

Maxon R. Davis
DAVIS, HATLEY, HAFFEMAN & TIGHE, P.C.
101 River Drive North, PO Box 2103
Great Falls, MT 59403-2103
T: (406) 761-5243
F: (406) 761-4126
max.davis@dhhtlaw.com

IN THE SUPREME COURT OF THE STATE OF MONTANA

MARYLAND CASUALTY COMPANY,

Petitioner,

v.

THE ASBESTOS CLAIMS COURT, and
THE HONORABLE AMY EDDY, Asbestos
Claims Court Judge

Respondents.

No. OP 19-0051

**UNOPPOSED MOTION OF CONTINENTAL CASUALTY COMPANY
AND TRANSPORTATION INSURANCE COMPANY FOR
LEAVE TO FILE AMICUS CURIAE BRIEF**

Pursuant to M. R. App. P. 12(7), Continental Casualty Company and Transportation Insurance Company (collectively, “CNA”) hereby move the Court for leave to file an amicus curiae brief in support of petitioner Maryland Casualty Company (“MCC”). CNA has conferred with both MCC and the plaintiff in this case, Ralph Hutt. Neither objects to the granting of this motion.

I. Interest of Amicus Curiae.

This action arises out of W.R. Grace & Co.'s operation of a now-defunct mine and mill in Libby. Plaintiff Ralph Hutt worked at the Libby facility from 1968 to 1969, and defendant MCC provided workers' compensation insurance to Grace during that time period. Mr. Hutt seeks to hold MCC liable in negligence on the ground that MCC, while Grace's workers' compensation carrier, failed to warn Mr. Hutt of—and to take adequate steps to protect him from—the dangers of exposure to asbestos released by Grace's operations. This Court has taken supervisory control to review the Asbestos Claims Court's holding that, under the circumstances of this case, MCC had a duty as Grace's workers' compensation insurer to warn workers of asbestos-related hazards at Grace's facility.

CNA has a direct interest in the Court's resolution of this dispute. CNA was Grace's workers' compensation insurer from 1973 to 1985. Over the past several years, a number of former workers at the Grace plant, represented by the same counsel who represent Mr. Hutt here, have filed lawsuits and otherwise asserted claims against CNA seeking to hold CNA liable in negligence for failing, while it was Grace's worker's compensation carrier, to warn them of and protect them from the dangers of exposure to asbestos released by Grace.

These claims against CNA are currently on hold pending a decision by the bankruptcy court for the federal District of Delaware as to whether the claims are

barred by an injunction issued in favor of CNA by the Grace bankruptcy court in 2012 due to CNA's settlement with Grace and its provision of funds to compensate such persons for damages they may have incurred due to exposure to Grace asbestos. *See In re Grace*, 900 F.3d 126 (3d Cir. 2018); *In re W.R. Grace & Co. (Continental Cas. Co. v. Carr)*, Adv. Proc. No. 15-50766 (Bankr. D. Del.). CNA believes that the federal courts will ultimately hold that the negligence claims asserted by former Grace workers against CNA are barred by the injunction in the Grace bankruptcy. But if the former workers prevail in their attempt to avoid the injunction, they will proceed against CNA in the Asbestos Claims Court, and CNA's ability to defend itself against such claims may be directly impacted by this Court's decision in the current matter. In short, a ruling by this Court as to the circumstances, if any, in which a workers' compensation insurer has a duty to warn and protect former workers may have a direct impact on CNA's ability to defend itself against these claims.

II. Reasons Why an Amicus Curiae Brief Is Desirable.

As this Court recognized in granting MCC's petition for review, this case presents "a substantial legal issue that may significantly impact" other litigants. Order at 1 in No. OP 19-0051 (Feb. 19, 2019). CNA is such a litigant. CNA has extensively researched the question presented, both in Montana and throughout the country, and believes that it can provide a broader perspective on the analysis of

duty in the circumstances of this case and similar cases, and the potential impact of any decision by this Court on the ability of workers' compensation insurers to carry out their traditional duties. If the Court grants CNA's motion, CNA will confer with counsel for MCC to ensure that CNA's amicus brief does not unnecessarily duplicate arguments or points already addressed by MCC.

III. Party Whose Position Amicus Curiae Supports.

CNA's proposed amicus brief would support the position of petitioner MCC.

IV. Date Upon Which the Brief Can Be Filed.

If the Court grants this motion, CNA is prepared to file its amicus brief on the same date as MCC's opening brief, *i.e.*, March 21, 2019.

V. Other Parties' Position on Amicus Curiae's Request.

Counsel has conferred with counsel for petitioner MCC and plaintiff Ralph Hutt. Neither MCC nor Mr. Hutt opposes this motion.

* * *

WHEREFORE, CNA respectfully moves the Court for leave to file an amicus curiae brief in support of petitioner MCC.

March 4, 2019

Respectfully submitted,

/s/ Maxon R. Davis

Maxon R. Davis

DAVIS, HATLEY, HAFFEMAN & TIGHE, P.C.

101 River Drive North, P.O. Box 2103

Great Falls, MT 59403-2103

T: (406) 761-5243

F: (406) 761-4126

max.davis@dhhtlaw.com

*Counsel for Continental Casualty
Company and Transportation Insurance
Company*

CERTIFICATE OF SERVICE

I, Joseph M. Sullivan, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed - Amicus - Leave to Participate to the following on 03-04-2019:

Charles J. Seifert (Attorney)
P.O. Box 598
Helena MT 59624
Representing: Maryland Casualty Corporation
Service Method: eService

Daniel W. Hileman (Attorney)
22 Second Ave. W., Suite 4000
Kalispell MT 59901
Representing: Maryland Casualty Corporation
Service Method: eService

Allan M. McGarvey (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Ralph V. Hutt
Service Method: eService

Dustin Alan Richard Leftridge (Attorney)
345 First Avenue East
Montana
Kalispell MT 59901
Representing: Ralph V. Hutt
Service Method: eService

Edward J. Longosz (Attorney)
1717 Pennsylvania Avenue NW
Suite 1200
Washington DC 20006
Representing: Maryland Casualty Corporation
Service Method: eService

Kennedy C. Ramos (Attorney)
1717 Pennsylvania Avenue NW
1200
wash DC 20006

Representing: Maryland Casualty Corporation
Service Method: eService

Maxon R. Davis (Attorney)
P.O. Box 2103
Great Falls MT 59403
Representing: Continental Casualty Company, Transportation Insurance Co.
Service Method: eService

Amy Eddy (Respondent)
920 S. Main, Ste. 310
Kalispell MT 59901
Service Method: Conventional

Tammy Peterson (Interested Observer)
Asbestos Court Clerk
Helena MT 59601
Service Method: Conventional

Matthew Cuffe (Interested Observer)
512 California
Libby MT 59923
Service Method: Conventional

Mark A. Johnston (Attorney)
1717 Pennsylvania Ave. NW, 12th Floor
Washington DC 20006
Representing: Maryland Casualty Corporation
Service Method: Conventional

Electronically Signed By: Joseph M. Sullivan
Dated: 03-04-2019