

11/09/2018

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AC 17-0694

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Attorney for MHSL Plaintiff

IN THE ASBESTOS CLAIMS COURT FOR THE STATE OF MONTANA

<p>IN RE ASBESTOS LITIGATION, <i>Consolidated Cases</i></p>	<p>Cause No. AC 17-0694</p> <p>PLAINTIFF'S MOTION TO ENFORCE SCHEDULING ORDER AND SUPPORTING MEMORANDUM</p> <p>Applicable to: <i>Hutt v. Maryland Casualty Co. et al.</i>, DDV-18-0175</p>
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MOTION

Comes now Plaintiff Ralph Hutt, and moves the Court to enforce the March 21, 2018, Scheduling Order (as amended by Order dated August 31, 2018, extending disclosure dates), by way of an order limiting Defendant MCC's experts' trial testimony to (a) opinions stated, with a statement of supporting facts and grounds therefore, in the Court-ordered expert disclosures, and (b) true rebuttal testimony.

This motion is made on the following grounds:

1. The Scheduling Order in this case requires that expert witness disclosures include the all information "called for in Rule 26, M.R.Civ.P."; the Scheduling Order also provides that the scope of testimony for any rebuttal expert will be strictly limited to "true rebuttal" testimony.

2. In addition to disclosure of the subject matter of expert opinions, the above referenced “information called for in Rule 26, M.R.Civ.P.” includes the requirement that “the substance of the facts and opinions to which the expert is expected to testify” be “state[d],” and also requires a “summary of the grounds for each opinion.”
3. With no more than a few exceptions, the expert disclosures MCC filed with the Court did not state any expert witness “opinions,” or the facts relied on or grounds for any such opinion. Rather, with few exceptions, the disclosures generally state that MCC’s experts would testify in “rebuttal” to Plaintiff’s experts, and identified the “subject matter” area of such rebuttal opinions.
4. After receiving extensive disclosures of opinions and bases for opinions in Plaintiff’s expert disclosures, MCC’s filed a disclosure of the “rebuttal” opinions by merely reciting that its experts had “not yet had the opportunity to fully examine the opinions proffered by Plaintiffs.”
5. The Scheduling Order imposes strict requirements for use of expert witnesses. The purpose of these requirements is to assure adequate disclosure of expert opinions so that the opposing party may prepare his own rebuttal expert opinions and rebuttal disclosures. The Scheduling Order’s provision addressing “true rebuttal” makes clear that this fair disclosure purpose will not be defeated by a party withholding expert opinions and then offering them as if they were rebuttal, especially if such rebuttal opinions are not themselves adequately disclosed.
6. By failing to disclose statements of each opinion and basis therefore, MCC has deprived Plaintiff of the ability to prepare rebuttal expert testimony, let alone meet the Scheduling Order’s requirement that Plaintiff’s rebuttal opinions be disclosed.

7. After repeated requests for a deposition date, MCC has failed to make Jennifer Sahmel available for deposition.
8. In order for this Court to have effective control over pretrial and discovery procedures, it is necessary to enforce the terms and purpose of this Court's Scheduling Orders.

MEMORANDUM OF RATIONALE AND AUTHORITIES

- I. **Under this Court's Scheduling Order, expert witness disclosures must, in addition to identifying the subject matter of opinions, actually "state" the substance of each opinion, the facts relied on and the "state" the grounds for each opinion so that the opposing party has a fair opportunity to prepare and disclose its rebuttal.**

This Court's Scheduling Order makes clear that the parties must disclose and file with the Court expert disclosures that contain the information required by Rule 26, M.R.Civ.P.:

On or before August 31, 2018: Names and addresses of the parties' expert witnesses, together with the information called for in Rule 26, M.R.Civ.P., must be furnished to all opposing parties and filed with the Court. Establishment of this deadline does not minimize the obligation to fully comply with all discovery requests, including the obligations outlined in Rule 26(d)(2), Mont.R.Civ.P. Rebuttal expert witnesses must be disclosed by September 14, 2018. The scope of testimony for any rebuttal expert will be strictly limited to true rebuttal testimony. (Emphasis added.)¹

In addition to disclosure of the subject matter of expert opinions, the above referenced "information called for in Rule 26, M.R.Civ.P." includes the requirement that each party "state the substance of facts and opinions to which the expert is expected to testify," and also requires the disclosure of a "summary of the grounds for each opinion."

