

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re

In Proceedings For A Reor-
ganization Under Chapter 11.
Case Nos 82 B 11656 (BRL)
Through 82 B 11676 (BRL)
Inclusive

JOHNS-MANVILLE CORPORATION, et al.,

Debtors.

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ORDER RE. PRIVILEGED INFORMATION

WHEREAS, Manville's Second Amended Plan of Reorganization (the "Plan") has been confirmed by Order of this Court dated December 22, 1986 (the "Confirmation Order"); and

WHEREAS, the Plan provides for the establishment of a successor entity, the Manville Personal Injury Settlement Trust* governed by independent Trustees to administer a claims resolution facility which will be responsible for the resolution, either through settlement, mediation, arbitration or litigation, of all Asbestos Health Claims and/or Other Asbestos Obligations; and

WHEREAS, various appeals have been filed and are presently pending, such that, as of the date hereof, the Confirmation Order is not a Final Order and the Plan has not been consummated, and

WHEREAS, in order to facilitate the functioning of the Trust pursuant to the Plan, this Court, by Order dated January 9, 1987, has authorized the Trustees of the Trust to commence

* Capitalized terms used herein and not otherwise defined have the meanings set forth in the Plan.

preparations so that the Trust will be able to function as necessary when the Plan is consummated; and by Order dated June 8, 1987 has amplified and affirmed its Order of January 9, 1987, and

WHEREAS, in connection with such preparation for consummation of the Plan and to assist the Trust in carrying out its obligations pursuant to the Plan, it may become necessary and appropriate for Manville Corporation and related entities, and their directors, officers, employees, attorneys, consultants and representatives (hereinafter collectively referred to as "Manville Corp.") and the Trust, its Trustees, officers, employees, consultants, attorneys and representatives (hereinafter collectively referred to as the "Trust") to exchange certain information, whether written or oral, which information is protected from disclosure by the attorney-client privilege and/or the work-product doctrine ("Privileged Information"),

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

1 Non-Waiver: To the extent that Manville Corp or the Trust provides Privileged Information to the other, such Privileged Information shall retain its privileged nature, and the sharing of Privileged Information by Manville Corp. with the Trust and/or by the Trust with Manville Corp shall not be deemed to be a waiver of the attorney-client privilege and/or work-product doctrine for any purpose.

2 Request for Information and Documents: The Trust, and Manville Corp shall each appoint one person (the

"Coordinators") through whom all requests from Manville Corp and the Trust to the other for information and/or documents that may contain Privileged Information shall be made. Each Coordinator will in turn appoint a substitute Coordinator who shall, respectively, make all requests and respond to all requests for information and/or documents in the event the Coordinator is unavailable. The Coordinators or the substitute Coordinators shall be available to request and respond to requests for information and documents during regular business hours.

3 Designation of Information And/Or Documents as "Privileged Information": Within a reasonable time after receiving a request for information and/or documents, the party to whom the request is made shall (1) determine whether any of the requested information and/or documents constitute "Privileged Information", (2) designate any Privileged Information as such by clearly marking any documents with a notation so indicating or by indicating in writing that oral information is so designated; and (3) so inform the Coordinator of the requesting party. If the requested information and/or documents are not designated "Privileged Information", the remaining terms of this Order (other than paragraphs 1-3, inclusive) shall not apply to such information and/or documents, and the parties shall agree on the terms and procedures for making such information and/or documents available to the requesting party. If the requested information and/or documents are designated "Privileged Information", the remaining paragraphs of this Order shall apply.

4 Production of Privileged Information The party to whom the request is made shall make Privileged Information, whether or not in documentary form, available to the requesting party at a time and place to be agreed upon by the Coordinators.

5. Restrictions on Use of Information: Any person who receives Privileged Information from Manville Corp. or the Trust, whether documentary or oral, shall refrain from using such Privileged Information for any purpose, including but not limited to any legal proceeding or action involving Manville Corp. or the Trust, other than in connection with the performance by Manville Corp. or the Trust of their obligations pursuant to the Plan

6 Restrictions on Privileged Information Prior to Consummation of the Plan

(a) Restriction to Authorized Persons Prior to the Consummation Date, Privileged Information disclosed by Manville Corp to the Trust shall be disclosed only to the Trustees, officers, attorneys, and designated employees of the Trust, who shall be deemed to be "Authorized Persons" for purposes of this Order. In addition other persons may be jointly designated "Authorized Persons" by the Trust and Manville Corp. prior to the transfer of Privileged Information Each Authorized Person shall sign a Confidentiality Agreement, a copy of which is attached to the annexed application (the "Confidentiality Agreement"), before receipt of any Privileged Information. A written list of Authorized Persons shall be maintained by the

coordinators and shall be amended from time to time, as it may become necessary, upon agreement of the Coordinators. If Manville and the Trust are unable to agree whether a person should be designated an "Authorized Person," either party may utilize the dispute resolution procedures set forth in Paragraph 10 below. Until the dispute is resolved, such person shall not be given Privileged Information for any purpose.

(b) Restrictions on Copying and Transmitting

Prior to the Consummation Date, the Trust shall not recopy or transmit or give any advice concerning such Privileged Information to any person or entity, other than an Authorized Person who has signed a Confidentiality Agreement and whose identity has been disclosed, in writing, to Manville Corp.

(c) "Neutral Convenor" of Pre-Consummation

Settlement Effort Both Manville Corp. and the Trust may disclose Privileged Information to Professor Francis McGovern, who has been designated by the Trust and this Court as the "Neutral Convenor" of the Trust's pre-Consummation Date settlement effort and who is hereby designated an "Authorized Person." Any disclosure of Privileged Information to Professor McGovern shall not be deemed a waiver of the attorney-client privilege or the work-product doctrine with respect to such Privileged Information

7. Post-Consummation. Subject to the provisions of Paragraph 5 above, there shall be no restrictions on the use, dissemination, disclosure, copying, and transfer of Privileged Information by the Trust after the Consummation Date

8. Non-waiver Through Limited Voluntary Disclosure.

Voluntary disclosure by the Trust to claimants or claimants' counsel of Privileged Information shall not be deemed a waiver of the attorney-client privilege or the work-product doctrine as to any other claimant, his counsel, or any other party.

9. Return of Privileged Information Upon Termination of the Trust: Within 120 days of termination of the Trust, whether through failure to consummate the Plan or for any other reason, each Authorized Person and the Trust shall return to Manville Corp all copies in its possession of any Privileged Information received from Manville Corp in documentary form, or shall certify that all such copies have been destroyed, and (b) return to Manville Corp all copies in its possession of any notes, reports, papers, writings or recordations referring or relating to Privileged Information received from Manville Corp., or shall certify that all such notes, reports, papers, writings and recordations have been destroyed

10. Dispute Resolution Procedure. Any dispute relating to this Order or to any aspect of the transfer of Privileged Information between Manville Corp. and the Trust, including but not limited to the designation of Authorized Persons and the designation of information as Privileged Information, shall be submitted to Professor Paul Rice of American University School of Law for non-binding mediation. Professor Rice shall attempt to resolve such dispute as soon as possible. If the parties cannot

agree, either party may apply to this Court for a final determination of the issues in dispute.

11. Modification of This Order. The provisions of this Order may be varied by agreement between Manville Corp. and the Trust, subject to approval by further order of this Court.

Dated: New York, New York
October 20, 1987

1st Burton, R. Lifwood
UNITED STATES BANKRUPTCY JUDGE