

FEDERAL COURT

BETWEEN:

MERV NORDICK, COLLEEN MILLIGAN, SEAN MILLIGAN, MARY DORIS MILLIGAN, ERNEST SPENCER, JOHN DOE I, JOHN DOE II, JOHN DOE III, JOHN DOE IV, JOHN DOE V, JANE DOE I, JANE DOE II, JANE DOE III, JANE DOE IV, JANE DOE V, JOHN DOE I LTD. JOHN DOE I UNINCORPORATED BUSINESS, JOHN DOE I HOUSING AUTHORITY, JOHN DOE I FIRST NATION, and other JOHN DOES & JANE DOES to be added

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA, W.R. GRACE & CO., W.R. GRACE & CO.-CONN, CRYOVAC INC., SEALED AIR CORP., W.R. GRACE & CO. CANADA LTD., GRACE CONSTRUCTION MATERIALS LTD., CRYOVAC CANADA INC., 3079931 NOVA SCOTIA CO., SEALED AIR (CANADA) CO., GRANT INDUSTRIES, JOHN DOE CORPORATION I, and JOHN DOE CORPORATION II, and other JOHN DOES & JANE DOES to be added

Defendants

“PROPOSED CLASS ACTION”

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Court Rules, 1998*, serve it on the plaintiff’s solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served upon you, if you are served in Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside of Canada and the United States of America, the period for serving and filing your statement of defence is sixty days. Copies of the *Federal Court Rules, 1998*, information concerning the local office of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

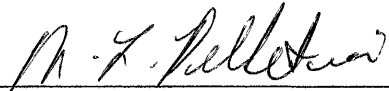
I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the 1st day of September A.D. 20 05 Dated this 1st day of September 28 05 M. L. Pelletier

M. L. Pelletier  
Registry Officer

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence without further notice to you.

Date: September 1, 2005.

Issued by: \_\_\_\_\_



(Registry Officer)

Address of

Local office: Federal Court of Canada  
Trial Division  
2425 Victoria Avenue  
Regina, SK S4P 3V7

TO: HER MAJESTY THE QUEEN,  
as represented by the  
ATTORNEY GENERAL OF CANADA  
c/o Deputy Minister of Justice  
239 Wellington Street  
Ottawa, Ontario K1A 0H8

AND TO: W.R. GRACE & CO. and  
W.R. GRACE & CO.-CONN  
5400 BrokenSound Boulevard N.W.  
Suite 300  
Boca Raton, Florida  
U.S.A. 33487

AND TO: CRYOVAC INC. and  
SEALED AIR CORP.  
United States of America

AND TO: W.R. GRACE & CO. CANADA LTD. and  
SEALED AIR (CANADA) INC. and  
GRACE CONSTRUCTION MATERIALS LTD. and  
3079931 NOVA SCOTIA CO.  
Suite 900 - 1959 Upper Water Street  
Halifax, Nova Scotia B3J 3N2

AND TO: GRANT INDUSTRIES LTD.  
Canada

AND TO: JOHN DOE CORPORATION I and JOHN DOE CORPORATION II and other  
JOHN DOES & JANE DOES to be added  
Address Unknown

## **Statement of Claim**

### **The Plaintiffs**

1. The Plaintiff, Merv Nordick, resides in Saskatoon, in the Province of Saskatchewan, and has been exposed to and suffered a financial loss due to Zonolite insulation in his cottage home.
2. The Plaintiff, Colleen Milligan, resides in Del Bonita, in the Province of Alberta, and has been exposed to and suffered a financial loss due to Zonolite insulation in her home.
3. The Plaintiff, Sean Milligan, resides in Del Bonita, in the Province of Alberta, and has been exposed to and suffered a financial loss due to Zonolite insulation in his home.
4. The Plaintiff, Mary Doris Milligan, resides in Del Bonita, in the Province of Alberta, and has been exposed to and suffered a financial loss due to Zonolite insulation in her home.
5. The Plaintiff, Ernest Spencer, resides in Eastmain and is a member of the Chisassibi First Nation, in the Province of Quebec, and has been exposed to and suffered a financial loss due to Zonolite insulation.
6. The Plaintiff, John Doe I, resides in the Province of Alberta, and has been exposed to and suffered a financial loss due to Zonolite insulation in his home.
7. The Plaintiff, John Doe II, resides in the Province of British Columbia, and has been exposed to and suffered a financial loss due to Zonolite insulation in his home.
8. The Plaintiff John Doe III, resides on and is a member of a First Nation in the Province of Alberta, and has been exposed to and suffered a financial loss due to Zonolite insulation in reserve housing.