¹ By Order dated August 31, 2018, this Court granted MCC's motion for additional time for filing of the required expert disclosures: the original disclosures deadline was extended to September 14, 2018, and the rebuttal disclosure deadline was extended to September 28, 2018.

The meaning of, and need for, these disclosure requirements has been explained by the Montana Supreme Court in *Smith v. Butte-Silver Bow Cty.*, 276 Mont. 329, 333–34, 916 P.2d 91, 93 (1996), as follows:

The Montana legislature adopted this rule from Rule 26, Fed.R.Civ.P. See Rule 26, M.R.Civ.P., Compiler's Comments. The underlying policies of Rule 26 are to eliminate surprise and to promote effective cross-examination of expert witnesses. See *Smith v. Ford Motor Co.* (10th Cir.1980), 626 F.2d 784, 792–93 (citing 28 U.S.C., Rule 26, Fed.R.Civ.P., Advisory Committee Notes).

Before an attorney can even hope to deal on cross-examination with an unfavorable expert opinion he must have some idea of the bases of that opinion and the data relied upon. If the attorney is required to await examination at trial to get this information, he often will have too little time to recognize and expose vulnerable spots in the testimony.
Smith, 626 F.2d at 794.

Specifically, the Montana Supreme Court went on to hold that even disclosures of actual opinions such as “[the expert] will testify that the Defendant's county attorney failed to meet acceptable corrections standards in protecting the decedent's life,” and “the Defendant's jail failed to meet acceptable corrections standards in protecting the decedent's life” were not sufficiently detailed to meet the requirements of the rule:

These broad statements indicate the general topics on which the Estate's experts are expected to testify. They do not, however, provide the substance of facts to which the Estate's expert witnesses will testify, as required by Rule 26(b)(4)(A)(i), M.R.Civ.P.

Smith v. Butte-Silver Bow Cty., 276 Mont. at 334, 916 P.2d at 94; accord, *Montana Power Co. v. Wax* (1990), 244 Mont. 108, 112, 796 P.2d 565, 567 (the defendant's disclosure failures “severely limited [the plaintiff's] ability to cross-examine [the defendant's] witnesses”).

It is one thing to be advised that a defense expert witness will be called to testify “on” issues of causation, but the required disclosure must enable the Plaintiff to know what opinions will be presented so that counsel can prepare cross-examination and secure rebuttal expert

testimony. For example, the Defendant's medical expert might be preparing to testify to the following opinions:

- Plaintiff's pulmonary difficulty is caused by sarcoidosis.
- Plaintiff's pulmonary condition could not be caused by exposure to Grace asbestos because the dose was insufficient to cause fibrotic disease.
- Plaintiff is suffering heart failure which is responsible for his experience of difficulty walking.

Without at least some statement of the substance of the first of these actual opinions, Plaintiff would not be informed that he needs to prepare examination addressed to the causes, symptoms and signs *of sarcoidosis*, prepare Plaintiff's medical expert for this medical proposition, and/or locate a rebuttal expert who is a specialist *on sarcoidosis*. Without the required disclosure of the second opinion, Plaintiff is deprived of the opportunity to prepare with a compilation of the studies and data of dose-response relationship for amphiboles and fibrosis, or identify a rebuttal expert in this epidemiological specialty. Without disclosure of the third opinion, Plaintiff is not informed that he will need to call a cardiologist to testify to the health of his heart.

