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IN THE SUPREME COURT OF THE STATE OF MONTANA

IN RE ASBESTOS LITIGATION,

Case No. AC 17-0694

Consolidated Cases.

**NOTICE OF DECONSOLIDATION
AND/OR NOTICE OF OPT-OUT BY
PLAINTIFFS AND CERTIFICATION
PURSUANT TO THE FEBRUARY 6, 2018
ORDER OF THE ASBESTOS CLAIMS
COURT**

Cause No. DV-94-79613

Cause No. DV-94-79614

[Consolidated under Cause DV-1996-1]

The instant “Notice of Deconsolidation and/or Notice of Opt-Out by Plaintiffs and Certification Pursuant to the February 6, 2018 Order of the Asbestos Claims Court” is filed pursuant to directives issued by the Honorable Amy Eddy therein, as Judge Eddy stated, in pertinent part, as follows:

- I. JURISDICTION: The Court will not preside over actions for asbestos related disease that is alleged to result from non-vermiculite asbestos exposure. Nor will the Court preside over actions to determine the existence or extent of insurance

¹ This filing relates to the hereafter-identified cases pending in Missoula County asbestos-related product liability actions which are consolidated under Cause No. DV-1996-1, Montana Fourth Judicial District, Missoula County. It should be noted that neither of these cases are among those asbestos actions which are listed within “Exhibit A” to the Montana Supreme Court’s November 28, 2017, “Order Establishing the Asbestos Claims Court and Consolidating Cases”.

coverage. Counsel on these types of actions must file a *Notice of Deconsolidation* in this Court by **February 23, 2018**, certifying the action is not subject to the jurisdiction of the Asbestos Claims Court. The *Notice of Deconsolidation* must also be filed in the state district court where the action is pending. Upon filing of the *Notice of Deconsolidation*, the action may proceed in district court without further order of this Court . . .

- II. NOTICE OF OPT-OUT: (applicable to vermiculite exposure cases only) Considering these actions were *sua sponte* consolidated into the Asbestos Claims Court by the Montana Supreme Court, the parties shall have until **February 16, 2018**, to file a *Notice of Opt-Out* should they wish to have their action remanded back to the district court for further proceedings. (*italics and bold type in the original*).

Specifically, the injurious asbestos exposures by the plaintiffs (or decedents) in the following cases pending in the Montana Fourth Judicial District Court in Missoula County were to various asbestos-containing products which contained various types of asbestos fiber, but are not cases which involve exclusively vermiculite exposures:

1. Cause No. DV-94-79613, *Donovan Ballard, et al. v. AC and S, Inc., et al.* [The lead parties to use in naming this matter can be *Ballard v. AC and S, Inc.*];² and
2. Cause No. DV-94-79614, *Erna Tetrault, individually and as personal representative on behalf of the Estate of Raymond Tetrault, deceased v. Abex Corp., et al.* [The lead parties to use in naming this matter can be *Tetrault v. Abex Corp., et al.*]³

Where the Asbestos Claims Court determined in its above-referenced Order of February 6, 2018, that it does not possess jurisdiction, “over actions for asbestos related disease that is alleged to result from non-vermiculite asbestos exposure”, and where the above-captioned cases include

² Cause No. DV-94-79613, *Donovan Ballard, et al. v. AC and S, Inc., et al.*, is a multiple-plaintiff civil action, in which twenty-nine (29) plaintiffs are so-listed.

³ Causes (1) and (2) are consolidated under Cause No. DV-1996-1, Montana Fourth Judicial District, Missoula County.

“non-vermiculite asbestos exposures”, it is respectfully submitted that these cases should “proceed in district court (in Missoula County) without further order of (the Asbestos Claims Court).”

Additionally, where the above-captioned cases may involve injurious exposures to products which contained both vermiculite exposures and other types of asbestos exposures, the plaintiffs herein alternatively and consecutively file this “Notice of Opt-Out” -- in the event that the instant cases potentially involving **mixed vermiculite and non-vermiculite exposures** could be construed to come within the jurisdiction of the Asbestos Claims Court.

Subject to this interpretational statement, undersigned counsel hereby certifies that the above-captioned actions are “not subject to the jurisdiction of the Asbestos Claims Court.”

DATED this 16th day of February, 2018.

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By: /s/ William A. Rossbach
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