9. The Plaintiff John Doe IV, resides on and is a member of a First Nation in the Province of British Columbia, and has been exposed to and suffered a financial loss due to Zonolite insulation in reserve housing.
10. The Plaintiff, John Doe V, resides in the Province of Ontario, and has been exposed to and suffered a financial loss due to Zonolite insulation in his home.
11. The Plaintiff, Jane Doe I, resides in the Province of Alberta, and has been exposed to and suffered a financial loss due to Zonolite insulation in her home.
12. The Plaintiff, Jane Doe II, resides in the Province of British Columbia, and has been exposed to and suffered a financial loss due to Zonolite insulation in her home.
13. The Plaintiff Jane Doe III, resides on and is a member of a First Nation in the Province of Alberta, and has been exposed to and suffered a financial loss due to Zonolite insulation in reserve housing.
14. The Plaintiff Jane Doe IV, resides on and is a member of a First Nation in the Province of British Columbia, and has been exposed to and suffered a financial loss due to Zonolite insulation in reserve housing.
15. The Plaintiff, Jane Doe V, resides in the Province of Quebec, and has been exposed to and suffered a financial loss due to Zonolite insulation in her home.
16. The Plaintiff, John Doe I Ltd., is a business corporation duly licenced under the laws of Alberta, which owns property where Zonolite has been used as insulation, and has been exposed to and suffered a financial loss due to Zonolite insulation.

17. The Plaintiff, John Doe I Unincorporated Business, carries on business in the Province of Alberta, which owns property where Zonolite has been used as insulation, and has been exposed to and suffered a financial loss due to Zonolite insulation.

18. The Plaintiff, John Doe I Housing Authority, is located in the Province of Alberta, which owns or manages property where Zonolite has been used as insulation, and has been exposed to and suffered a financial loss due to Zonolite insulation.

19. The Plaintiff, John Doe I First Nation, is a First Nation located in the province of Alberta, which owns property where Zonolite has been used as insulation, and has been exposed to and suffered a financial loss due to Zonolite insulation.

#### **The Defendants**

20. The Defendant, Attorney General of Canada, is named as a Defendant on behalf of Her Majesty the Queen in Right of Canada, in accordance with *The Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

21. The Defendant, W.R. Grace & Co., is a United States corporation, incorporated in one of more of the states of the United States of America.

22. The Defendant, W.R. Grace & Co.-Conn, is a United States corporation, incorporated in one of more of the states of the United States of America.

23. The Defendant, Cryovac Inc., is a United States corporation, incorporated in one of more of the states of the United States of America.

24. The Defendant, Sealed Air Corp, is a United States corporation, incorporated in one of more of the states of the United States of America.

25. The Defendant, W.R. Grace & Co. Canada. Ltd., is a corporation carrying on business in and under the laws of Canada.

26. The Defendant, Grace Construction Materials Ltd., is a corporation carrying on business in and under the laws of Canada.

27. The Defendant, 3079931 Nova Scotia Co., is a corporation carrying on business in and under the laws of Nova Scotia.

28. The Defendant, Cryovac Canada. Inc., is a corporation carrying on business in and under the laws of Canada.

29. The Defendant, Sealed Air (Canada) Inc., is a corporation carrying on business in and under the laws of Canada.

30. The Defendant, Grant Industries Ltd., is a corporation carrying on business in and under the laws of Canada.

31. The Defendant, John Doe Corporation I, is a business corporation duly licenced under the laws of Alberta, which was involved in the promotion and/or distribution of Zonolite insulation products.

32. The Defendant, John Doe Corporation II, is a business corporation duly licenced under the laws of Alberta, which was involved in the promotion and/or distribution of Zonolite insulation products.