The failure to timely disclose actual expert opinions is not cured by a delinquent supplemental disclosure. Rather, the preparation of a party's own experts for their depositions, decisions about which of the opponent's experts need to be deposed, the use of expert testimony to establish the basis for substantive motions, motions challenging the foundational scientific validity of medical or industrial hygiene evidence, and the opportunity to timely move *in limine* to exclude prejudicial matters from expert testimony, preclude testimony constituting legal

opinions, or preclude testimony not meeting the “reasonable degree of probability” standard, all are greatly impaired by delayed disclosure. Certainly, delay of the disclosure of opinions until after the close of discovery and after the deadline for Plaintiff to identify rebuttal experts and rebuttal opinions, is fundamentally prejudicial.

It is the precise office of a Court’s scheduling order to assure procedural due process by giving each side (a) a full and fair opportunity to identify expert testimony and (b) a deadline for such disclosure. In short, the expert witness disclosure requirements of this Court’s Scheduling Order would be rendered meaningless if MCC were permitted to ignore the requirement that it disclose actual opinions and grounds therefore on or before the Court-ordered dates.

II. With few exceptions, MCC’s, expert witness disclosures do not include statements of the substance of facts, opinions, or grounds therefore.

After moving for additional time to file its expert witness disclosures, MCC filed cursory descriptions of the subject matter of its experts. Generally, the witnesses are identified as rebuttal witnesses (“Dr. Weill will be called upon to review Plaintiff’s expert witness disclosure and [medical] opinions and provide rebuttal testimony;” Ms. Sahmel may be offered to provide rebuttal opinions based on review of Plaintiff’s expert disclosures, regarding the standard of care and state of the art for industrial hygiene;” Defendant reserves the right to call Dr. Haber to provide medical and methodological rebuttal opinions.”) For the court’s convenient reference, MCC’s initial and rebuttal disclosure reports are attached hereto as Exhibits A and B.

While the disclosures for witnesses Weill, Sahmel, and Haber, provide some detail as to the subject matters of the witness testimony (“testify regarding Plaintiff’s disease;” “opine on the [x-ray and PFT interpretations];” “testify on causes;” “testify concerning other contributing factors;” “testify concerning the purpose ...of industrial hygiene;” “testify concerning the state of

the art.”) there are no statements of the actual opinions that they will offer, no disclosures of the facts the expert will identify as significant, and no indication of the basis and grounds for the experts conclusions.

In contrast, a few actual opinions are stated in MCC’s disclosures. MCC discloses, for example, that “Dr. Sicilia is expected to opine that early twentieth century medical research on asbestos was inconclusive,” that he is “expected to opine that asbestos was considered on balance a useful product in the U.S. through the 1970s,” and that he “is expected to testify that sound research cannot rely exclusively on medical literature ...” While these disclosures are bare-bones and are largely lacking in identifying opinion grounds, and fail to disclose any “facts” of asbestos research and literature, they at least provide the bare minimum information of what each opinion will be.

III. MCC has failed to disclose its “rebuttal” testimony.

In addition to addressing disclosure of experts’ affirmative opinions, the Scheduling Order permits each party to identify rebuttal experts and opinions. The distinction between affirmative opinions and rebuttal opinions is that the former are affirmative evidence supporting a party’s contentions or negating the opponent’s contentions while the latter are responsive to the affirmative opinions of the opposing expert.²

²Black’s Law Dictionary defines the term “rebut” as “[t]o refute, oppose, or counteract (something) by evidence, argument, or contrary proof <rebut the opponent’s expert testimony> <rebut a presumption of negligence>.” Rebut, Black’s Law Dictionary (10th ed. 2014). Black’s defines “rebuttal evidence” as “[e]vidence [that is] offered to disprove or contradict the evidence [that is] presented by an opposing party.”

As a general proposition, affirmative expert opinions are those that were known to and could have been identified by a party as necessary or expected to support, for example, its position on medical causation. In contrast, rebuttal expert opinions are those the need for which arises by reason of the opinions of the opposing party's expert.

