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IN THE ASBESTOS CLAIMS COURT FOR THE STATE OF MONTANA

<p>IN RE ASBESTOS LITIGATION,</p> <p><i>Consolidated Cases</i></p>	<p>Cause No. AC 17-0694</p> <p>LIBBY PLAINTIFFS' PETITION FOR CREATION OF A RECEIVERSHIP, APPOINTMENT OF CONSERVATOR, OR GUARDIAN AD LITEM</p>
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COME NOW plaintiffs in the above captioned action and petition the Court for: (a) the appointment of a receiver, pursuant to §27-20-101 et seq., MCA, or in the alternative; (b) the appointment of a conservator, pursuant to §72-5-401, et seq., MCA; or (c) the appointment of a guardian ad litem, pursuant to §72-38-211(4), MCA, for Robinson Insulation Company (hereinafter "Robinson").

The requested appointment is sought (a) to protect the insurance assets of Robinson for the benefit of Robinson and plaintiffs with respect to their claims herein and other litigants with claims against Robinson that are covered by insurance policies of Robinson; (b) to provide a vehicle to protect Robinson's defenses to such claims and its right to the insurers' defense and indemnity with respect to such claims; and (c) to assure an orderly preservation and administration of such insurance assets for the benefit of all interested persons with such claims.

In support of this petition, Plaintiffs allege:

1. Robinson is a now-defunct corporation which incorporated on January 1, 1937, and existed under the laws of Montana until it was voluntarily dissolved on October 24, 1989;
2. Robinson operated a vermiculite expansion plant in Cascade County, Montana. Robinson received milled vermiculite ore from the Libby Zonolite/W.R. Grace mine and mill operation. The vermiculite ore was contaminated with amphibole asbestos. The asbestos contaminated vermiculite ore was processed by expansion, and subsequently packaged, transported and sold as a consumer product. The products and ore Robinson processed, manufactured and sold contained asbestos. Because of Robinson's acts of transporting, loading, processing, manufacturing, developing, marketing,

packaging, labeling, distributing, and/or selling ore and products containing Libby vermiculite, and its negligent failure to warn, it is alleged to be liable for the resulting asbestos exposures.

3. Claims for personal injury from exposure to asbestos have been asserted in this and other actions against Robinson. Previous attempts at service of process against Robinson have been unsuccessful;
4. The Montana Supreme Court has held in *Allen v. Atlantic Richfield Co.* 329 Mont. 230,124 P.3d 132 (2005) that, notwithstanding its dissolution, Robinson may continue to be sued for liabilities arising during its existence;
5. Robinson's liability was insured under multiple liability insurance policies covering the claims of the plaintiffs and other asbestos claimants;
6. Plaintiffs and similarly situated claimants have a vested right in insurance coverage for their claims. *McLane v. Farmers Insurance Exchange*, 150 Mont. 116, 432 P.2d 98 (1967); *J. G. Link & Co. v. Continental Cas. Co.*, 470 F.2d 1133 (9th Cir.1972);
7. Robinson's liability insurers have not attempted to provide a defense or to settle plaintiffs' claims or the claims of similarly situated asbestos claimants;

8. As third-party claimants, Plaintiffs have a clear legal right in insurance coverage and claim adjustment under Robinson's insurance policies;
9. There is no other adequate remedy to protect Plaintiffs' interest in Robinson's insurance coverage and claim adjustment;
10. In the absence of the appointment of a receiver, conservator, or guardian *ad litem*, Plaintiffs will be unable to protect or secure their interests in Robinson's insurance coverage and claim adjustment thereunder, and will sustain irreparable damage to those interests;
11. Pursuant to §27-20-101 et seq., MCA Robinson's liability insurance constitutes property and a fund subject to the claims of Plaintiffs and similarly situated asbestos claimants. In the absence of the appointment of a receiver pursuant to §27-20-101 et seq., MCA, this property and fund is in danger of being lost or materially injured by (a) the absence of insurance defense, indemnification and/or claim adjustment or settlement, and/or (b) by the risk that the limited fund of insurance coverage may be depleted should individual settlements be reached between Robinson's insurers and some claimants;
12. Upon the dissolution of Robinson, a resulting trust of its assets, including its insurance, arose in favor of its members and creditors,

and a constructive trust has arisen with respect to insurance policy defense, indemnity and coverage proceeds;

13. In the alternative to the appointment of a receiver and in the absence of such appointment, the appointment of a conservator, pursuant to §72-5-401, et seq., MCA, is appropriate and necessary by reason of Robinson's dissolution and the death of Robinson's members, and by reason of the insurance companies' failure to attempt to settle claims or provide a defense to the defunct corporation, Robinson is unable to manage its property, including its insurance coverage, to make defense or settlement demands on its insurer for the preservation of such coverage, or otherwise effectively manage such property, and Plaintiffs are adversely affected by such lack of management.;

14. In the alternative to the appointment of a receiver and in the absence of such appointment, a guardian ad litem should be appointed pursuant to §72-38-211 (4), MCA, to protect the insurance property and the interest therein of creditors and claimants, including Plaintiffs and similarly situated asbestos claimants, representation of interests in the insurance are not adequately represented.

Plaintiffs ask the Court to appoint Nancy Gibson or other qualified individual as receiver, conservator, and/or guardian ad litem with the following powers:

- a) To be sued on behalf and in the name of Robinson in any actions alleging personal injury from exposures to asbestos, including the power to accept service of process and other papers;
- b) To tender to insurers the defense of this and any other asbestos-related liability claims and actions against Robinson;
- c) To present demand upon the insurers to attempt to settle any and all asbestos claims within policy limits and to make reasonable good faith offers to settle such claims upon their merits; and
- d) To be sued on behalf of Robinson in any coverage disputes with Robinson's insurers, and to serve and accept service of process and other papers.

Plaintiffs further ask that the Court further vest the receiver, conservator, and/or guardian ad litem with the following additional powers and authorities to be exercised *only pursuant to specific court approval* upon petition to this Court identifying the manner of such exercise:

- a) Filing and prosecution and/or defending on behalf of Robinson any litigation to resolve any coverage disputes between Robinson and its

insurers which litigation shall be the responsibility of counsel for the Plaintiffs in this case;

- b) Authorizing an insurer's settlement of an asbestos claim upon demonstration that a limited fund, if any exists, is adequately protected for Plaintiffs and all similarly situated claimants;
- c) Holding proceeds of insurance liability coverage for the benefit Plaintiffs and similarly situated asbestos claimants, and make distributions upon application to this Court; and
- d) To otherwise act, with respect to Robinson's insurance coverage for asbestos injury, in the mutual best interests of the Plaintiffs and similarly situated asbestos claimants as informed by counsel for such Plaintiffs and similarly situated claimants.

DATED this 1st day of March, 2018.

McGARVEY, HEBERLING, SULLIVAN  
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By: /s/ Allan McGarvey  
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