### **The Class**

33. The Plaintiffs are representatives of a class of persons (including all families, estates, corporations, firms, businesses, organizations, and all other effected entities), resident or situated in Canada, more particularly described as follows:

- a. *All persons resident in Canada who were exposed to asbestos or asbestos containing products (marketed or described as Zonolite), other than in the course of their employment, as a result of the actions, inactions, or omissions of the Defendants, and who have or may in the future suffer personal injury as a result;*
- b. *All persons resident in Canada who have a derivative claim as a result of the death of a person where such death was caused or contributed to by exposure to asbestos or asbestos containing products (marketed or described as Zonolite), other than in the course of their employment, as a result of the actions, inactions, or omissions of the defendants;*
- c. *All persons resident in Canada who have suffered a financial loss in the value of their home(s) or other property as a result of asbestos or asbestos containing products (marketed or described as Zonolite) being present in their home(s) or other property;*
- d. *All persons resident in Canada who have suffered a financial loss resulting from the cost of removal or the cost of isolating asbestos or asbestos containing products (marketed or described as Zonolite) in their home(s) or other property;*
- e. *Without limiting the foregoing, a claim is specifically made against the Government of Canada, as represented by Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada, for its actions, inactions, or omissions in respect to Zonolite approval and use in Canada, including but not limited to: the Government having encouraged Canadians to install Zonolite products in their homes; the Government having offered financial incentives to Canadians who installed Zonolite; the Government having failed to properly test and monitor the effects and dangers of Zonolite; the Government having endangered the health of millions of Canadians through its promotion and encouragement of use of Zonolite products; and, the Government having failed to properly alert and advise*

*Canadians as to the dangers of Zonolite based on information currently available, thereby needlessly placing Canadians at increased and unnecessary risk of continued exposure to Zonolite and the risks of personal injury and negative health effects.*

(Hereinafter Class Members are collectively referred to as “Plaintiff(s)”, “Class Member(s)”, or the “Class”.)

**Nature of the Claim**

34. W.R. Grace & Co., W.R. Grace & Co.-Conn, Cryovac Inc., and Sealed Air Corp. (hereinafter collectively referred to as “W.R. Grace”) are the successors in law to the Zonolite Company. The Defendants defined as W.R. Grace at all or at various material times have operated as a group enterprise and as the agents for and instruments of each other. W.R. Grace carried on business, at all or various times, in the United States and Canada in that asbestos mined in Libby, Montana was marketed, sold, manufactured, processed, distributed and delivered by them to destinations in Canada including the Province of Alberta.

35. W.R. Grace & Co. Canada Ltd., Grace Construction Materials Ltd., 3079931 Nova Scotia Co., Cryovac Canada Inc. and Sealed Air Canada Inc. (hereinafter collectively referred to as “W.R. Grace Canada”) at all or various material times have acted in their own capacity and in association with, as agents for and as instruments of W.R. Grace by way of marketing, selling, processing, manufacturing, distributing and delivering asbestos or asbestos containing products in Canada.

36. Grant Industries Ltd. is or was at all material times a company or group of companies acting as a common enterprise or as agents for and instruments of one for the other and which were incorporated pursuant to the laws of Canada and the laws of the Provinces of Canada (hereinafter individually or jointly and severally referred to as “Grant Industries”). The companies involved in the common enterprise included Grant Industries Ltd., Grant Industries (Alta) Ltd., Grant Industries

(Canada) Ltd., Grant Industries (Ont) Ltd., and Grant Industries (Sask) Ltd. At all or various material times, Grant Industries was involved in the marketing sale, processing, distributing, manufacturing and delivering of asbestos or asbestos containing products in Canada including the province of Alberta.

37. The Government's duty to exercise care, including with respect to the duties referred to above, includes a continuing duty of full disclosure of any health risks or hazards, a continuing duty to warn of any such health risks and hazards, a continuing duty to take steps to identify and warn individuals which it knew or ought to have known were exposed to such risks or hazards and a continuing duty to provide advice or information to such individuals in order to allow such individuals an opportunity to seek out and obtain appropriate medical investigations and treatment in a timely manner.

