

ADMINISTRATIVE PROCEEDING
FILE NO. 3-9793

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
June 27, 2003

In the Matter of :
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JEAN-PAUL BOLDUC, et al. : SCHEDULING ORDER
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:

This proceeding concerns alleged manipulation of earnings reported from 1991 to 1996 by W.R. Grace & Co. (Grace) of its subsidiary National Medical Care, Inc. (NMC). Respondents are former officers of NMC. The hearing is scheduled to commence August 4, 2003. The parties have filed prehearing briefs, witness and exhibit lists, and expert reports. A prehearing conference will take place by telephone on July 1 at 2:00 p.m. EDT, to expedite the disposition of the proceeding by addressing the topics listed below.

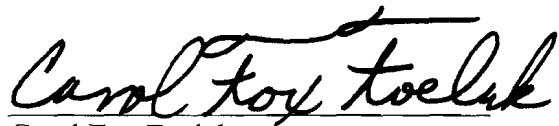
1. The Division of Enforcement (Division) has moved to exclude the three Respondents' three proposed expert witnesses from testifying and to strike their expert reports. The three experts opine on the responsibilities of officers of subsidiaries in a manner that is favorable to the Respondents. Among other arguments, the Division urges that the opinions are conclusory and that it is undesirable to burden the record with unnecessary evidence. The Division's two proposed expert witnesses, however, also address, in a conclusory manner, the responsibilities of officers of subsidiaries, opining that the officers of NMC had a responsibility for Grace's financial statements independent from the responsibility of Grace management and of the outside auditors. The two experts also discuss thoroughly their opinions that the treatment of certain reserves in NMC's and Grace's financial statements was not in accordance with generally accepted accounting principles (GAAP).

It appears from Respondents' prehearing briefs that they do not contest that the treatment of the reserves was not in accordance with GAAP. The parties may wish to consider a stipulation to that effect and to consider eliminating all five experts. This would conserve public and private resources and expedite resolution of the proceeding.

2. The Order Instituting Proceedings (OIP) alleges that the Respondents “committed or caused” violations of Exchange Act Sections 10(b) and 13(b)(5) and Rules 10b-5 and 13b2-1.¹ The Division’s prehearing brief argues that they violated these provisions. The undersigned wishes to confirm that the Division is no longer alleging that the Respondents “caused” violations of these provisions by a primary violator.

3. The Division should be prepared to discuss the evidence it will present concerning the charges pursuant to 17 C.F.R. § 201.102(e) (Rule 102(e)) against Respondent Armstrong in light of the Commission’s Order lifting its stay of the proceeding. See Jean-Paul Bolduc, Admin. Proc. No. 3-9793 (July 18, 2002) (unpublished) (July 18, 2002, Order). What evidence will the Division present to address whether his actions “constituted ‘appearing or practicing’ before the Commission and whether they threatened the integrity of the Commission’s processes”? See July 18, 2002, Order at 2 n.9. Referring to Rule 102(e)(ii), the OIP charges “improper professional conduct . . . in a violation of applicable professional standards.” The Commission has ruled that it is an “undisputed fact that Armstrong’s license had lapsed.” July 18, 2002, Order at 3. What evidence will the Division present concerning “the nature of any professional standards to which he was subject during the period at issue.” See July 18, 2002, Order at 2 n.9.

IT IS SO ORDERED.



Carol Fox Foelak
Administrative Law Judge

¹ The OIP also alleges that the respondents “caused” violations of Exchange Act Sections 13(a) and 13(b)(2) and Rules 12b-20, 13a-1, and 13a-13. See OIP at ¶ F.1. The Division’s prehearing brief identifies Grace as the primary violator.