This Court imposed a very clear limitation on expert rebuttal testimony based on this distinction, stating: "The scope of testimony for any rebuttal expert will be strictly limited to true rebuttal testimony."

In its initial witness disclosure, MCC identified that the primary, if not sole role, of some of its experts was to provide "rebuttal" testimony responding to the opinions disclosed by Plaintiff's experts. Plaintiff then delivered and filed expert witness disclosures which were thorough³ giving full opportunity for defendant's experts to identify their rebuttal opinions. Yet, when the time came to disclose the substance of MCC's rebuttal testimony and the grounds therefore, MCC provided the following disclosure:

"As expert witness depositions have not yet been taken, MCC has not yet had the opportunity to fully examine the opinions proffered by Plaintiff's experts. MCC reserves the right to supplement with rebuttal opinions and experts to the extent necessary in addition to those in MCC's initial disclosure after the conclusion of expert witness depositions."

³ The expert witness disclosure of Industrial Hygienist Terry Spear is 87 pages, with 4 appendices, and cites the facts relied upon by citation to scores of exhibits contemporaneously produced. Medical Expert Dr. Redlich's disclosure consists of 7 pages together with 71 pages of referenced materials. See also disclosures by Dr. Collella (3 pages), Dr. Hart (21 pages plus citations and appendix), Gunlikson (2 page report on present value), Morrison (6 pages), Crowley (38 page Life Care Plan plus 4 page report).

This failure to disclose rebuttal opinions stands in utter defiance of the explicit requirements of this Court's Scheduling Order, and constitutes ample grounds to exclude expert opinions other than the actual opinions stated in MCC's initial disclosure. This motion does not seek that harsh, though deserved, result.

The denial of due process that is caused by MCC's rebuttal disclosure failure compounds its failure to disclose its expert's affirmative opinions in its initial disclosure. It denies the Plaintiff the opportunity to prepare his cross-examination, it denies the opportunity to prepare Plaintiff's experts in view of the rebuttal opinions, it denies Plaintiff the opportunity to bring motions *in limine* challenging the foundational scientific validity of scientific evidence or the failure of opinions to meet the evidentiary standard of "reasonable degree of probability," and/or seeking exclusion of prejudicial matters from expert testimony.

Defendant's defiance of the Scheduling Order presents a further danger that Defendant will seek to introduce its experts' affirmative opinions clothed as rebuttal. It is one thing for a MCC's rebuttal expert to testify that the basis of Plaintiff's medical expert's opinion is faulty because she misapplied diagnostic criteria, it is fundamentally different to affirmatively assert a new contention that the Plaintiff's medical condition is caused by idiopathic interstitial fibrosis or any other contended causal agency or factor. The latter opinion is not "true rebuttal." Rather, it is an undisclosed affirmative opinion of what the defense expert contends to be the cause of Plaintiff's disease.

Similarly, it is one thing to rebut Plaintiff's industrial hygiene opinion testimony with a defense expert opinion that the Plaintiff's expert has misapplied the industrial hygiene standard that forms the basis of his opinion. It is fundamentally different to advance (in the disguise of

“rebuttal”) the affirmative opinion of an entirely different but undisclosed industrial hygiene standard. **Remarkably, in this case, MCC has disclosed neither the affirmative opinions nor the rebuttal opinions.**

Admittedly, there may at times be a gray area between what is clearly an affirmative opinion and a rebuttal opinion, and the character of the testimony may, to some extent, be a function of how the Plaintiff’s expert testifies at trial. The point of this motion, however is to ask that this Court give its Scheduling Order meaning and effect both with respect to the required disclosure of actual opinions (and grounds) and with respect to the limitations on “true rebuttal.” That may be done by an order with the following elements:

1. The Court should order that, with the exception of opinions in its original disclosure statement which (a) are specifically “stated” as affirmative opinions and (b) for which the supporting “facts” and “grounds” are also disclosed, MCC’s expert testimony at trial shall be limited to true rebuttal of Plaintiff’s experts’ trial testimony.
2. The Court should order that, while MCC’s experts may testify in general that they disagree with opinions offered by Plaintiff’s experts, “true rebuttal” does not include affirmative opinions that could have been stated in MCC’s expert disclosures but that arise from and/or are necessarily attendant to the defense contentions. Examples of such “affirmative opinions” are:
 - “It is my opinion that the cause of Plaintiff’s respiratory difficulty is sarcoidosis caused by exposure to tree bark or idiopathic interstitial fibrosis.”
 - “It is my opinion that Plaintiff’s life expectancy is ___ years ,” or “ his prognosis is good ,” or “his disease will not progress.”

- “It is my opinion that Plaintiff did not have sufficient exposure dose while working at Grace to cause asbestos disease.”
 - “It is my opinion that the “5mppcf” whole dust exposure limit was correctly applied and recommended to Grace by MCC.”
3. The Court should order that “true rebuttal” testimony is allowed only if (a) the matter in contention first arises by reason of Plaintiff’s expert testimony, (b) the rebuttal is limited to the stated bases of the Plaintiff’s expert opinion, (c) the defense expert does not insert a new contention, and (d) Plaintiff is not surprised by the opinion or grounds therefore.
 4. The Court should order that opinions that may not be offered at trial through MCC’s experts include:
 - a. Testimony by Dr. Haber other than that previously offered at the CARD Clinic hearing (i.e. as disclosed in the original Haber expert disclosure), and then only if Plaintiff’s medical expert testifies that she relied on the methodologies at issue in the CARD hearing in reaching her opinions.
 - b. Any opinion by a medical expert that Plaintiff has medical conditions unrelated to asbestos that are responsible for his symptomology or signs of pulmonary disease or impairment.
 - c. Any opinion as to how plaintiff’s condition might be apportioned between his exposure to asbestos at Grace and any pre-existing conditions or other causes of his symptoms and signs of impairment.

- d. Any opinion by a medical expert as to the amount of medical expenses that are reasonably necessary for Ralph Hutt or for end stage care of asbestos-related disease.
- e. Apart from the opinions specifically stated on page 4 of MCC's original expert witness disclosure, any opinion by an industrial hygienist or historian of whether MCC properly applied (a) historical knowledge of asbestos hazards or asbestos warnings, (b) asbestos dust exposure standards, or (c) state of the art of dust control or warnings.

IV. Jennifer Sahmel should not be permitted to testify to any opinion, fact or bases for opinion because, in addition to the disclosure failures, she has not been made available for deposition.

MCC's failures to identify any opinions facts or grounds for opinions of Jennifer Sahmel in either the original or rebuttal expert disclosures is further compounded by MCC's failure to proffer the witness for deposition examination. This witness should not be allowed to testify at all.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court enter an order enforcing this Court's Scheduling Order by limiting Defendant's experts' trial testimony to (a) the heretofore disclosed statements of actual affirmative opinions, which include the facts upon which the opinion is based and grounds therefore, and (b) true rebuttal testimony.

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Respectfully submitted this 9th day of November, 2018.

McGARVEY, HEBERLING, SULLIVAN
& LACEY, P.C.

By: /s/ Allan M. McGarvey

ALLAN McGARVEY
JOHN F. LACEY
DUSTIN LEFTRIDGE

Attorney for MHSL Plaintiff

Exhibit A

09/14/2018

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AC 17-0694

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*Attorneys for Maryland Casualty Company, n/k/a Zurich American Insurance Company,
successor by merger to Maryland Casualty Company***IN THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA**

IN RE ASBESTOS LITIGATION,

Consolidated Cases.