38. Zonolite is a trade name for a particular vermiculite insulation which was mined in Libby, Montana. Vermiculite is a naturally occurring mineral mined around the world and which is known to contain asbestos. Asbestos is the generic name for a variety of fibrous minerals which due to their strength, durability, and non-combustibility were used by industry. The asbestos from the mine in Libby, Montana is known to include an asbestos fiber known as tremolite. When inhaled, tremolite fibers stay in the lungs and are known to inflict damage and cause disease including asbestosis, mesothelioma, and other forms of cancer.

39. Tremolite asbestos is an especially deadly form of asbestos because it consists of thin needle-like fibers which are sharply pointed and easily penetrate the linings of the lungs. The lungs are unable to remove tremolite asbestos that has speared into lung tissue, and the tremolite spears cannot be coughed out or washed out of the lung tissues by blood. As a result, affected lung areas become inflamed and eventually the lung areas become heavily scarred and non-functional. Eventually, it becomes impossible to breathe effectively because oxygen cannot get into the lungs and carbon dioxide and other impurities cannot get out.

40. The Zonolite used in the Plaintiffs' homes and in the homes of other class members contained tremolite and, due in whole or in part to the poor construction of and overcrowding in the Plaintiffs and other class members' homes, the Plaintiffs and other class members were exposed to and did inhale asbestos fibers at various times.

41. Asbestos related diseases are progressive, latent, and insidious. They cause significant pain, suffering, and impairment. The asbestos related diseases of the Plaintiffs and other class members were caused by the exposure to the asbestos containing products in their homes, particularly the Zonolite.

42. At all or various times, the Defendants knew or ought to have known that asbestos or asbestos containing products, including Zonolite, posed a health risk and hazard to any person who may come into contact with it particularly where asbestos fibers may be inhaled, as occurred in the Plaintiffs' homes and the homes of other class members. As such, the Defendants had a duty to take reasonable care and caution in the mining, processing, manufacturing, marketing, sale, distribution, handling, and delivery of asbestos and asbestos containing products. The Defendants also knew at all or various material times that taking steps to warn the public including the Plaintiffs and other class members would have allowed such individuals to take steps to ensure containment of the asbestos containing products, removal of the asbestos containing products, and also allowed such individuals to seek out and obtain appropriate medical investigations and treatment in a timely manner. The Defendants also had an ongoing duty to warn and provide full disclosure of any health risks or hazards as medical and other scientific information became available over the course of time from 1964 to the present. The Defendants knew or ought to have known that:

- (a) their representations to the public, lack of full disclosure, and lack of warning would cause the public, including the plaintiffs and other class members, to assume that there was no health or safety issue to be concerned about;
- (b) exposure to asbestos and asbestos containing products constituted a real and substantial danger, particularly where there was risk of exposure to airborne asbestos

fibres;

- (c) there was a specific danger to the health and safety of occupants of the Plaintiffs' home and other homes similarly constructed as a result of the risk of exposure to asbestos fibers;
- (d) asbestos and asbestos containing products, including Zonolite, were intended to be used as attic insulation and that, over the course of the life of a building, such products may not be properly contained due to improper installation, wear and tear on the building and other such causes;
- (e) any disclosure or warning to the public should be commensurate with the gravity of the risk and danger to their health and well being;
- (f) an absence of reasonable care and breach of the duty of disclosure and to warn would result in injury to inhabitants of houses where asbestos or asbestos containing products, including Zonolite, were used;
- (g) the risk was even of greater gravity for inhabitants of housing on reserves due to poor construction and use of attic space due to overcrowding;
- (h) the attic space containing insulation such as Zonolite may be accessed for work or play and that disturbing the asbestos fibers would increase the risk of danger to such persons accessing the attic space; and
- (i) such other matters as may become known.

43. The Defendants warranted, expressly or impliedly, that their asbestos containing products were not defective, were of good and merchantable quality and were fit for their intended use without danger or health risks. In fact, the asbestos containing products of the said defendants were defective, unreasonably dangerous, not of good and merchantable quality and unfit for their intended uses.

