

IN THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA

IN RE ASBESTOS LITIGATION, <i>Consolidated Cases</i>	Cause No. AC 17-0694 MOTIONS FOR EXPANSION OF RECEIVERSHIP, APPROVAL OF SETTLEMENT, and CREATION OF QUALIFIED SETTLEMENT TRUST (Robinson Receivership)
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Come now, Nancy Gibson, Receiver for Robinson Insulation Company, and Allan McGarvey and Mark Kovacich, on behalf of certain Libby Plaintiffs, and move the Court for orders:

- a. Expanding the Receivership to include dissolved entity Grogan Robinson Lumber Company, a co-insured of Robinson Insulation Company;
- b. Approving a settlement of rights and obligations arising under certain liability insurance policies of Robinson Insulation Company and Grogan Robinson Lumber Company, and enjoining claims with respect thereto, and entry of a final appealable judgment and order; and
- c. Creating a Qualified Settlement Fund Trust to resolve personal injury claims arising under such settled insurance.

Introduction

This Court has created a Receivership for Robinson Insulation Company

(“Robinson”) for the purposes of accepting service of actions against the company, tendering defense to insurers, litigating coverage issues, and settling resulting litigation upon specific Court approval.

The Receiver has pursued these purposes by accepting service and tendering defense of hundreds of asbestos cases in which Robinson is a defendant. Defense has been conditionally accepted and defense counsel appointed to defend the cases.

Counsel for the Libby Claimants agreed with defense counsel to suspend active litigation of most of the actions against Robinson while the Receiver, counsel for Libby claimants, and coverage counsel for the insurers attempted to settle the rights and duties arising under the liability policies. The settlement efforts have been extensive, and settlements with the identified insurers have been reached, subject to Court approval.

Settlement of Insurance Assets

The settlement structure recognizes that the Receivership Court has plenary power to order a final resolution of claims arising under Robinson’s insurance policies, consistent with the Receivership’s purpose to manage the insurance assets which are the sole assets of the Receivership.

The proposed settlement has been reached in the context of coverage litigation in Case 19-CV- 00181 in the U.S. District Court for Montana, in which case pleadings have been filed setting forth the respective coverage contentions of

all parties. In addition, counsel for the Libby Claimants and coverage counsel for the settling insurers (ACE Fire Underwriters Insurance Company, ACE Property & Casualty Insurance Company, Motorists Commercial Mutual Insurance Company, and American States Insurance Company) have exchanged numerous detailed coverage analyses and informal discovery responses which inform a fair settlement.

The settlement structure has three components. First, under the terms of the Settlement Agreement, each of the settling insurers would make a one-time payment to buy back their policies, in exchange for which the Receivership estate would assume all of the obligations the settling insurance companies otherwise would have to pay on asbestos claims, so as to achieve finality such that all claims against the insurers under the policies would be resolved and enjoined.

Second, the proceeds of the settlement would be paid into a Qualified Settlement Fund Trust, and the Receivers' rights and obligations with respect to such settlement proceeds will be assigned to and assumed by such trust.

Third, following court approval of the settlement of the Receivership's insurance rights, the Receiver and counsel for Libby Claimants will propose to the Court a Trust Distribution Procedure ("TDP") mechanism for distribution of trust funds to claimants meeting criteria including (a) an occurrence within the coverage period of the settled insurance and (b) exposure and disease criteria with

corresponding recovery levels reflecting claim values in the tort system. The TDP will be fashioned on typical asbestos trust TDPs created in bankruptcies, including the Asbestos Personal Injury TDP approved by the Bankruptcy Court in the W.R. Grace bankruptcy. It will set forth the elements of a proof of claim, and will be designed to reflect claim values in the tort system.

After all due process considerations have been fully addressed, the Receiver and counsel for Libby Claimants will move the Court to approve the TDP. Claims may then be presented to the Trust and resolved subject to a payment percentage designed to assure that accepted claims are paid in proportion to the total trust fund asset.

In addition to the Settlement Agreement which is the subject of these motions, a pending tentative settlement has been reached with the Liquidator of the Home Insurance Company which is in liquidation pursuant to the June 13, 2003 Order of the Superior Court of the State of New Hampshire, Merrimack County. The tentative settlement is subject to approval by both this Court and the New Hampshire court in the Liquidation proceeding. The Qualified Settlement Fund Trust has been designed to accept contributions resulting from a settlement with Home Insurance Company Liquidator or any other settling insurer so that asbestos claims against Robinson Insulation Company and/or Grogan Robinson Lumber Company may be resolved through unified claim procedures.