)

) Cause No. AC-17-0694

)

) *Ralph Hutt v. Maryland Casualty Company,*) *et al.*, Eighth Judicial District Court

) Cause No. DDV-18-0175

) Judge John Parker

)

) DEFENDANT'S EXPERT WITNESS

) DISCLOSURE

Defendant Maryland Casualty Company ("MCC"),¹ by and through its attorneys of record
and pursuant to Montana Rules of Civil Procedure, respectfully submits its initial Expert Witness

¹ Maryland Casualty Company is n/k/a Zurich American Insurance Company, successor by merger to MCC as of December 31, 2015. For clarity and conformity with this case's extensive history, this Disclosure refers to the Defendant as "MCC."

Disclosure and states, subject to rebuttal testimony, and additional rebuttal experts that may be identified and opinions provided consistent with the Court's scheduling order, and in response to the specific opinions which Plaintiff may offer to support his case as to MCC.

1. David Weill, M.D.
Weill Consulting Group
5935 Magazine Street
New Orleans, Louisiana 70115

Dr. Weill will be offered to provide medical opinions concerning the diagnosis, treatment and care of Plaintiff, and to rebut the opinions of Plaintiff's medical expert(s) in this case. Dr. Weill will be called upon to review Plaintiff's expert disclosure and opinions and provide rebuttal testimony. Dr. Weill is expected to testify regarding Plaintiff's disease or condition as identified by Plaintiff's expert(s) and its relation, if any, to the alleged exposures at the W.R. Grace facility in 1968 and 1969 as identified in Plaintiff's Complaint. Dr. Weill is expected to opine on the CARD Clinic's interpretations of x-rays and/or PFT results for Mr. Hutt, and that CARD Clinic providers are not pulmonary experts. Dr. Weill may testify on causes of the pleural changes, if any, seen on Mr. Hutt's radiographic studies, as well as Mr. Hutt's diagnosis of asbestosis. Dr. Weill may also testify concerning other contributing factors to Mr. Hutt's pulmonary condition including other exposures to asbestos unrelated to the Libby Plant generally, and specifically exposures outside of MCC's period of insurance coverage for W.R. Grace from 1962 to 1973.

Dr. Weill may also testify concerning, by way of rebuttal testimony, what, if any, limitations Mr. Hutt has as a result of his pulmonary condition relative to other physical and medical diagnoses, as well as the long-term prognosis for Mr. Hutt.

Dr. Weill's opinions will be based upon his review of Plaintiff's medical records, "B" reads of Plaintiff's films (*i.e.*, radiographs, chest X-rays and/or chest CTs), depositions taken in this

matter, review of Plaintiff's expert disclosure and opinions, as well as Dr. Weill's education and experience. Dr. Weill's opinions will be made to a reasonable degree of medical probability.

A copy of Dr. Weill's Curriculum Vitae will be provided upon request.

2. Jennifer Sahmel, MPH, CIH, CSP
Insight Exposure and Risk Sciences
771 Ithaca Drive
Boulder, CO 80305

Ms. Sahmel may be offered to provide rebuttal opinions based on review of Plaintiff's expert disclosures, regarding the standard of care and state of the art for industrial hygiene practices in mining operations such as the W.R. Grace facility during the period of 1962 to 1973, and more specifically the time period of Mr. Hutt's employment by W.R. Grace at the Libby facility, as well as to review and provide rebuttal opinions, as necessary, of any identified Plaintiff's industrial hygiene expert(s) in this case. Ms. Sahmel may be called to testify concerning the purpose and scope of industrial hygiene activities including the identification, evaluation and control of workplace environmental factors that may cause sickness, injury or significant discomfort and inefficiency among workers. Ms. Sahmel may be called to testify concerning the state of the art during the relevant time period for asbestos exposure assessment and risk management. She may also testify concerning historical exposure limits for conditions such as the W.R. Grace facility for the relevant time period.

Ms. Sahmel's opinions will be made to a reasonable degree of scientific probability.