44. The Defendants, at all or various material times, were in breach of their duties to take reasonable care, in breach of their warranties, negligent, reckless and or willfully disregarding of the health and safety of the public, including the Plaintiffs and other class members, in failing to take

any, or alternatively, any adequate steps to fulfil their duties, the particulars of which include:

- (a) failing to advise the public, including the Plaintiffs and other class members, in a timely manner, or at all, of the dangerous characteristics of asbestos and asbestos related products, including Zonolite;
- (b) in failing to provide the public, including the Plaintiffs and other class members, with knowledge of their exposure to harmful asbestos containing products, including Zonolite;
- (c) in failing to give any warning, or alternatively, sufficient warning or knowledge to the public, including the Plaintiffs and other class members, that they should either remove or ensure containment of asbestos or asbestos containing materials, including Zonolite, and that failing to do so would place their health and well being in jeopardy as a result of the potential for inhaling asbestos fibers;
- (d) in failing to advise, or alternatively, adequately advise the public, including the Plaintiffs and other class members, that they should seek out medical investigation, advice and treatment in a timely manner as a result of having potentially been exposed to asbestos or asbestos containing products, including Zonolite;
- (e) in failing to adequately or at all investigate and evaluate the risk to the public, including the Plaintiffs and other class members, as a result of being exposed to asbestos or asbestos containing products, including Zonolite;
- (f) suppressing and rejecting the dissemination of information concerning the hazards of exposure to asbestos or asbestos containing products, including Zonolite, and, instead, representing to the public, including the Plaintiffs and other class members, that there was no, or alternatively, no significant danger or risk to their health or well being;
- (g) in creating, promoting, and adhering to an ineffective and inadequate standard of safety and failing to properly or at all disclose relevant information regarding the dangers of asbestos or asbestos containing products, including Zonolite; and
- (h) such other particulars as may become known.

45. Further, the Government, in its duty to the Plaintiffs including First Nations people in Canada, and other class members, breached its duties, the particulars of which include the following:

- (a) in failing to initiate a timely review, evaluation, or investigation to identify those persons exposed to asbestos or asbestos containing products, including Zonolite, used in various buildings including on reserves and military housing, despite having the means to do so;
- (b) in failing to properly assess and investigate concerns that were brought to its attention by the Plaintiff and others;
- (c) in refraining from providing information in a timely manner to those persons potentially exposed to asbestos or asbestos containing products, including Zonolite, despite having full knowledge that such products were used in homes constructed in failing to give any warning, on reserves;
- (d) in directing and allowing asbestos or asbestos containing products, including Zonolite, to be placed in homes in combination with knowledge of the poor construction and overcrowding in such homes and the risk of improper containment and, after construction, in failing to take steps to ensure containment or removal of such products in a timely manner;
- (e) in failing to instruct servants, agents, officers and employees to take steps to properly investigate and evaluate the risks to the Plaintiffs and other class members in a timely manner and in failing to ensure that such tasks were undertaken by properly trained and competent individuals and in failing to properly supervise such individuals;
- (f) in failing to take appropriate steps in a timely manner to protect the health and safety of the Plaintiffs;
- (g) in putting political and business interests above the health and well being of the Plaintiffs and other class members;
- (h) recklessly and deliberately ignoring the health and well being of the Plaintiffs and other class members and, instead, advancing and protecting the interests of the Canadian asbestos industry;

- (i) in failing to advise the Plaintiffs in a timely manner or at all of its conflicting interests between the Plaintiffs and other class members, and the Canadian asbestos industry and its resulting delay in taking any action to warn of the risks to the Plaintiffs or other class members;
- (j) in failing to provide accurate and timely information relating to the health risks and dangers to the Plaintiffs and other class members and effectively preventing such individuals from seeking and obtaining timely and appropriate medical investigation and treatment;
- (k) in publishing material to the public that represented that there was no risk or danger to the Plaintiffs and other class members thereby leading the public, including the Plaintiffs and other class members, to believe that there was not a significant health risk or safety risk arising from their exposure to asbestos and asbestos related products, including Zonolite; and
- (l) such other particulars as may become known.

