate that, in fact, they were served, that actual notice  
7 was provided --

8 MR. COBB: The debtor's affidavits indicate, Your  
9 Honor, that Van Cott, the law firm, was served at a certain  
10 address, an incorrect address, and therefore they claim they  
11 received actual notice. And Van Cott would claim in response,  
12 would respond by saying that the address was incorrect, it did  
13 not contain the suite number of the law firm, that it should  
14 have been addressed to the plan trustee, the 401(k) plan  
15 trustee, because that is the claimant here, and therefore --  
16 and following on that, they never received actual notice.

17 THE COURT: All right. Ms. Baer?

18 MS. BAER: Your Honor, with respect to the last  
19 point, our certificate of service shows that Van Cott Bagley  
20 Cornwall was served at 50 South Main Street, Salt Lake City,  
21 Utah. The claimant here who filed this motion, Van Cott  
22 Bagley, Cornwall, McCarthy, is located at 50 South Main Street,  
23 Salt Lake City, Utah. That law firm who filed this motion got  
24 served with the bar date notice. But, Your Honor, I'm not --  
25 we didn't even have to serve them. They are in exactly the