A copy of Ms. Sahmel's Curriculum Vitae will be provided upon request.

3. David B. Sicilia, Ph.D
Department of History, Key Hall
4282 Chapel Lane
University of Maryland
College Park, MD, USA 20742

Dr. Sicilia will be offered to provide opinions regarding the use of asbestos in twentieth century America; historical local, state and federal requirements for the use of asbestos-containing materials; historical medical and scientific, governmental, and labor union research on the potential health effects of asbestos; and the dissemination of information about the uses and potential health effects of asbestos through newspapers, periodicals, specialized non-medical journals, and broadcast media throughout the twentieth century.

Dr. Sicilia is expected to opine that early twentieth century medical research on asbestos was inconclusive. Researchers typically worked with samples from worker populations and repeatedly called for additional research so that findings could be substantiated. Dr. Sicilia is expected to testify that Dr. Selikoff and others expressed their findings in tentative terms throughout the 1960s and into the 1970s. And medical research about asbestos was not distributed to the broad American public.

Dr. Sicilia is expected to opine that asbestos was considered on balance a useful product in the U.S. through the 1970s. His analysis of leading newspapers and business and scientific/technical trade journals regularly read by millions of Americans, including engineers, managers, and workers (as opposed to a discrete group of physicians) documents that asbestos was overwhelmingly presented or discussed in positive terms until the 1970s. All of this research and analysis postdate Mr. Hutt's employment period.

Dr. Sicilia is expected to testify that sound research cannot rely exclusively on medical literature without attempting to determine what was published in newspapers or leading science, technology, and business journals in the twentieth century. His review of approximately 82,000 items in those publications shows that prior to the 1970s virtually none of the medical research on asbestos health and industrial hygiene reached the general public, engineers, or business managers.

coveralls or uniforms, and lockers for street clothes at the W.R. Grace facility; and to implement an adequate medical surveillance program. He testified concerning the State of Montana's failure to ensure that there was an adequate education program for workers; its failure to ensure that workers at the W.R. Grace facilities were utilizing proper respirator protection; and its failure to post warnings about asbestos hazards or require W.R. Grace to do so.

A copy of Dr. Spear's Curriculum Vitae is available upon request.

6. Defendant's Expert Witness Disclosure is based on information available to date. Defendant reserves the right to supplement this disclosure and to expand or modify the areas of expected testimony and opinions set forth herein based on the disclosure of additional information as it becomes available, including in rebuttal to Plaintiff's Expert Witness Disclosure, and upon receipt of plaintiff's theories and opinions as to MCC through Plaintiff's deposition, depositions of experts, and receipt of Plaintiff's discovery responses. To date, Defendant has not received the benefit of any expert opinions directed at MCC.

Dated: September 14, 2018

ECKERT SEAMANS CHERIN & MELLOTT, LLC

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Exhibit B

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DEFENDANT'S REBUTTAL EXPERT
WITNESS DISCLOSURE

Defendant Maryland Casualty Company ("MCC"),¹ by and through its attorneys of record and pursuant to Montana Rules of Civil Procedure and this Court's scheduling order states as follows with respect to rebuttal experts:

As expert witness depositions have not yet been taken, MCC has not yet had the opportunity to fully examine the opinions proffered by Plaintiff's experts. MCC reserves the right to supplement with rebuttal opinions and experts to the extent necessary in addition to those in MCC's initial disclosure after the conclusion of expert depositions.

Dated: September 28, 2018

ECKERT SEAMANS CHERIN & MELLOTT, LLC

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¹ Maryland Casualty Company is n/k/a Zurich American Insurance Company, successor by merger to MCC as of December 31, 2015. For clarity and conformity with this case's extensive history, this Disclosure refers to the Defendant as "MCC."

CERTIFICATE OF SERVICE

I, Allan M. McGarvey, hereby certify that I have served true and accurate copies of the foregoing Other - Other to the following on 11-09-2018:

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