46. The Defendants' negligence, reckless conduct, breach of warranty, and other breaches of duty caused or materially contributed to the Plaintiffs' and other class members' harm or risk of harm, including exposure to asbestos and asbestos containing products including Zonolite, and delayed appropriate medical investigations, monitoring, and treatment. The Plaintiffs and other class members have, as a result, suffered loss and damage, including development of, and delay in investigation and treatment of, asbestos related diseases.

47. As a result of their being exposed to asbestos and asbestos containing products, including Zonolite, the Plaintiffs and other class members have suffered loss and damage including the following:

- (a) pain and suffering;
- (b) loss of enjoyment of life;
- (c) mental distress;

- (d) past and future loss of income;
- (e) medical and other such expenses, both past and future, including the costs of monitoring, detecting, and treating;
- (f) asbestosis;
- (g) mesothelioma and other forms of cancer;
- (h) special damages;
- (i) damages pursuant to the *Fatal Accidents Act* and similar legislation including damages for loss of care, guidance, and companionship, pecuniary loss, funeral expenses, and other such damages; and
- (j) such further and other loss and damage as may be advised.

48. The conduct of the Defendants has been high-handed, arrogant, indifferent, and motivated by economic and political considerations and, as such, the plaintiffs and other class members claim aggravated and punitive damages.

49. Insofar as they are applicable to the circumstances of this case, the Plaintiffs plead and rely upon the following, inter alia:

- (a) *The Department of Health Act*, S.C. 1996 c. 8;
- (b) *The Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.
- (c) *The Department of Indian Affairs and Northern Development Act*, R.S.C. 1985, c. I-6;
- (d) *The Indian Act*, R.S.C. 1985, c. I-5;
- (e) The Royal Proclamation of 1763.

### **Issues Relating in Particular to First Nations Peoples**

50. The Plaintiff, Ernest Spencer, resides on land set aside for the use and benefit of First Nations People in Canada. The Plaintiffs home was located on land which was subject to the protection and management of the Government and which is known as a reserve as that term is used in *The Indian*

*Act.*

51. The Government has a special and fiduciary relationship with First Nations people. As such, the Government is vested with a special and fiduciary obligation to deal with reserve land in such a way that it is in the best interests of its inhabitants. Insofar as the Government had a duty, power, or discretion to manage the land and use of such land, and, in any event, to the extent that it did in fact engage in the management and use of such land, including the construction, maintenance, or demolition of housing, the Government had a duty to do so with the utmost of care, loyalty, good faith, and setting aside any self interest in favour of the interests of the Plaintiffs or other such class members.

52. The Government searched its records of all homes built on reserves between 1960 and 1990, and found 597 in 74 communities that contained Zonolite. The results were:

- (a) Quebec - 28
- (b) Manitoba - 234
- (c) Saskatchewan - 276
- (d) Alberta - 25
- (e) British Columbia - 28
- (f) Yukon - 6

53. The Government, at all material times, had a duty to or, in any event, did in fact assume responsibility for and control over premises on reserve land, including demolition, maintenance, and construction of housing and as such was an occupier of the land on reserves. The Government had a duty as an occupier to take reasonable care that persons entering into structures on the reserve would be reasonably safe and warranted the safety of such structures.

54. Because the harm that occurred was a reasonably foreseeable consequence of the Government's acts and omissions, and because there is sufficient proximity between the Government and the Plaintiffs, and given that there are no policy reasons why the duty should not be imposed,

the Government owed a duty of care to the Plaintiffs.

### **The Common Issues**

55. The Plaintiff and class members have in common that each has suffered injury due to having been exposed to Zonolite. Common issues would include:

- (a) Does Zonolite cause personal injury and, if so, what are the nature and extent of the injuries caused by Zonolite?
- (b) Was Zonolite defective or unfit for the purpose for which it was intended as designed, developed, fabricated, manufactured, sold, imported, distributed, marketed or otherwise placed into the stream of commerce in Canada by the Defendants?
- (c) Did the Defendants breach a duty of care owed to group members and if so when and how?
- (d) Whether W.R Grace is responsible in law for the acts of the W.R. Grace Canada?
- (e) Whether the Government owed a duty to Class Members, and a special fiduciary duty to First Nations people, and whether the Government breached those duties?
- (f) Whether the Class Members are entitled to punitive damages.

