

SYNOPSIS OF THE CASE

2020 MT 70, OP 19-0051: MARYLAND CASUALTY COMPANY, Petitioner, v. THE ASBESTOS CLAIMS COURT, and THE HONORABLE AMY EDDY, Asbestos Claims Court Judge, Respondent.¹

The Montana Supreme Court issued a ruling today that will allow over 800 former employees of W.R. Grace & Company's Zonolite Division in Libby (Grace) to continue their asbestos-related personal injury claims against Maryland Casualty Company (MCC), Grace's former workers' compensation insurance provider from 1963-1973.

The plaintiff and other Grace workers assert that they were irreparably injured by repeated workplace exposure to airborne asbestos while employed by Grace's Zonolite Division. Upon acquisition in 1963, Grace continued large scale vermiculite mining and processing operations in the Libby area preliminary to the production of various commercial insulation products for residential and commercial use. The raw vermiculite mined and processed by Grace contained amphibole asbestos, a highly dangerous substance when breathed after released into the air by Grace's mining and processing operations. The plaintiff and other claimants allege that MCC negligently contributed to their development of ultimately fatal asbestos-related diseases by failing to warn them of the risk of harm posed by workplace exposure to asbestos, a risk known to MCC as a result of its affirmative involvement with Grace regarding workplace safety measures and employee-specific medical monitoring of asbestos-related lung conditions.

On appeal from a ruling by the Asbestos Claims Court, MCC asserted that it did not owe Grace workers a legal duty to use reasonable care to warn of the risk posed by airborne asbestos because that is a duty owed by the employer, not by its insurance company. The Montana Supreme Court held that, based on MCC's affirmative assumption of employee-specific medical monitoring and Grace's reliance on MCC to perform that function, MCC owed Grace workers a legal duty, independent of Grace's safety duty, to use reasonable care to warn them of the risk of airborne asbestos.

In a separate concurring opinion joined by Justices McKinnon and Shea, Justice Gustafson concurred with the majority opinion, but stated that she would further find that MCC owed a duty to warn Grace workers on additional alternative grounds, *i.e.*, that MCC's failure to warn of the danger of airborne asbestos increased the preexisting risk of harm created by Grace and that the workers reasonably relied on MCC's employee-specific medical monitoring to warn them of the hazard.

¹ This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.

In second concurring opinion joined by Justices McKinnon and Gustafson, Chief Justice McGrath observed that, since MCC owed a duty of care to Grace workers based on its own conduct independent of Grace's conduct, the asserted workers' claims against MCC are not precluded by the injunction of the United States Bankruptcy Court "channeling" related claims against Grace, including derivative claims, into the Bankruptcy Court and its related adjudication.

In a third concurring opinion, Justice McKinnon concurred with the results reached by the majority and other concurring opinions. She stated further, however, that based on MCC's affirmative acts of collecting workers' health care information, x-raying workers' chests, medically monitoring workers, and actively implementing an industrial hygiene program, she would alternatively find, as found by the District Court, that MCC owed a direct duty of care to the workers under existing Montana law rather than the circuitous route taken by the Court.

The Supreme Court ruling means that the case will now return to the Asbestos Court for trials on worker claims to determine whether MCC breached the duty owed to them and, if so, whether that breach caused them to suffer injury and resulting damages.