In support of the Motions for approval of the Settlement Agreement and creation of the Qualified Settlement Fund Trust, the following documentation is supplied:

1. A copy of the Settlement Agreement and Release (“Settlement”) between and among the Receiver and the settling insurers.
2. A copy of the Qualified Settlement Fund Trust agreement.
3. The affidavits of Nancy Gibson and Allan McGarvey demonstrating that (a) the Settlement was reached through extensive, arms-length negotiations between and among the Receiver, counsel for Libby Plaintiffs, and coverage counsel for the settling insurers and (b) that the settlement exhausts the full amount of the settling insurers’ indemnity coverage liability through a negotiated resolution of the coverage claims and defenses presented in the above-described federal court coverage litigation (Case 19-CV- 00181, U.S. District Ct. for Montana).

Grogan Robinson Lumber Company

The Receiver previously moved this Court to expand the Receivership to include dissolved corporation Grogan Robinson Lumber Company. Counsel inadvertently failed to present the supporting Exhibit A and no demonstration had been made that other claims were pending against Grogan Robinson Lumber

Company or could be brought against it under the common insurance coverage. That motion was denied.

The Receiver and counsel for Libby Plaintiffs now renew the motion to expand the Receivership to include Grogan Robinson Lumber Company upon the following additional information and grounds.

First, for Robinson Insulation Company to resolve the insurers' obligations under the structure described above, a mechanism must be in place to assure that the insurance coverage with respect to the related entity is also resolved, because Grogan Robinson Lumber Company is a co-insured under the subject policies. The Settlement Agreement therefore makes the expansion of the Receivership a condition to the settlement.

Second, while the only known case that had been pending against Grogan Robinson Lumber Company was the *Hartle* case (Montana Eleventh Judicial District Court Cause No. DV-15-2018-532B, settlement of which has been approved by this Court), there are several facts which made necessary the above-described condition to the Settlement Agreement:

- Grogan Robinson Lumber Company was a related entity and operation which distributed the expanded vermiculite product manufactured by Robinson Insulation Company to lumberyards and other retail outlets in Montana. The two related manufacturing and

distribution entities are subject to claims for the same injuries and damages under strict product liability grounds for each company's role in the manufacturing and distribution of the same vermiculite insulation products.

- The two companies operated with overlapping management and ownership.
- While there is no need for an asbestos claimant to sue both companies as each was dissolved and the only recoverable asset was the insurance common to both companies, many of the asbestos claimants have substantially identical grounds for pursuing either company.
- The insurers of the co-insured entities cannot settle their indemnity and defense duties to Robinson without the concurrence of the coinsured Grogan Robinson which faces corresponding liability exposure for the same covered occurrence and injury because there is a single coverage for both entities.
- The insurers of the co-insured entities cannot settle the personal injury claims against one insured without taking appropriate actions to protect the coinsured and desire a release of all claims against both insureds.

- The settlement, which constitutes the negotiated full value of coverage, exhausts such coverage for both insureds.
- Counsel for the Libby Plaintiffs have apprised the insurers that there are a large number of claims that can be brought against Grogan Robinson Lumber Company.
- To assure that this Court has no jurisdictional barrier to expanding the Receivership, one or more cases pleading claims against Grogan Robinson Lumber Company have now been filed in the Montana District Court which is part of the Asbestos Claims Court consolidated proceedings.

Third, the Receiver for Robinson Insulation Company cannot effectively manage its insurance assets without coordinating the resolution of parallel claims against its co-insured, Grogan Robinson. Since both related companies are dissolved and have no assets other than the common liability insurance which is already the subject of the Robinson Insulation Company Receivership, the same grounds for creation of the Robinson Receivership exist for the creation of a Grogan Robinson Receivership.

Finally, the Court's ability to protect the rights of both dissolved companies' debtors and creditors is best managed through a consolidated receivership for both entities.

In support of the renewed motion for expansion of the Receivership to include Grogan Robinson Lumber Company, the following documentation is provided to establish the above described facts:

1. Exhibit A which is a Sworn Interrogatory answer on behalf of Grogan Robinson Lumber Company establishing that the entity has been dissolved and describing the ownership and operational relationship between Robinson Insulation Company and Grogan Robinson Lumber Company.
2. A copy of a filed pleading alleging a claim of strict products liability of Grogan Robinson Lumber Company which (a) assures the Asbestos Claims Court has jurisdiction to expand the Receivership to include a defendant party before this Court, and (b) demonstrates the related claim of liability of the two entities.
3. The affidavits of Allan McGarvey and Receiver Nancy Gibson.

Submitted with these consolidated motions are three proposed orders which the movants respectfully request the Court to enter:

1. Judgment and Order approving the Settlement Agreement;
2. Order creating the Qualified Settlement Fund Trust; and
3. Order amending the Receivership to include Grogan Robinson Lumber Company.

Respectfully submitted this 21st day of May, 2020.

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CERTIFICATE OF SERVICE

I, Allan M. McGarvey, hereby certify that I have served true and accurate copies of the foregoing Motion - Other to the following on 05-22-2020:

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