56. The members of the proposed Class number in the hundreds of thousands. As a result, the Class is so numerous that joinder in a single action is not practical. However, proceeding with the Class Members' claim by way of a class action is both practical and feasible, and each Class Member should be readily identifiable from information and records available from the Defendants, its agents, and public records.

57. Individual members of the proposed class do not have a significant interest in individually controlling the prosecution of their claim by way of separate actions, and individualized litigation would also present the potential for varying, inconsistent, and contrary judgements, and would magnify the delay and expense to all parties resulting from multiple proceedings on the same issues. The cost to pursue individual actions concerning this claim would effectively deny the individual Claimants access to the Courts and appropriate legal relief.

58. The Plaintiffs will fully and adequately protect the interests of the proposed Class, and have retained counsel to represent the class who are well qualified to prosecute complex class action litigation. Neither the Plaintiffs nor their solicitors have interests which are contrary to, or conflicting with, the interests of the proposed Class.

### **General**

59. The proposed Class Counsel, Merchant Law Group, is also involved in other proposed class actions concerning Zonolite (issued before provincial superior courts in Canada), including Nordick et al. v. Attorney General of Canada et al. (issued on May 11, 2005, the Court of Queen's Bench of Alberta, No. 0501-07100), and Nordick et al. v. Attorney General of Canada et al. (issued before the Court of Queen's Bench of Saskatchewan), which Counsel may seek to prosecute conjunctively or concurrently with this action.

60. The Plaintiffs, as representatives of the class of all persons, families, estates, consumers, corporations, firms, businesses, entities, and other organizations resident or situated in Canada, have suffered injury, economic loss, and damages as a result of the Defendants' acts, omissions, wrong doings, and breaches of legal duties and obligations, included but not limited to, tortious liability, causing personal injury and harm, breach of duty of care, breach of contract, breach of fiduciary duty and obligations, deceit, misrepresentation, negligence, intentional and negligent misrepresentation, collusion, inappropriate and unfair trade and business practices, failure to make proper public disclosure, and failure to fulfill their statutory and common law duties and obligations to the Plaintiffs and the Class Members. Wherefore the Plaintiffs on behalf of themselves and all class members claim for the following relief, on a joint and several basis, against all of the Defendants:


- a. An order certifying this proceeding as a class action in accordance with the provisions of the Act;
- b. General damages for each member of the class in an amount to be determined at trial;

- c. Special damages for each member of the class in an amount to be determined at trial;
- d. For those persons entitled to the benefit of the *Fatal Accidents Act* and similar applicable legislation as a result of their relation to a deceased person who was a member of the class, damages for loss of care, guidance and companionship, and damages for pecuniary loss resulting from the death of the deceased including loss of financial support, funeral expenses and other such damages;
- e. Damages against the Defendant Government arising out of the breach of the duty owed by the Government to the Plaintiffs with such relief including equitable compensation restoring the Plaintiffs and any eligible class members to the full position that they would have been but for the Government's breach of its duties;
- f. Punitive damages for each member of the class in an amount to be determined at trial;
- g. Aggravated and exemplary damages for each member of the class in an amount to be determined at trial;
- h. Such further and other costs and damages as may be proven at trial;
- i. Pre-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly;
- j. Post-judgment Interest on the foregoing sums in the amount of 2% per month, compounded monthly;
- k. Costs of this action, on a solicitor and client basis; and,

1. Such further and other relief, including such further equitable relief as is consistent with the fiduciary relationship and duties which have been breached, as counsel may advise and/or this Honourable Court may allow.

Dated at the City of Regina, in the Province of Saskatchewan, this 1<sup>st</sup> day of September, 2005.

**MERCHANT LAW GROUP**

  
\_\_\_\_\_  
Solicitors for the Plaintiffs

This document prepared by:

**Merchant Law Group**  
Barristers and Solicitors  
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Regina, Saskatchewan S4P 4H8

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